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August 20, 2021

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Substituted Compliance Application for Spanish Firms as Security-Based Swap Dealers or Major Security-Based Swap Participants for Certain Requirements under Exchange Act Section 15F and Regulations Thereunder

Dear Ms. Countryman:

We are submitting this application (the **Application**) to request that the Securities and Exchange Commission (**Commission** or **SEC**) make a determination with respect to the risk control, recordkeeping and reporting, internal supervision and compliance, and counterparty protection requirements under Spanish Law specified herein that compliance with Spanish Law requirements by the class of market participants described in Appendix A satisfies the analogous requirements applicable to a security-based swap dealer or major security-based swap participant registered with the Commission that is not a U.S. person (together, "non-U.S. SBS Entities") under Section 15F of the Securities Exchange Act of 1934 (**Exchange Act**) and regulations thereunder.

The enclosed Application proceeds in the following Appendices[1], with each Appendix responsive to one or more of the elements of a substituted compliance application described in the Commission Staff's guidance:[2]

- **Appendix A** responds to Element 1 of the Staff's guidance, identifying the type of Spanish market participants who wish to use substituted compliance (including the Spanish authorities that directly oversee such market participants) and the specific Exchange Act provisions and rules for which we are requesting substituted compliance;

- **Appendix B** responds to Elements 2 and 3 of the Staff's guidance together by describing (i) the Exchange Act provisions and rules for which we are requesting substituted compliance;
(ii) the EU and Spanish requirements, including their regulatory objectives, that are comparable to these Exchange Act provisions and rules; and (iii) attaching copies of or links to the relevant EU and Spanish requirements in English (though some translations contain the date of a previous version of a law, all requirements relevant to this application are up-to-date) ; and

[1] The contents of the documents included in Appendix A, B and Annex I of Element IV have been prepared by Banco de Santander and its Legal Counsels from the Law Firms: Cleary Gottlieb, Steen & Hamilton LLP (in the United States) and Uría Menéndez Abogados, S.L.P. (in Spain), respectively.

[2] *See* Staff Guidance—Elements of an Application for Substituted Compliance for Foreign Security-Based Swap Dealers and Major Security-Based Swap Participants, *available at* https://www.sec.gov/files/staff-guidance-elements-substituted-compliance-application_0.pdf.

- **Appendix C** responds to Element 4 and Element 5 of the Staff's guidance. The Elements explain how the Spanish National Securities Market Commission ("Comisión Nacional del Mercado de Valores" or **CNMV**) and the European Central Bank (or **ECB**), with the participation of the Banco de España (or **BdE**), administer effective supervisory compliance programs and exercise effective enforcement authority with respect to Spanish and relevant European Union requirements. It also addresses the Commission's access to books and records and onsite inspection and examination. In addition, in connection with the requirements set out in Exchange Act Rule 3a71-6(c)(3) regarding the SEC´s access to books and records and onsite inspections and examinations, we acknowledge in relation to books and records that there are no laws or policies under either Spanish or EU Law (see below with respect to Regulation (EU) No. 2016/279 on the protection of natural persons with respect to the processing of personal data and on the free movement of such data (**GDPR**)), that would impede the ability of any Covered Entity (as defined in Appendix A) from providing the Commission with prompt access to its books and records or submitting to on-site inspection and examination by the SEC. With regard to GDPR, the CNMV and BdE have reached an understanding in principle that could be included in a memorandum of understanding (**MoU**), as well as additional arrangements, as required by Rule 3a71-6(a)(2)(ii) under the Exchange Act, to be executed concurrently with the substituted compliance order. Furthermore, the CNMV notes that it has extensive experience working with the Commission and its staff on supervisory and enforcement matters relating to the regulation of securities and derivatives markets.

As you know, we have separately been discussing with the Staff Element 6, of the Staff's guidance, the MoU relating to supervisory and enforcement arrangements with the Commission and other matters that may arise under a substituted compliance order, which is intended to formalize the understanding around GDPR and address other ancillary supervision and enforcement issues. The CNMV and the BdE plan to enter into an MoU with the Commission before a final substituted compliance order can be issued.

On August 16, 2021, The Commission and the ECB have signed a Memorandum of Understanding concerning consultation, cooperation and the exchange of information related to the supervision and oversight of certain cross-border over-the-counter derivatives entities in connection with the use of substituted compliance by such entities.

We welcome the opportunity to discuss the application and its contents with Commission Staff in further detail, if necessary. Please do not hesitate to reach out to Antonio Mas, International Affairs Director at (MAS@cnmv.es) and Santiago Yraola, International Affairs Deputy Director at (Yraola@cnmv.es) with any questions you might have.

Sincerely,

RODRIGO BUENAVENTURA
Fecha: 2021.08.20 18:20:09 +02'00'

Rodrigo Buenaventura

Enclosures:

Appendix A

Appendix B

Appendix C

Appendix A: Scope of the Substituted Compliance Request

Covered Market Participants

As discussed in greater detail below, the Application covers Spanish investment firms (**Investment Firms**)[1] and credit institutions (**Credit Institutions)**, in each case that are significant institutions, that are authorized by the CNMV and the ECB to provide investment services or perform investment activities in Spain and that are supervised by the CNMV and the ECB (with the participation of BdE) (**Covered Entities).**

Covered entities are supervised by the CNMV for conduct on securities market matters.

i. Scope of EU and Spanish legislation

The substantive activities of Covered Entities conducting business in Spain in relation to security-based swaps (insofar as relevant to this Application) is regulated in Spain primarily in accordance with five sets of EU legislation and implementing Spanish legislation under this framework as follows:

1. the Markets in Financial Instruments Regulation (**MiFIR**) and Spain's domestic implementation of the European Union's (**EU**) recast Markets in Financial Instruments Directive (**MiFID**) (also known as "MiFID II"): MiFIR is a regulation and MiFID is a directive which both entered into force on 3 January 2018, with recast MiFID having been transposed into Spanish law with effect from 30 September 2018.[2]

   MiFIR and MiFID apply to Investment Firms, which comprise any legal person whose regular occupation or business is the provision of one or more investment services to third-parties and/or the performance of one or more investment activities on a professional basis. Investment services and activities means any of the services and activities listed in Section A of Annex I of MiFID (e.g. dealing as principal or agent, advising on transactions) relating to any of the instruments listed in Section C of Annex I of MiFID. Section C of Annex 1 refers explicitly to swaps as well as "other derivative financial instruments".

   Credit Institutions are also subject to MiFIR and MiFID when providing investment services or conducting investment activities and, accordingly EU and Spanish legislation that is stated in this Application to apply to Investment Firms also applies to Credit Institutions.

   CNMV is responsible for supervising compliance with MiFIR and MiFID.

2. the European Market Infrastructure Regulation (**EMIR**): EMIR is a regulation which entered into force on August 16, 2012.

   EMIR implements various of the G20 commitments to reform "over-the-counter" (**OTC**) derivatives markets in an effort to promote greater stability and transparency. EMIR applies a G20 mandatory clearing obligation and bilateral risk-management requirements for persons dealing in OTC derivatives and reporting requirements for derivatives contracts, as well as establishing requirements for central counterparties (**CCPs**), clearing members, trade repositories and, in some respects, trading venues. EMIR applies its requirements differently in certain respects to "financial counterparties" (**FCs**), and "non-financial counterparties" (**NFCs**).

   CNMV is responsible for supervising compliance with EMIR requirements by Spanish FCs and NFCs, and by non-Spanish entities in the limited cases where EMIR applies between two persons outside the European

[1] Spanish investment firms with more than €30 billion in assets are required to become a credit institution, which will be afterwards, supervised by the European Central Bank.

[2] Royal Decree-law 14/2018, of 28 September.

Economic Area (**EEA**) viz. where the contract in question has a direct, substantial or foreseeable effect in the EU or where it is necessary or appropriate to prevent the evasion of rules and obligations arising from EMIR.

3. the Capital Requirements Regulation (**CRR**) and Spain's domestic implementation of the EU's Capital Requirements Directive (**CRD,** including **CRD IV and CRD V**): CRR is a regulation and CRD is a directive, which entered into force on June 28, 2013 and July 17, 2013, respectively. CRD IV has been transposed into Spanish law with effect from 31 November 2014, although some provisions were applied from the 1st of January of 2014 or from 30 of June of 2014.[3] CRD V has been transposed into Spanish law with effect from 29 April 2021, although some provisions shall enter into force later on.[4]

   CRR and CRD IV/V establish prudential and supervisory requirements for certain "Institutions", including Credit Institutions and Investment Firms. CRR and CRD IV/V together implement the Basel framework in the EU.

   Covered Entities are directly supervised for prudential matters by ECB (including by way of a joint supervisory team in which the BdE participates). Every Covered Entity established in Spain to conduct investment services on securities matters is supervised by the CNMV

4. the Bank Recovery and Resolution Directive (BRRD): BRRD is a directive which entered into force on January 1, 2015, with BRRD having been transposed into Spanish law with effect from 20 of June 2015, although some provisions were applied from the 1st of January of 2016 or from 3 of July of 2017[5].

   BRRD establishes rules and procedures relating to the recovery and resolution of Credit Institutions and certain Investment Firms subject to the requirements of CRR and CRD IV, including Covered Entities.

5. the Market Abuse Regulation (**MAR**) and the Criminal Sanctions for Market Abuse Directive (**CSMAD**): MAR is a regulation and CSMAD is a directive which both entered into force on July 2, 2014. with CSMAD having been transposed into Spanish law with effect from 13 of March of 2019[6].

   MAR establishes restrictions on insider dealing and market manipulation and disclosure requirements for issuers of financial instruments. CNMV is responsible for supervising compliance with MAR.

   EU member states can implement EU legislative requirements in a more onerous manner, and/or can impose additional requirements, through member state law (these are known as "gold-plating" of EU requirements).

ii. <u>Application of EU legislation</u>

The various parts of EU legislation above considered each apply where instruments are MiFID financial instruments and each cover different topics in relation to the relevant subject matter and are designed to operate in conjunction with each other. Transactions will be subject to EMIR, MiFIR, MIFID, CRR, CRD IV/V, BRRD, MAR and CSMAD requirements except where a particular transaction is exempt from a particular regime are specifically noted in the chart below. EU legislation does not vary on a product-specific basis (within the broader

[3] Royal Decree-Law 14/2013, of 29 November.
[4] Royal Decree-Law 7/2021, of April 27, on the transposition of European Union directives in matters of competition, prevention of money laundering, Credit Institutions, telecommunications, tax measures, prevention and repair of environmental damage, displacement of workers in the provision of transnational services and defense of consumers.
[5] Law 11/2015, of 18 of June.
[6] Organic Law 1/2019, of 20 of February.

set of instruments treated in EU law as MiFID financial instruments) – i.e. there is no distinction between what would be categorized in the US as swaps and security-based swaps.

EU regulations are binding with direct effect in all EU member states (i.e. no transposition into the national law of each EU member state is required to give effect to them). All member states of the EU are legally bound to implement the provisions of EU directives, in accordance with the Treaty on the Functioning of the European Union, by transposing them into their national law including a deadline for such national transposing within each EU directive. For each directive referred to, we have assumed that each EU member state has completed the process of transposing that directive into its national law on identical terms set out in the directive and such transposed law is in full force and effect.

MiFIR, MiFID, EMIR, CRR, CRD IV/V, MAR and CSMAD are so-called 'Level 1' legislation. These are supplemented by a range of subordinate 'Level 2' legislation and 'Level 3' guidance. All such legislation and guidance is referenced in this chart where relevant.

The EU regulations and directives considered in this document are intended to establish a high degree of minimum harmonization and consistency across the laws of EU member states, with only limited scope for local discretion or deviation. This chart is limited to matters of EU law and does not address the laws of each EU member state.

All of the EU legislation considered in this Application is currently in force and it does not address upcoming or potential future revisions to such EU legislation. However, if any revision is made we will report on it to the Commission.

iii. Application to Covered Entities

For purposes of this Application, we would expect that Covered Entities would generally be treated by the EU and Spanish regime as:

- ***For the purposes of CRR and Spain's implementation of CRD IV/V:*** Credit Institutions (or Investment Firms that meet the definition of "institution" in that legislation);
- ***For the purposes of MiFIR and Spain's implementation of MiFID:*** Investment Firms (or Credit Institutions that are subject to certain provisions of that legislation); and
- ***For the purposes of EMIR:*** Financial Counterparties.[7]

We have expressly noted in the relevant responses how MAR and CSMAD apply to dealers.

In addition, for the rules discussed in this Application, we would expect security-based swaps to fall within the scope of MiFID financial instruments and that the provisions of EMIR would apply to security-based swaps. The various parts of Spanish legislation considered in this Application each apply where instruments are MiFID financial instruments and each cover different topics in relation to the relevant subject matter and are designed to operate in conjunction with each other. Transactions will be subject to EMIR, MiFIR, CRR, MAR, Spain's implementation of MIFID, Spain's implementation of CRD IV/V, Spain's implementation of CSMAD except where a particular transaction is exempt from a particular regime as specifically noted in the Application. Spanish

[7] Some obligations under EMIR are also affected by EMIR's so-called 'clearing threshold'. FCs that exceed the clearing threshold (**FC+s**) are subject to the mandatory clearing requirement, whereas FCs that do not exceed the clearing threshold (**FC-s**) are not. We have noted where this is relevant in this Application. Whether a dealer would be a FC+ or an FC- will depend upon their individual trading activity and so no statement of general application can be made. How the clearing threshold applies to counterparties is dealt with in each relevant response.

legislation does not vary on a product-specific basis (within the broader set of instruments falling within scope of MiFID financial instruments) – i.e. unlike Title VII of the Dodd-Frank Act, which distinguishes between, and applies different regulatory frameworks to, swaps and security-based swaps, the Spanish regulatory framework does not apply differently to subsets of MiFID financial instruments.

Relevant Exchange Act Provisions and Rules

As set forth in greater detail in Appendix B, we are requesting substituted compliance with respect to the following Exchange Act provisions and rules, to the extent applicable to a dealer with prudential regulator:

- Risk Control:
    - *Risk Management Systems*: Exchange Act section 15F(j)(2) [15 U.S.C. 78o-10(j)(2)] and Exchange Act rules 15Fh-3(h)(2)(iii)(I)[17 CFR 140.15Fh-3(h)(2)(iii)(I)]
    - *Trade Acknowledgment and Verification:* Exchange Act rule 15Fi-2 [17 CFR 240.15Fi-2]
    - *Portfolio Reconciliation and Dispute Resolution, Portfolio Compression and Trading Relationship Documentation*: Exchange Act rules 15Fi-3, 4 and 5 [17 CFR 240.15Fi-3, 4 and 5]
- Recordkeeping and Reporting:
    - *Record Creation*: Exchange Act section 15F(g) [15 U.S.C. 78a-10(hg)] and Exchange Act rule 18a-5 [17 CFR 240.18a-5]
    - *Record Maintenance*: Exchange Act section 15F(g) [15 U.S.C. 78a-10(hg)] and Exchange Act rule 18a-6 [17 CFR 240.18a-6]
    - *Reports*: Exchange Act rule 18a-7 [17 CFR 240.18a-7]
    - *Notifications*: Exchange Act rule 18a-8 [17 CFR 240.18a-8]
- Supervision and Chief Compliance Officer:
    - *Diligent Supervision*: Exchange Act rule 15Fh-3(h) [17 CFR 240.15Fh-3(h)] (other than paragraph (h)(2)(iii)(I))
    - *Chief Compliance Officers*: Exchange Act section 15F(k) [15 U.S.C. 78o-10(k)] and Exchange Act rule 15Fk-1 [17 CFR 240.15Fk-1]
    - *Conflicts of Interest*: Exchange Act section 15F(j)(5) [15 U.S.C. 78a-10(j)(5)]
    - *Antitrust Considerations*: Exchange Act section 15F(j)(6) [15 U.S.C. 78o-10(j)(6)]
- Counterparty Protection
    - *Fair and Balanced Communication*: Exchange Act rule 15Fh-3(g) [17 CFR 240.15Fh-3(g)]
    - *Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest*: Exchange Act rule 15Fh-3(b) [17 CFR 240.15Fh-3(b)]
    - *Disclosure of Daily Marks*: Exchange Act rule 15Fh-3(c) [17 CFR 240.15Fh-3(c)]

- *Know Your Counterparty*: Exchange Act rule 15Fh-3(e) [17 CFR 240.15Fh-3(e)]
- *Suitability*: Exchange Act rule 15Fh-3(f) [17 CFR 240.15Fh-3(f)]
- *Disclosure of Clearing Rights*: Exchange Act rule 15Fh-3(d) [17 CFR 240.15Fh-3(d)]

Appendix B: Comparison of U.S. and EU and Spanish Requirements

This Appendix describes (i) the Exchange Act provisions and rules for which we are requesting substituted compliance and (ii) the EU and Spanish requirements, including their regulatory objectives that are comparable to these Exchange Act provisions and rules. We present these descriptions first in narrative form, followed than by a comparison in tabular form that illustrates similarities or differences between U.S. and EU and Spanish requirements.

This Appendix is organized by the regulatory categories set forth in Commission Staff's Guidance on Information Regarding Foreign Regulatory Requirements for Substituted Compliance Applications (**SEC Guidance**).[8] Column 1 of this Appendix's table sets out the relevant Commission requirements and a summary of the Commission's policy goals, generally tracking the descriptions set forth in the SEC Guidance. These are followed by the EU law requirements, and a summary of the EU's policy goals, that correspond to the Commission requirements (column 2).[9] Third we have included information about relevant Spanish law provisions (column 3). Finally, an assessment of the comparability of outcomes (or of requirements, where appropriate) as against the EU and Spanish position is set out in the fourth column.[10]

[8] SEC Staff Guidance (Dec. 23, 2019), *available at* https://www.sec.gov/files/staff-guidance-substituted-compliance-applications.pdf.

[9] Statements on EU and Spanish law requirements and policy goals are drafted on the basis of requirements that apply to Covered Entities when incorporated in Spain (i.e. a direct comparison is made between how the US regime applies to SBS Entities and how the EU and Spanish regime applies to Covered Entities).

[10] We note that comparability of outcomes alone is sufficient under the SEC's holistic approach to assessing substituted compliance because such approach "will focus on the comparability of regulatory outcomes rather than predicating substituted compliance on requirement-by-requirement similarity." *See* SEC Guidance at p. 3 (quoting Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR 29960, 30074 (May 13,2016) (**Business Conduct Adopting Release**) *available at* https://www.govinfo.gov/content/pkg/FR-2016-05-13/pdf/2016-10918.pdf. Comparability of requirements is included, where applicable, for completeness.

1. Category: Risk Control Requirements

a. Executive Summary

The risk control requirements of the Exchange Act promote market stability by requiring that registered entities have adequate financial resources and follow risk mitigation and documentation practices that are appropriate to manage the market, counterparty, operational and legal risks associated with their security-based swap business.

b. Subcategory: Internal Risk Management Requirements

Dealers are obligated to follow policies and procedures reasonably designed to assist them in managing the risks associated with their business activities.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Internal Risk Management Requirements			
1. To what extent are firms required to implement internal risk management controls?			
Firms must "establish robust and professional risk management systems adequate for managing [their] day-to-day business." Exchange Act section 15F(j)(2) [15 U.S.C. 78o-10(j)(2)].[1] Firms are generally required, as part of their supervisory systems, to establish, maintain and enforce written policies and procedures addressing the obligations to, *inter alia*, monitor trading, establish a day-to-day business risk management system, disclose trading information to the SEC, establish internal recordkeeping systems, and implement systems to safeguard against conflicts of interest. Exchange Act rule 15Fh-	**MiFID** Investment Firms must establish, implement and maintain adequate risk management policies and procedures that identify the risks relating to the Investment Firm's activities, processes and systems and, where appropriate, set the level of risk tolerated by the Investment Firm. The requirement goes beyond this to encompass monitoring the effectiveness and adequacy of the Investment Firm's risk management policies and procedures, together with the level of compliance by the Investment Firm and its personnel	Article 16(4)(5) MiFID has been transposed into Article 193(3)(a)(b) **SSMA**[3] and to Article 30ter(2) **RD 217/2008**[4]**.** Relevant Articles MiFID Org Reg., as regulation, are directly applicable Relevant Articles of EMIR Margin RTS, RTS 149/2013 and CRR, as regulations, are directly applicable in Spain Article74 CRD IV has been transposed into Article29(1) **LOSSEC**[5] Article76(1) CRD IV has been transposed into Article37(2)(b)	**Comparability of outcomes**: The EU's requirements to implement internal risk management controls provide a similar regulatory outcome to the SEC requirements for risk management controls. In particular, the regulatory outcomes pursued under Exchange Act section 15F(j)(2) and MiFID are consistent in that each require Investment Firms to establish robust internal risk management systems to manage risks associated with their business activities. While we believe that the SEC as a market regulator regulating derivatives activity should find the

[1] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Internal Risk Management Requirements			
1. To what extent are firms required to implement internal risk management controls?			
3(h)(2)(iii)(I) [17 CFR 240.15Fh-3(h)(2)(iii)(I)].[2]	with the arrangements, processes and mechanisms adopted and the adequacy and effectiveness of measures taken to address deficiencies in them. Article 21 and 23 MiFID Org Reg. A specific risk management function is required where appropriate and proportionate that must: (i) operate independently, (ii) implement the Investment Firm's risk management policies and procedures, and (iii) provide required reports and advice to senior management. Article 23(2) MiFID Org Reg. An investment firm must take reasonable steps to ensure continuity and regularity in the	LOSSEC Article76(3) CRD IV has been transposed into Article 38 LOSSEC Article79(b) CRD IV has been transposed into Article 46(c) **RD 84/2015**[6] Articles of CRR referred to herein are directly applicable in Spain.	directly equivalent MiFID requirements alone sufficient, we have, for background, also listed additional risk management requirements relevant EU regulated entities are subject to, as they contribute to the regulatory landscape on the topic of risk management. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note that the below EU requirements are, when taken together, comparable to analogous SEC policies and procedures requirements in the following ways:

[3] Recast text of the Spanish Securities Market Act approved by Spanish Royal Legislative Decree 4/2015, of 23 October,
[4] Royal Decree 217/2008, of 15 February, on the legal regime for investment firms and other entities providing investment services, as well as partially amending the Regulation of Spanish Law 35/2003, of 4 November, on Collective Investment Schemes, approved by Spanish Royal Decree 1309/2005, of 4 November, and other royal decrees on the securities market.
[5] Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of Credit Institutions
[2] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[6] Royal Decree 84/2015 of 13 February 2015 implementing Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of Credit Institutions.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Internal Risk Management Requirements			
1. To what extent are firms required to implement internal risk management controls?			
	performance of investment services and activities. For that purpose investment firm shall employ appropriate and proportionate systems, resources and procedures. Article 16(4) MiFID. Investment Firms must have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems. Article 16(5) MiFID. Investment firms shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under MiFID , as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable		• Articles 21 and 23 MiFID Org Reg. require Investment Firms to establish and maintain policies and procedures to identify risk, set risk tolerance levels, and monitor the effectiveness of such policies and procedures and address deficiencies in them, while Article 23(2) MiFID Org Reg. requires an independent risk management function to be established to implement risk management policies and procedures. Articles 22 and 24 MiFID Org Reg. further require Investment Firms to establish compliance and, where appropriate, audit functions in connection with the implementation of the risk management policies. • Counterparties are required to establish risk management procedures for the exchange of collateral for non-centrally cleared OTC derivative

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Internal Risk Management Requirements			
1. To what extent are firms required to implement internal risk management controls?			
	the competent authorities to exercise their powers effectively under MiFID. For this purpose, Investment firms shall establish and maintain a permanent and effective compliance function which operates independently and which, among other things, has the following responsibilities: • to monitor on a permanent basis and to assess, on a regular basis, the adequacy and effectiveness of the measures, policies and procedures put in place, and the actions taken to address any deficiencies in the firm's compliance with its obligations; • to report to the management body, on at least an annual basis, on the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that		contracts, which are subject to annual testing and updates and review by competent authorities under RTS, Article 2. • Article 74 CRD IV requires Credit Institutions to establish robust internal risk management systems, including internal administrative and accounting procedures. Article 76(1) CRD IV requires management bodies of Credit Institutions to review and approve internal risk management strategies and policies. Article 76(3) CRD IV requires Credit Institutions that are sufficiently large and complex to establish a risk committee which we would expect to encompass most dealers. Article 16(5) MiFID requires Investment Firms to establish robust internal risk management assessment

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Internal Risk Management Requirements			
1. To what extent are firms required to implement internal risk management controls?			
	have been identified, as well as remedies undertaken or to be undertaken. Article 22 MiFID Org Reg. Investment firms shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the investment firm which, among other things, shall establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the investment firm's systems, internal control mechanisms and arrangements. Article 24 MiFID Org Reg. **EMIR Margin RTS**		procedures. • Articles 286-88 and 293 CRR require Credit Institutions to establish and maintain a CCR management framework and impose detailed obligations on Credit Institutions and their relevant functions in connection with the day-to-day management of counterparty credit risks. These requirements are consistent with the policy and procedure requirements set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(I).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Internal Risk Management Requirements			
1. To what extent are firms required to implement internal risk management controls?			
	Counterparties must establish, apply and document risk management procedures for the exchange of collateral for non-centrally cleared OTC derivative contracts. EMIR Margin RTS, Article 2(1). The risk management procedures must include procedures providing for or specifying the following: (a) the eligibility of collateral for non-centrally cleared OTC derivative contracts in accordance with Section 2 of Chapter 1 of the EMIR Margin RTS; (b) the calculation and collection of margins for non-centrally cleared OTC derivative contracts in accordance with Section 3 of Chapter 1 of the EMIR Margin RTS; (c) the management and segregation of collateral for non-centrally cleared OTC derivative contracts in accordance with Section 5 of Chapter 1 of the EMIR Margin RTS; (d) the calculation of the		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Internal Risk Management Requirements			
1. To what extent are firms required to implement internal risk management controls?			
	adjusted value of collateral in accordance with Section 6 of Chapter 1 of the EMIR Margin RTS; (e) the exchange of information between counterparties and the authorisation and recording of any exceptions to the risk management procedures; (f) the reporting of the exceptions in Chapter II of the EMIR Margin RTS to senior management; (g) the terms of all necessary agreements to be entered into by counterparties before the time in which a non-centrally cleared OTC derivative contract is concluded, including the terms of the netting agreement and the terms of the exchange of collateral agreement in accordance with Article 3 of the EMIR Margin RTS; (h) the periodic verification of the liquidity of the collateral to be exchanged; (i) the timely re-appropriation of the collateral in the event of default by the posting counterparty from		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Internal Risk Management Requirements			
1. To what extent are firms required to implement internal risk management controls?			
	the collecting counterparty; and (j) the regular monitoring of the exposures arising from OTC derivative contracts that are intragroup transactions and the timely settlement of the obligations resulting from those contracts. EMIR Margin RTS, Article 2(2). Risk management procedures must be tested, reviewed and updated as necessary and at least annually. EMIR Margin RTS, Article 2(5). Upon request, counterparties using initial margin models shall provide the competent authorities with any documentation relating to the risk management procedures regarding the calculation and collection of margins for non-centrally cleared OTC derivative contracts at any time. EMIR Margin RTS, Article 2(6).		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Internal Risk Management Requirements			
1. To what extent are firms required to implement internal risk management controls?			
	<u>EMIR risk mitigation (other than margin)</u> See below discussion of risk mitigation techniques set out in RTS 149/2013 in section 1(c) and (1)(d). **<u>CRR & CRD IV</u>** The management body of a Credit Institution must approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the entity is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle. Article 76(1) CRD IV. Credit Institutions are required to have robust governance arrangements, which include a clear organisational structure with well-defined, transparent		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Internal Risk Management Requirements			
1. To what extent are firms required to implement internal risk management controls?			
	and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures. Article 74 CRD IV. Credit Institutions that are significant in terms of size, internal organisation and nature, scope and complexity of their activities must establish a risk committee composed of members of the management body who do not perform any executive function in the entity concerned. Article 76(3) CRD IV. Credit Institutions must have internal methodologies that enable them to assess the credit risk of exposures. Article 79(b) CRD IV. A Credit Institution shall establish		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Internal Risk Management Requirements			
1. To what extent are firms required to implement internal risk management controls?			
	and maintain a counterparty credit risk ("CCR") management framework, consisting of: (a) policies, processes and systems to ensure the identification, measurement, management, approval and internal reporting of CCR; (b) procedures for ensuring that those policies, processes and systems are complied with. The CCR management framework shall take account of market, liquidity, and legal and operational risks that are associated with CCR. The CCR management framework shall be used in conjunction with internal credit and trading limits. Article 286 CRR. A Credit Institution's measurement of CCR shall include measuring daily and intra-day use of credit lines. The institution shall measure current exposure gross and net of collateral. At portfolio and counterparty level, the institution shall calculate and		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Internal Risk Management Requirements			
1. To what extent are firms required to implement internal risk management controls?			
	monitor peak exposure or potential future exposure at the confidence interval chosen by the institution. The Credit Institution shall take account of large or concentrated positions, including by groups of related counterparties, by industry and by market. Article 286(7) CRR. Credit Institutions must conduct stress testing. Article 286(8) CRR. A Credit Institution using the Internal Model Method shall establish and maintain: (a) a risk control unit; and (b) a collateral management unit. The risk control unit shall be responsible for the design and implementation of its CCR management, including the initial and on-going validation of the model, and shall carry out the following functions: (a) it shall be responsible for the design and implementation of the CCR management system of the		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Internal Risk Management Requirements			
1. To what extent are firms required to implement internal risk management controls?			
	institution;(b) it shall produce daily reports on and analyse the output of the institution's risk measurement model; (c) it shall control input data integrity and produce and analyse reports on the output of the institution's risk measurement model. The collateral management unit shall carry out the following tasks and functions: (a) calculating and making margin calls, managing margin call disputes and reporting levels of independent amounts, initial margins and variation margins accurately on a daily basis; (b) controlling the integrity of the data used to make margin calls, and ensuring that it is consistent and reconciled regularly with all relevant sources of data within the Credit Institution; (c) tracking the extent of re-use of collateral and any amendment of the rights of the institution to or in connection with the collateral that it posts;		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Internal Risk Management Requirements			
1. To what extent are firms required to implement internal risk management controls?			
	(d) reporting to the appropriate level of management the types of collateral assets that are reused, and the terms of such reuse including instrument, credit quality and maturity; (e) tracking concentration to individual types of collateral assets accepted by the institution; (f) reporting collateral management information on a regular basis. Article 287 CRR. A Credit Institution shall regularly conduct an independent review of its CCR management system through its internal auditing process. That review shall include both the activities of the control and collateral management units. Article 288 CRR. A Credit Institution shall: • conduct a regular programme of back-testing, comparing the risk measures generated by the model with realised risk		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Internal Risk Management Requirements			
1. To what extent are firms required to implement internal risk management controls?			
	measures, and hypothetical changes based on static positions with realised measures; • carry out an initial validation and an on-going periodic review of its CCR exposure model and the risk measures generated by it; • the management body and senior management shall be involved in the risk control process and shall ensure that adequate resources are devoted to credit and counterparty credit risk control; • the internal risk measurement exposure model shall be integrated into the day-to-day risk management process of the institution; • the risk measurement system shall be used in conjunction with internal trading and		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Internal Risk Management Requirements			
1. To what extent are firms required to implement internal risk management controls?			
	exposure limits; • ensure that its risk management system is well documented. In particular, it shall maintain a documented set of internal policies, controls and procedures concerning the operation of the risk measurement system, and arrangements to ensure that those policies are complied with; • an independent review of the risk measurement system shall be carried out regularly in the institution's own internal auditing process; • the on-going validation of counterparty credit risk models, including back-testing, shall be reviewed periodically by a level of management with sufficient authority to decide the action that will be taken to address weaknesses in the models.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Internal Risk Management Requirements			
1. To what extent are firms required to implement internal risk management controls?			
	Article 293 CRR		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Internal Risk Management Requirements			
2. What types of risks are those internal controls required to address?			
Firms must "establish robust and professional risk management systems adequate for managing [their] day-to-day business." Exchange Act section 15F(j)(2) [15 U.S.C. 78o-10(j)(2)].[7] Firms are generally required, as part of their supervisory systems, to establish, maintain and enforce written policies and procedures addressing the obligations to, *inter alia*, monitor trading, establish a day-to-day business risk management system, disclose trading information to the SEC, establish internal recordkeeping	**MiFID** Investment Firms must establish, implement and maintain adequate risk management policies and procedures that identify the risks relating to the Investment Firm's activities, processes and systems and, where appropriate, set the level of risk tolerated by the Investment Firm. Article 21 (5) 23(1) MiFID Org Reg. **CRR & CRD IV** An Investment Firm's risk management strategy will,	Articles 21(5) and 23(1) MiFID Org Reg. are directly applicable Articles 79-87 CRD IV have been transposed into Articles 46-54 RD 84/2015. These articles are supplemented by Articles 46-51 Bank of Spain Circular 2/2016.	**Comparability of outcomes**: The EU's risk management requirements provide for similar outcomes with respect to the types of risks that must be managed as the SEC's risk management requirements. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note that the below EU requirements are, when taken together, comparable to analogous SEC

[7] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Internal Risk Management Requirements			
2. What types of risks are those internal controls required to address?			
systems, and implement systems to safeguard against conflicts of interest. Exchange Act rule 15Fh-3(h)(2)(iii)(I) [17 CFR 240.15Fh-3(h)(2)(iii)(I)].[8]	amongst other things, be required to cover: credit and counterparty risk, residual risk, concentration risk, securitisation risk, market risk, interest rate risk, operational risk, liquidity risk, risk of excessive leverage, etc. Articles 79-87 CRD IV.		requirements regarding risks addressed by internal control systems in the following ways: • Article 23(1) MiFID Org Reg. requires Investment Firms to establish risk management policies and procedures addressing risks relating to an Investment Firm's activities, processes and systems. Articles 79-87 CRD IV require Investment Firms to implement risk management strategies to address, *inter alia*, credit and counterparty risk, residual risk, concentration risk, securitization risk, market risk, interest rate risk, operational risk, liquidity risk and risk of excessive leverage. These requirements are consistent with the Exchange Act's requirement to establish robust and professional risk

[8] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Internal Risk Management Requirements			
2. What types of risks are those internal controls required to address?			
			management systems to manage the risks of a dealer's day-to-day business.

c. Subcategory: Trade Acknowledgement and Verification Requirements

Trade acknowledgment and verification rules are intended to help avoid legal and operations risks by providing for definitive written records of transactions and procedures to avoid disputes.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Trade Acknowledgement and Verification Requirements			
1. To what extent are transactions subject to trade acknowledgment, confirmation, or similar requirements that provide for the creation of definitive written records of the transaction?			
The trade acknowledgment rules apply to any transaction in which a firm "purchases from or sells to any counterparty a security-based swap." Exchange Act rule 15Fi-2(a) [17 CFR 240.15Fi-2(a)].[9]	**MiFID requirements** An Investment Firm that has carried out an order on behalf of a client (including by executing an order as principal with its client) must promptly provide the client, in a durable medium, with the essential information concerning the execution of that order and send a notice to the client in a durable medium confirming execution of the order. In addition, Investment Firms must supply the client, on request, with information about the status of its order. Article 25(6) MiFID and Article 59 MiFID Org Reg. **EMIR: timely confirmation**	Article 25(6) MiFID has been transposed into Article 211 SSMA Article 59 MiFID Org Reg is directly applicable Article 11(1)(a) EMIR is directly applicable	**Comparability of outcomes**: The timely confirmation requirement under EMIR and the MiFID requirements provide a comparable regulatory outcome to the SEC trade acknowledgement and confirmation requirements. In particular, the regulatory outcomes pursued under the Exchange Act rule 15Fi-2(a) and Article 11(1)(a) of EMIR and MiFID are consistent, in that each requires the timely confirmation of relevant details of a trade in order to promote effective risk management and minimize legal and operational risks.

[9] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Trade Acknowledgement and Verification Requirements			
1. To what extent are transactions subject to trade acknowledgment, confirmation, or similar requirements that provide for the creation of definitive written records of the transaction?			
	FCs and NFCs are required to confirm the terms of each uncleared OTC derivative contract in a timely manner and by electronic means where available. EMIR, Article 11(1)(a).		In the CFTC Substituted Compliance Decision on Transaction-Level Requirements, the CFTC found that the EMIR timely confirmation requirements were "[g]enerally identical in intent", as well "comparable to and as comprehensive as the swap transaction confirmation requirements of Commission regulation 23.501".

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Trade Acknowledgement and Verification Requirements			
2. To what extent are transactions further subject to verification or similar requirements intended to identify disagreements regarding transaction terms?			
A firm must verify[10] the accuracy of, or dispute with the counterparty, the terms of the trade acknowledgment. Exchange	**EMIR** Both counterparties to an uncleared OTC derivative transaction are equally subject to	Article 11(1)(a) EMIR is directly applicable	**Comparability of outcomes**: Although the timely confirmation requirements under EMIR apply

[10] "Trade verification" means "the process by which a trade acknowledgment has been manually, electronically, or by some other legally equivalent means, signed by the receiving counterparty." Exchange Act rule 15Fi-1(i) [17 CFR 240.15Fi-1(i)].

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Trade Acknowledgement and Verification Requirements			
2. To what extent are transactions further subject to verification or similar requirements intended to identify disagreements regarding transaction terms?			
Act rule 15Fi-2(d)(2) [17 CFR 240.15Fi-2(d)(2)].[11] The trade verification requirement applies to security-based swap transactions for which a firm has received a trade acknowledgment (subject to certain exceptions). Exchange Act rule 15Fi-2(d)(2) [17 CFR 240.15Fi-2(d)(2)].[12]	the timely confirmation obligation described in question 1 of section 1(c). EMIR, Article 11(1)(a).		in a different manner to the SEC's transaction verification requirements, the risk management objectives pursued under Exchange Act rule 15Fi-2(d)(2) and Article 11(1)(a) of EMIR are consistent and comparable, in that each regulation is designed to ensure that both parties to a transaction are informed of, and agree upon, all terms of that transaction in writing and in a timely manner following execution. The SEC requirement with respect to timely confirmation is substantially the same as the CFTC requirement and the CFTC noted in the CFTC Substituted Compliance Decision on Transaction-Level Requirements that "the trade confirmation requirements of the EMIR standards are comparable to and

[11] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8
[12] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Trade Acknowledgement and Verification Requirements			
2. To what extent are transactions further subject to verification or similar requirements intended to identify disagreements regarding transaction terms?			
			as comprehensive as the swap transaction confirmation requirements of CFTC Regulation 23.501."

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Trade Acknowledgement and Verification Requirements			
3. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?			
Responsible Parties (Exchange Act rule 15Fi-2(a) [17 CFR 240.15Fi-2(a)]):[13] – For transactions between a dealer and a participant, the dealer will provide the trade acknowledgment. – For transactions in which only one	**<u>EMIR: timely confirmation (responsible parties)</u>** Both counterparties to an uncleared OTC derivative transaction are equally subject to the timely confirmation obligation described in question 1 of section 1(c). EMIR Article 11(1)(a). **<u>EMIR: timely confirmation (timing)</u>** Confirmation is required within	Article 11(1)(a) EMIR is directly applicable Article 12 RTS 149/2013 is directly applicable Article 25(6) MiFID has been transposed into Article 211 SSMA Article 59 MiFID Org Reg. is	**<u>Comparability of outcomes</u>**: The timely confirmation requirement under EMIR provides for a comparable regulatory outcome to the SEC's responsible parties and trade acknowledgment requirements. In particular, the regulatory outcomes pursued under Exchange Act rules 15Fi-1 and 15Fi-2 and Article 11(1)(a) of

[13] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Trade Acknowledgement and Verification Requirements			
3. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?			
counterparty is a dealer or participant, the dealer or participant will provide the trade acknowledgment. – For all other transactions in which a dealer or participant purchases or sells a security-based swap, the counterparties will agree as to who provides the trade acknowledgment. **Contents**: Trade acknowledgments are comprised of written or electronic records of a security-based swap transaction sent by one counterparty to the other (Exchange Act rule 15Fi-1(h) [17 CFR 240.15Fi-1(h)]),[14] that	two working days if one or both of the parties to the transaction is an NFC- and otherwise within one working day. RTS 149/2013, Article 12. **MiFID** **Responsible parties:** All Investment Firms must provide confirmations to their clients following the execution of orders on behalf of such clients (including by executing an order as principal with its client). Article 25(6) MiFID and Article 59 MiFID Org Reg. **Contents:** An Investment Firm must provide the client with the essential information concerning the execution of orders and to send a notice to the client in a durable medium confirming execution of orders. The	directly applicable	EMIR, along with RTS 149/2013, are consistent and comparable in that each requires parties to promptly provide a confirmation containing all details of a transaction to their counterparty following execution. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:

[14] https://www.govinfo.gov/content/pkg/CFR-2018-title17-vol4/pdf/CFR-2018-title17-vol4-sec240-15Fb6-1.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Trade Acknowledgement and Verification Requirements			
3. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?			
disclose all the terms of the transaction (Exchange Act rule 15Fi-2(c) [17 CFR 240.15Fi-2(c)]).[15] **Delivery**: Trade acknowledgments must be provided through electronic means that provide reasonable assurance of delivery and a record of transmittal. Exchange Act rule 15Fi-2(c) [17 CFR 240.15Fi-2(c)].[16] **Timing**: Trade acknowledgments "must be provided promptly, but in any event by the end of the first business day[17] following the day of execution." Exchange Act rule 15Fi-2(b) [17 CFR 240.15Fi-2(b)].[18]	confirmation must include: the reporting firm identification; the name or other designation of the client; the trading day; the trading time; the type of order; venue identification; instrument identification; a buy/sell indicator; the nature of the order if other than buy/sell; the quantity; the unit price; the total consideration; information on commissions and expenses charged; the rate of exchange (where relevant); the client's responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not		• **Responsible parties**. The timely confirmation requirement under Article 11(1)(a) of EMIR applies equally in respect of both counterparties. Article 25(6) of MiFID and Article 59 of MiFID Org Reg. require Investment Firms to provide confirmations to their clients following the execution of transactions with those clients. While the requirements under EMIR do not align exactly with the SEC requirements, the EMIR, MiFID and SEC obligations all promote the same underlying policy goal of providing an agreed confirmation following the execution of a

[15] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8
[16] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8
[17] For those purposes: the term "business day" means any day other than a Saturday, Sunday or legal holiday; the term "execution" means the point at which the counterparties become irrevocably bound to a transaction under applicable law; and the term "day of execution" means the calendar day of the counterparty to the security-based swap transaction that ends the latest, with special accommodations for late-afternoon and non-business day transactions. *See* Exchange Act rules 15Fi-1(a), (d) and (e) [17 C.F.R. 240.15Fi-1(a), (d) and (e)].
[18] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Trade Acknowledgement and Verification Requirements			
3. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?			
	previously been notified to the client; and, where the client's counterparty was the Investment Firm itself or any person in the Investment Firm's group or another client of the Investment Firm, the fact that this was the case unless the order was executed through a trading system that facilitates anonymous trading. In addition, Investment Firms must supply the client, on request, with information about the status of its order. Article 25(6) MiFID and Article 59 MiFID Org Reg. **Timing:** This information must be provided to the client promptly, meaning as soon as possible and no later than the first business day following execution or, where the confirmation is received by the Investment Firm from a third-party, no later than the first business day following receipt of the confirmation from the third-		transaction. • **Contents**. Article 25(6) MiFID and Article 59 MiFID Org Reg. require an Investment Firm to confirm a plethora of essential information concerning the execution of that order (including all material terms of the transaction). These requirements are comparable to the requirements of Exchange Act rule 15Fi-2(c) [17 CFR 240.15Fi-2(c)], which requires the trade acknowledgement to disclose all the terms of the transaction. • **Delivery**. Article 11(1)(a) of EMIR requires a confirmation to be provided by electronic means where available. This requirement is comparable to Exchange Act rule 15Fi-2(c)

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Trade Acknowledgement and Verification Requirements			
3. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?			
	party. Article 25(6) MiFID and Article 59 MiFID Org Reg.		which requires delivery of a trade acknowledgment through electronic means. • **Timing**. Article 12 of RTS 149/2013 requires counterparties to confirm the terms of each uncleared OTC derivative contract within one or two working days, depending on the nature of the counterparties. Article 59 MiFID Org Reg. requires an Investment Firm to promptly provide the client with a confirmation as soon as possible and no later than the first business day following execution or, where the confirmation is received by the Investment Firm from a third-party, no later than the first business day following receipt of the confirmation from the third-party. These requirements are comparable

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Trade Acknowledgement and Verification Requirements			
3. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?			
			to the timing requirements set forth in Exchange Act rule 15Fi-2(b), which requires confirmation by the end of the first business day following the day of execution. The CFTC also noted in their Substituted Compliance Decision on Transaction-Level Requirements that the specific timing requirements under the EMIR and the relevant US rules were comparable.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Trade Acknowledgement and Verification Requirements			
4. What requirements govern the substance, policies and procedures, and timing associated with trade verifications?			
Firms are required to "establish, maintain, and enforce written policies and procedures that are reasonably designed to obtain	As discussed in question 3 of section 1(c) above, both counterparties are subject to the timely confirmation obligation	EMIR and RTS 149/2013 are directly applicable	**Comparability of outcomes**: The timely confirmation requirement under EMIR provides for a comparable regulatory

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Trade Acknowledgement and Verification Requirements			
4. What requirements govern the substance, policies and procedures, and timing associated with trade verifications?			
prompt verification of the terms of a trade acknowledgment", regardless of whether the counterparty is also subject to the trade acknowledgment requirement. Exchange Act rule 15Fi-2(d)(1) [17 CFR 240.15Fi-2(d)(1)].[19] Firms must "promptly" verify or dispute the terms of trade acknowledgments they receive. Exchange Act rule 15Fi-2(d)(2) [17 CFR 240.15Fi-2(d)(2)].[20] Exchange Act rule 15Fi-1(i) defines trade verification as "the process by which a trade acknowledgement has been manually, electronically, or by some other legally equivalent means, signed by the receiving counterparty."	under Article 11(1)(a) of EMIR, and Investment Firms are required to provide timely confirmations to their clients in Article 25(6) MiFID and Article 59 MiFID Org Reg. These requirements, including the associated obligations on process, substance and timing of the confirmations, in practice encompass both the practices of acknowledgment and verification.		outcome to the SEC trade verification requirements. In particular, both Exchange Act rules 15Fi-1 and 15Fi-2 and RTS 149/2013 require parties to have processes in place to provide trade confirmations and promptly resolve any disputes which may arise in respect of such trade confirmations.

[19] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8
[20] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary		Comparability Assessment
c. Subcategory: Trade Acknowledgement and Verification Requirements			
5. To what extent are those requirements subject to exceptions with regard to particular types of transactions?			
The trade acknowledgment and verification requirements are subject to exceptions regarding: • Transactions with a clearing agency as counterparty: An exception applies to any "clearing transaction," which is defined as a security-based swap "that has a clearing agency as a direct counterparty." Exchange Act rules 15Fi-1(b), 15Fi-1(c), 15Fi-2(e) [17 CFR 240.15Fi-1(b), (c),[21] 240.15Fi-2(e)];[22] • Transactions on execution facilities: An exception applies to transactions executed on a security-based swap execution facility or national	The timely confirmation requirement under Article 11(1)(a) of EMIR only applies to uncleared OTC derivative contracts and does not apply to derivative contracts entered into on a regulated market (whether in the EU or in a non-EEA market considered as equivalent). Exempt entities under EMIR, as specified in Articles 1(4) and (5) of EMIR,[26] are not subject to these requirements and accordingly, counterparties to such exempt entities are not subject to the Article 11(1)(a) timely confirmation obligation in respect of transactions with these exempt entities.[27]	Articles 1(4) and (5) and 11(1)(a) EMIR are directly applicable Articles 59 and 61 MiFID Org Reg are directly applicable	**<u>Comparability of outcomes</u>**: The exceptions to the timely confirmation obligation under Article 11(1)(a) of EMIR provide a comparable regulatory outcome to the SEC transaction exceptions to the trade acknowledgement and verification rules. In particular, there are comparable exceptions under EMIR and the Exchange Act rules for cleared derivative contracts and derivative contracts entered into on a regulated market. In addition: (1) exemptions from MiFID confirmation requirements exist where the confirmation would be duplicative of a

[21] https://www.govinfo.gov/content/pkg/CFR-2018-title17-vol4/pdf/CFR-2018-title17-vol4-sec240-15Fb6-1.pdf
[22] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8
[26] This includes: (i) a member of the European System of Central Banks (**ESCB**) or other Member State body performing similar functions or other EU public body charged with or intervening in the management of the public debt; (ii) the Bank for International Settlements; (iii) the central banks and public bodies charged with or intervening in the management of the public debt in Japan; United States of America; Australia; Canada; Hong Kong; Mexico; Singapore and Switzerland; (iv) certain multilateral development banks, (v) certain public sector entities within the meaning of point (18) of Article 4 of Directive 2006/48/EC where they are owned by central governments and have explicit guarantee arrangements provided by central governments; and (vi) the European Financial Stability Facility and the European Stability Mechanism
[27] OTC Answer 12(g) in the ESMA Q&A on EMIR provides additional guidance on this point.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary		Comparability Assessment
c. Subcategory: Trade Acknowledgement and Verification Requirements			
5. To what extent are those requirements subject to exceptions with regard to particular types of transactions?			
securities exchange, provided that the facility's rules, procedures or processes provide for the acknowledgment and verification of all terms of the transaction "no later than" the time otherwise required by the rule. Exchange Act rule 15Fi-2(f)(1) [17 CFR 240.15Fi-2(f)(1)];[23] • Transactions accepted for clearing: An exception applies to transactions that are submitted for clearing to a clearing agency, provided: (i) the transaction is submitted "as soon as technologically practicable, but in any event no later than the time established for providing a trade acknowledgment" under the rule; and (ii) the clearing agency's rules, procedures or processes	In the context where the Investment Firm deals as principal with its client, it is only not required to provide a confirmation if the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the client by another person (e.g. a clearing broker). Investment Firms are permitted to enter into agreements with ECPs to determine the content and timing of the reports required by art 59 delegated regulation (see above) and reports required relating to holdings of client assets and client money. Article 61 MiFID Org Reg.		confirmation provided by another party involved in the transaction; and (2) the timing and content of MiFID confirmation may be adjusted as agreed with the client where the client is an ECP.

[23] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary		Comparability Assessment
c. Subcategory: Trade Acknowledgement and Verification Requirements			
5. To what extent are those requirements subject to exceptions with regard to particular types of transactions?			
provide for acknowledgment and verification of all terms of the transaction "prior to or at the same time" the transaction is accepted for clearing. Exchange Act rule 15Fi-2(f)(2) [17 CFR 240.15Fi-2(f)(2)];[24] and • Additional provisions for transactions that have not been acknowledged, verified or accepted for clearing: If a firm receives notice that a transaction has not been acknowledged and verified pursuant to the rules, procedures or processes of an execution facility or exchange, or accepted for clearing by a clearing agency (per the above exceptions), the firm must comply with the applicable trade acknowledgment and verification requirements "as			

[24] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary		Comparability Assessment
c. Subcategory: Trade Acknowledgement and Verification Requirements			
5. To what extent are those requirements subject to exceptions with regard to particular types of transactions?			
if" the transaction were executed at the time it receives the notice. Exchange Act rule 15Fi-2(f)(3) [17 CFR 240.15Fi-2(f)(3)].[25]			

[25] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

d. Subcategory: Risk Mitigation Requirements

Registered entities are required to take steps to identify and resolve discrepancies in transaction terms and valuations, reduce offsetting or redundant security-based swaps, and document their trading relationships in order to mitigate market, credit, operational and legal risks by, *inter alia*, increasing the likelihood that parties (i) remain in agreement with existing material terms, and (ii) identify problems with parties' internal valuation systems, models or internal controls. SEC Guidance at Category I.F;[28] *see* Exchange Act Release No. 87782 (Dec. 18, 2019) at 10-11 (**Risk Mitigation Adopting Release**).[29]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Risk Mitigation Requirements			
1. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?			
Portfolio reconciliation requirements do not apply to cleared security-based swaps. Exchange Act rule 15Fi-3(d) [17 CFR 240.15Fi-3(d)].[30] Firms are required to take the following actions to engage in portfolio reconciliation with their counterparties: 1. Portfolios and security-based swap transactions with counterparties that are dealers or participants:	**EMIR: portfolio reconciliation** FCs and NFCs to an OTC derivative contract not cleared by a CCP are required to establish formalised processes which are robust, resilient and auditable in order to reconcile portfolios. EMIR, Article 11(1)(b). FCs and NFCs to an OTC derivative contract shall agree in writing or other equivalent electronic means with each of their counterparties on the arrangements under which portfolios should be reconciled before entering into that OTC	Articles 11(1)(b) and 11(2) EMIR and Articles 11, 13 and 15 RTS 149/2013 are directly applicable	**Comparability of outcomes**: The EU reconciliation and dispute resolution requirements provide a similar regulatory outcome to the corresponding SEC requirements. In particular, the regulatory outcomes pursued under Exchange Act rules 15Fi-3 and Articles 13 and 15 of RTS 149/2013 are consistent, in that each require parties to agree to develop procedures to comply with extensive reconciliation requirements tailored to the type of firm at issue, in order to identify and resolve any

[28] https://www.sec.gov/files/staff-guidance-substituted-compliance-applications.pdf
[29] https://www.govinfo.gov/content/pkg/FR-2020-02-04/pdf/2019-27762.pdf
[30] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Risk Mitigation Requirements			
1. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?			
– The two counterparties must engage in portfolio reconciliation in the manner specified in paragraph (a) to Exchange Act rule 15Fi-3 [17 CFR 240.15Fi-3];[31] – Firms must establish, maintain, and follow written policies and procedures reasonably designed to ensure that they engage in portfolio reconciliation for transactions with all other counterparties in the manner set forth in paragraph (b) to Exchange Act rule	derivative contract. RTS 149/2013, Article 13(1). This reconciliation shall be performed by the counterparties to the OTC derivative contract or by a qualified third-party duly mandated to this effect by a counterparty (for example, a third-party service provider). It shall cover key trade terms that identify each particular OTC derivative contract and shall include at least the valuation attributed to each contract in accordance with Article 11(2) of EMIR. RTS 149/2013, Article 13(2). Reconciliation shall be performed: (a) for an FC or NFC+: (i) On each business		discrepancies or disputes between counterparties regarding the valuation of the transaction in a timely manner. By identifying and managing mismatches in key economic terms and valuation for individual transactions across an entire portfolio, both the EU and SEC rules are aimed at achieving a process in which overall risk can be identified and reduced. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**:

[31] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Risk Mitigation Requirements			
1. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?			
15Fi-3 [17 CFR 240.15Fi-3];[32] – Rule 15Fi-3(a) and (b) address the potential use of third-party service providers to perform the reconciliations, and require firms to agree in writing on the terms of portfolio reconciliation with their counterparties. Exchange Act rule 15Fi-3(a), (b) [17 CFR 240.15Fi-3(a), (b)];[33] – Portfolio reconciliation must be performed no less frequently than once per business day for portfolios that include 500 or more security-	day when the counterparties have 500 or more OTC derivative contracts outstanding with each other; (ii) Once per week when the counterparties have between fifty-one and 499 OTC derivative contracts outstanding with each other at any time during the week; and (iii) Once per quarter when the counterparties have fifty or less OTC derivative		The below EU requirements are comparable to analogous SEC requirements in the following ways: • **General reconciliation requirement framework**. Article 13(1) of RTS 149/2013 provides that FCs and NFCs to an OTC derivative contract shall agree in writing or other equivalent electronic means with each of their counterparties on the arrangements under which portfolios should be reconciled before entering into that OTC derivative contract. Under Article 13(2) of RTS 149/2013, the reconciliation shall cover key trade terms that identify each particular OTC derivative contract and shall include at

[32] https://www.sec.gov/rules/final/2019/34-87782.pdf
[33] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Risk Mitigation Requirements			
1. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?			
based swaps, once each week for portfolios that include more than fifty security-based swaps, and once each calendar quarter for portfolios that include no more than fifty security-based swaps at any time during the quarter. Exchange Act rule 15Fi-3(a)(3) [17 CFR 240.15Fi-3(a)(3)];[34] – Firms must resolve discrepancies in material terms[35] immediately. Exchange Act rule	contracts outstanding with each other at any time during the quarter. (b) for a NFC-: (i) Once per quarter when the counterparties have more than 100 OTC derivative contracts outstanding with each other at any time during the quarter; or (ii) Once per year when the		least the valuation attributed to each contract. These requirements are comparable to the portfolio reconciliation requirements in Exchange Act rule 15Fi-3. • **Policies and procedures**. Article 11(1)(b) of EMIR requires that FCs and NFCs to an OTC derivative contract not cleared by a CCP establish formalized processes which are robust, resilient and auditable, in order to reconcile portfolios. This requirement is comparable to Exchange Act rule 15Fi-3. • **Third-party service providers**. Article 13(2) of RTS 149/2013

[34] https://www.sec.gov/rules/final/2019/34-87782.pdf

[35] In this context, and in the same context where the counterparties are not dealers or participants, a "material term" includes the terms required to be reported to security-based swap data repositories or the SEC pursuant to Regulation SBSR rule 901, and excludes terms that are not relevant to the ongoing rights and obligations of the parties and the valuation of the security-based swap. 17 CFR 242.901; *see* Exchange Act rule 15Fi-1(i) [17 CFR 240.15Fi-1(i)].

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Risk Mitigation Requirements			
1. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?			
15Fi-3(a)(4) [17 CFR 240.15Fi-3(a)(4)];[36] – Firms must establish, maintain and follow written policies and procedures reasonably designed to resolve valuation discrepancies of 10% or more as soon as possible but in any event within five business days.[37] Exchange Act rule 15Fi-3(a)(5), (c) [17 CFR 240.15Fi-3(a)(5), (c)];[38] and – Firms must promptly notify the SEC and any applicable prudential regulation regarding valuation disputes, at the	counterparties have 100 or less OTC derivative contracts outstanding with each other. RTS 149/2013, Article 13(3). **EMIR: dispute resolution** FCs and NFCs to an OTC derivative contract not cleared by a CCP are also required to establish formalised processes which are robust, resilient and auditable in order to identify disputes early and resolve them. EMIR, Article 11(1)(b). In relation to uncleared OTC derivative contracts, RTS 149/2013 requires FCs and NFCs to have agreed detailed procedures and processes in		prescribes that reconciliation shall be performed by the counterparties to the OTC derivative contract with each other or by a qualified third-party duly mandated to this effect by a counterparty. This requirement is comparable to Exchange Act rules 15Fi-3(a) and 15Fi-3(b). • **Frequency**. Article 13(3) of RTS 149/2013 sets out the frequency with which reconciliation be performed for FCs and NFCs. These frequency requirements are comparable to those set out in Exchange Act rules 15Fi-3(a)(3) and 15Fi-3(b)(3). • **Resolving discrepancies**. Article 15(1) of RTS 149/2013 requires parties to agree to

[36] https://www.sec.gov/rules/final/2019/34-87782.pdf
[37] Provided that the firm has procedures to identify how it will comply with applicable variation margin requirements pending resolution of the discrepancy.
[38] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Risk Mitigation Requirements			
1. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?			
transaction or portfolio level, in excess of $20 million, if not resolved within a specified period of time. Exchange Act rule 15Fi-3(a)(5), (c) [17 CFR 240.15Fi-3(a)(5), (c)].[39] Firms must report such valuation disputes within three business days, and must provide amended notices if the amount of any valuation dispute that was the subject of a previous notice increases or decreases by more than $20 million at the transaction or portfolio level. Exchange Act rules 15Fi-3(c)(1), (2) [17	relation to: (a) the identification, recording and monitoring of disputes relating to the recognition or valuation of the contract (recording at least the length of time for which the dispute remains outstanding, the counterparty and the amount which is disputed); and (b) the resolution of disputes in a timely manner, with a specific process for those disputes that are not resolved within five business days. RTS 149/2013, Article 15(1). FCs shall report to the competent authority designated in accordance with Article 48 of MiFID any disputes between counterparties relating to an OTC derivative contract, its valuation or the exchange of collateral for		detailed procedures and processes to identify, record, monitor and resolve disputes relating to the recognition or valuation of the contract. This requirement is comparable to Exchange Act rules 15Fi-3(a)(5), 15Fi-3(c) and 15Fi-3(b)(4). • **Regulator notification**. Article 15 of RTS 149/2013 requires FCs to report to relevant competent authorities any disputes between counterparties relating to an OTC derivative contract, its valuation or the exchange of collateral for an amount or value higher than EUR 15 million and outstanding for at least fifteen business days. While the equivalent requirement under Exchange Act rules

[39] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Risk Mitigation Requirements			
1. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?			
CFR 240.15Fi-3(c)(1), (2)].[40] 2. Portfolios and security-based swap transactions with counterparties that are not dealers or participants: – Timing: Portfolio reconciliation must be performed no less frequently than once each calendar quarter for portfolios that include no more than 100 security-based swaps at any time during the quarter, and once annually for portfolios that include no more than 100 security-based swaps at any time during the calendar year.	an amount or value higher than EUR 15 million and outstanding for at least fifteen business days. RTS 149/2013, Article 15(2).		15Fi-3(a)(5) and 15Fi-3(c) is slightly different, in that firms must notify the SEC and any applicable prudential regulator of valuation disputes in excess of $20 million if not resolved within a specified period of time, we note that in the CFTC Substituted Compliance Decision on Transaction-Level Requirements the CFTC acknowledged this discrepancy and nonetheless considered that the EU and relevant US requirements were comparable. Overall, in the CFTC Substituted Compliance Decision on Transaction-Level Requirements, the CFTC found that the EMIR portfolio reconciliation requirements were "[g]enerally identical in intent" and further "comparable to and as

[40] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Risk Mitigation Requirements			
1. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?			
Exchange Act rule 15Fi-3(b)(3) [17 CFR 240.15Fi-3(b)(3)];[41] – Firms must resolve discrepancies in the material terms or valuation of security-based swaps, and must establish, maintain and follow written procedures reasonably designed to resolve discrepancies in valuation (of 10% or less) or in the material terms of security-based swaps in a timely fashion. Exchange Act rule 15Fi-3(b)(4) [17 CFR 240.15Fi-3(b)(4)];[42] and			comprehensive as the portfolio reconciliation requirements of Commission regulation 23.502".

[41] https://www.sec.gov/rules/final/2019/34-87782.pdf
[42] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Risk Mitigation Requirements			
1. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?			
– Firms must promptly notify the SEC and any applicable prudential regulation regarding security-based swap valuation disputes, at the transaction or portfolio level, in excess of $20 million, if not resolved within a specified period of time. Exchange Act rule 15Fi-3 [17 CFR 240.15Fi-3].[43] Firms must report such valuation disputes within five business days, and must provide amended notices if the amount of any valuation dispute that was the subject of a previous notice increases or decreases by more			

[43] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Risk Mitigation Requirements			
1. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?			
than $20 million. Exchange Act rule 15Fi-3(c)(1), (2) [17 CFR 240.15Fi-3(c)(1), (2)].[44]			

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Risk Mitigation Requirements			
2. To what extent are parties to transactions required to engage in bilateral offset, bilateral or multilateral compression, or similar exercises to reduce offsetting or redundant instruments?			
Portfolio compression Firms must establish, maintain and follow written policies and procedures addressing bilateral offset, bilateral compression and multilateral compression. For counterparties that are dealers or participants, Exchange Act rule 15Fi-4(a) addresses bilateral offset, bilateral compression and multilateral compression	**<u>EMIR: portfolio compression</u>** FCs and NFCs with 500 or more uncleared OTC derivative contracts outstanding with a counterparty shall have in place procedures to regularly and, at least twice a year, analyse the possibility of a portfolio compression exercise in order to decrease counterparty risk and either: (i) engage in such an	Article 14 RTS 149/2013 is directly applicable	**<u>Comparability of outcomes</u>**: The EU portfolio compression requirements provide a similar regulatory outcome to the SEC portfolio compression requirements. In particular, the regulatory outcomes pursued under Exchange Act rules 15Fi-4 and Article 14 of RTS 149/2013 are consistent, in that each require regular determinations of

[44] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Risk Mitigation Requirements			
2. To what extent are parties to transactions required to engage in bilateral offset, bilateral or multilateral compression, or similar exercises to reduce offsetting or redundant instruments?			
requirements. Exchange Act rule 15Fi-4(a) [17 CFR 240.15Fi-4(a)].[45] Compression rules do not apply to cleared security-based swaps. Exchange Act rule 15Fi-4(c) [17 CFR 240.15Fi-4(c)].[46] Compression rules may reduce a market participant's "gross exposure to its direct counterparties," and may provide "important operational benefits and efficiencies for market participants . . . ." Risk Mitigation Adopting Release at 12-13.[47]	exercise; or (ii) be able to provide a reasonable and valid explanation to the relevant competent authority if they conclude such exercise is not appropriate. RTS 149/2013, Article 14.		whether portfolio compression is appropriate and policies and procedures to be put in place to engage in such exercise. Specifically, Article 14 of RTS 149/2013 provides that FCs and NFCs with 500 or more uncleared OTC derivative contracts outstanding with a counterparty shall have procedures in place to regularly and, at least twice a year, analyze the possibility of a portfolio compression exercise in order to decrease counterparty risk and either: (i) engage in such an exercise; or (ii) be able to provide a reasonable and valid explanation to the relevant competent authority if they conclude such exercise is not appropriate. This requirement is comparable to the policies and

[45] https://www.sec.gov/rules/final/2019/34-87782.pdf
[46] https://www.sec.gov/rules/final/2019/34-87782.pdf
[47] https://www.govinfo.gov/content/pkg/FR-2020-02-04/pdf/2019-27762.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Risk Mitigation Requirements			
2. To what extent are parties to transactions required to engage in bilateral offset, bilateral or multilateral compression, or similar exercises to reduce offsetting or redundant instruments?			
			procedures required by Exchange Act rule 15Fi-4(a) to be put into place to analyze and effect compression. In the CFTC Substituted Compliance Decision on Transaction-Level Requirements, the CFTC found that the EMIR portfolio compression requirements were "[g]enerally identical in intent" and further "comparable to and as comprehensive as the portfolio compression requirements of Commission regulation 23.503".

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
Except for pre-existing security-based swaps, cleared security-based swaps, or certain security-	**MiFID requirements** An Investment Firm must establish a record that includes	Articles 24, 58, MiFID Org Reg. are directly applicable	**Comparability of outcomes**: The EU documentation

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
based swaps executed anonymously on a national securities exchange or security-based swap execution facility, firms must establish, maintain and follow policies and procedures reasonably designed to ensure that they execute written security-based swap trading relationship documentation with each of their counterparties prior to, or contemporaneously with, executing a security-based swap. Exchange Act rule 15Fi-5(a)(1), (2), (b)(1)-(3) [17 CFR 240.15Fi-5(a)(1), (2), (b)(1)-(3)].[48] These requirements should: – promote sound collateral and risk management practices; – reduce counterparty	the document or documents agreed between the Investment Firm and the client that set out the rights and obligations of the parties, and the other terms on which the Investment Firm will provide services to the client. Article 25(5) MiFID. This must be in writing and on paper or another durable medium. Article 58 MiFID Org Reg. In practice, Investment Firms meet this obligation through their standard client-facing terms of business (addressing MiFID client protection requirements amongst other things), in combination with derivatives master agreements and related collateral documentation where appropriate. Investment Firms must, where appropriate and proportionate in view of the nature, scale and complexity of their business and	Article 25(5) MiFID has been transposed into Article 218 SSMA and Article 82 RD 217/208 Article 2(2)(g) EMIR Margin RTS is directly applicable Article 11(1)(a) and (b) EMIR and Articles 13 and 15(1) RTS 149/2013 are directly applicable	requirements applicable to OTC derivatives trading relationships provide a similar regulatory outcome to the SEC trading relationship documentation requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fi-5, EMIR and MiFID are consistent in that each provide for documentation requirements in order to mitigate the risks associated with entering into transactions. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific</u>**

[48] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
credit risk; and – promote certainty regarding the agreed-upon valuation and other material terms of a security-based swap. Risk Mitigation Adopting Release at 14.[49] Where both counterparties are dealers or financial counterparties,[50] or upon counterparty request – documentation must include: – Written documentation regarding the process for determining the value of security-based swaps for purposes of complying with	the nature and range of investment services and activities undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the Investment Firm. The responsibilities of this function must include to: establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the Investment Firm's systems, internal control mechanisms and arrangements; issue recommendations based on the result of this work and verify compliance with those recommendations; and report to senior management in relation to internal audit matters. Article 24 MiFID Org Reg.		**requirements**: The below EU requirements are comparable to analogous SEC requirements in the following ways: • **Creation of trading records**. Article 25(5) MiFID requires an Investment Firm to establish a record that includes the document or documents agreed between the Investment Firm and the client that set out the rights and obligations of the parties, and the other terms on which the Investment Firm will provide services to the client. Article 11(1)(a) EMIR in connection with Article 12 RTS 149/2013 require FCs and NFCs to create trade confirmations. These requirements are comparable

[49] https://www.govinfo.gov/content/pkg/FR-2020-02-04/pdf/2019-27762.pdf
[50] For those purposes, the term "financial counterparty" includes swap dealers, major swap participants, certain commodity pools, private funds and employee benefit plans, and persons predominately engaged in activities that are in the business of banking or that are financial in nature. Exchange Act rule 15Fi-1(g) [17 CFR 240.15Fi-1(g)].

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
margin and risk management requirements. Exchange Act rule 15Fi-5(b)(4) [17 CFR 240.15Fi-5(b)(4)];[51] – Information regarding the status of the dealer or its counterparty, as an insured financial institution or financial company. Exchange Act rule 15Fi-5(b)(5) [17 CFR 240.15Fi-5(b)(5)];[52] and – Information regarding security-based swaps that have been accepted for clearing. Exchange Act rule	**EMIR: timely confirmation** FCs and NFCs are required to confirm the terms of each uncleared OTC derivative contract in a timely manner and by electronic means where available. EMIR, Article 11(1)(a). Confirmation is required within two working days if one or both of the parties to the transaction is an NFC- and otherwise within one working day. RTS 149/2013, Article 12. **EMIR: netting and collateral agreements** FCs and NFCs subject to the margin requirement will generally be required to enter into netting agreements and exchange collateral agreements, at the		to Exchange Act rules 15Fi-5(a) and 15Fi-5(b). • Article 24 MiFID Org Reg. requires Investment Firms, where appropriate and proportionate, to establish an internal audit function, the remit of which includes reviewing the effectiveness of internal controls – these internal controls would normally include, among other matters, the Investment Firm's documentation policies and procedures. These requirements are comparable to Exchange Act rules 15Fi-5. • **Required terms**: Article 2(2)(g) of the EMIR Margin RTS requires, at a minimum,

[51] https://www.sec.gov/rules/final/2019/34-87782.pdf
[52] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
15Fi-5(b)(6) [17 CFR 240.15Fi-5(b)(6)].[53] Firms must have an independent audit of their documentation policies and procedures. Exchange Act rule 15Fi-5 [17 CFR 240.15Fi-5].[54] Trading relationship documentation must address, in part: payment obligations, netting, termination events, termination obligations, transfer of rights and obligations, governing law, valuation, dispute resolution, trade acknowledgments and verifications, and credit support arrangements. Exchange Act rules 15Fi-5(a)(1), (b)(1)-(3) [17 CFR 240.15Fi-5(a)(1), (b)(1)-(3)].[55]	latest, at the moment in which a non-centrally cleared OTC derivative contract is concluded, as further detailed in question 2 of section 1(c) above. The terms of all necessary agreements (including, as relevant, the terms of any netting agreement and any exchange of collateral agreement) must document (at least): (a) any payment obligations arising between counterparties; (b) the conditions for netting payment obligations; (c) events of default or other termination events of the non-centrally cleared OTC derivative contracts; (d) all calculation methods used in relation to payment obligations; (e) the conditions for netting payment obligations upon termination; (f) the transfer of		that the terms of all necessary agreement (including as relevant the terms of any netting or collateral agreements) document, *inter alia*, payment obligations, the conditions for netting, termination events and the transfer of rights and obligations upon termination. These requirements are comparable to the trading relationship documentation requirements under Exchange Act rules 15Fi-5(a)(1) and (b)(1)-(2).

[53] https://www.sec.gov/rules/final/2019/34-87782.pdf
[54] https://www.sec.gov/rules/final/2019/34-87782.pdf
[55] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
	rights and obligations upon termination; and (g) the governing law of the transactions of the non-centrally cleared OTC derivative contracts. EMIR Margin RTS, Article 2(2)(g).		

2. Category: Recordkeeping and Reporting Requirements[1]

a. Executive Summary

The recordkeeping and reporting requirements provide for records, reports and notices to facilitate the SEC's oversight of registrants, by enabling SEC access to key information in connection with the SEC's obligation to protect the integrity of the security-based swap market and to protect market participants. The recordkeeping and reporting requirements also include quarterly securities count practices intended to help guard against deficiencies in firms' internal controls.

When considering substituted compliance in connection with recordkeeping and reporting requirements, the SEC intends to consider whether "the foreign financial regulatory system's required records and reports, the timeframes for recording or reporting information, the accounting standards governing the records and reports, and the required format of the records and reports" are comparable to applicable Exchange Act provisions and underlying rules, as well as whether the foreign regulatory system "would permit the [SEC] to examine and inspect regulated firms' compliance with the applicable securities laws." Exchange Act rule 3a71-6(d)(6) [17 CFR 240.3a71-6(d)(6)].[2]

b. Subcategory: Record Creation

Registered firms must keep applicable books and records in the form and manner, and for the period, prescribed by the SEC, and keep those books and records open to inspection and examination by SEC representatives. Exchange Act section 15F(f)(1)(B), (C) [15 U.S.C. 78o-10(f)(1)(B), (C)];[3] and Exchange Act Release No. 87005 (Sep. 19, 2019) (**Books and Records Adopting Release**).[4]

The record creation requirements vary depending on whether the firm at issue has a prudential regulator.[5] For firms that have a prudential regulator, the recordkeeping requirements specifically apply to the firm's business as a dealer. Exchange Act section 15F(f)(1)(B) [15 U.S.C. 78o-10(f)(1)(B)].[6]

[1] To date, the SEC has not yet issued guidance regarding substituted compliance determinations concerning trade reporting and public dissemination. We further note that the SEC has issued limited four-year no-action relief when complying with certain CFTC reporting and dissemination requirements. The working group will monitor the situation in light of these factors, and may support a substituted compliance determination on these topics at a later time.
[2] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf
[3] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[4] http://www.cecouncil.org/media/266640/sec-release-no-34-87005.pdf
[5] Commodity Exchange Act section 1a(39) [7 U.S.C. 1a(39)] defines "prudential regulator", and is incorporated by reference by Exchange Act section 3(a)(74) [15 U.S.C. 78c(a)(74)].
[6] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
1. What records are firms required to make with regard to their transactions and other activities?			
Recordkeeping Firms must maintain daily trading records (including records of each counterparty) of security-based swaps, and related records and recorded communications. Firms must maintain a complete audit trail for trade reconstructions. Exchange Act section 15F(g) [15 U.S.C. 78o-10(g)].[7] Records to be created include:	**Recordkeeping** Investment Firms are required to arrange for records to be kept of all services and transactions undertaken which must be sufficient to enable the relevant regulator to fulfil its supervisory tasks and to perform enforcement actions under MiFID, MiFIR, CSMAD and MAR, and in particular to ascertain that an Investment Firm has complied with all obligations with respect to clients or potential clients and the integrity of the market. Article 16(6) MiFID.	Article 16(6) MiFID has been transposed into Article 194(1) SSMA and Article 32(1) RD 217/2008	**<u>Comparability of outcomes:</u>** The EU transaction recordkeeping requirements provide for a comparable regulatory outcome to the SEC transaction recordkeeping requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15F(g) and MiFID are consistent in that each requires firms to record and maintain a variety of transaction and counterparty records to facilitate regulatory oversight and enforcement. *See* Article 16(6) MiFID (requiring recordkeeping to enable regulatory supervision and enforcement). While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific

[7] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
1. What records are firms required to make with regard to their transactions and other activities?			
			requirements below for completeness. **<u>Comparability of specific requirements:</u>** The below EU requirements are comparable to analogous SEC requirements in the following ways:
Trade blotters: Blotters or other records of original entry containing an itemized daily record of purchases and sales of securities, receipts and deliveries of securities, and receipts and disbursements of cash and other debits and credits, as well as additional information such as account-related information and information regarding security-based swaps (e.g., type, reference security, unique transaction identifier, and counterparty identifier). Exchange Act rule 18a-5(b)(1) [17 CFR	**Trade blotters**: Investment Firms are required to keep detailed records in relation to every client order and decision to deal, and every client order executed or transmitted. Articles 74 and 75 MiFID Org Reg. Investment Firms are required to retain, and make accessible to regulators, precise information in relation to client orders, decisions to deal, transactions and order processing. Records cover matters such as the name and designation of the client or any person acting on the client's behalf, instrument	Articles 74, 75, 76 and Annex IV MiFID Org Reg. which are made reference to are directly applicable Article 25(1) MiFIR which is made reference to is directly applicable Article 16(7) MiFID has been transposed into Article 194(2)(3) SSMA and Article 32(2)-(8) of RD 217/2008	**Trade blotters**: The trade information that must be recorded in accordance with Articles 74 and 75 MiFID Org Reg. and Annex IV MiFID Org Reg. is comparable to the trade information that must be recorded pursuant to Exchange Act rule 18a-5(b)(1).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
1. What records are firms required to make with regard to their transactions and other activities?			
240.18a-5(b)(1)][8];	identification, and a broad range of transaction detail (date and time, quantity, price, currency, order type etc.). These are granular information requirements which allow the regulator to reconstitute each key stage of processing a transaction. Annex IV MiFID Org Reg. Investment Firms are required to keep the relevant data relating to all transactions in financial instruments which they have carried out, whether on their own account or on behalf of a client. Article 25(1) MiFIR. Investment Firms are required to record all forms of telephone conversations and electronic communications regarding client orders (even where these do not result in the conclusion of a transaction or the provision of a service). Article 16(7) MiFID and		

[8] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
1. What records are firms required to make with regard to their transactions and other activities?			
	Article 76 MiFID Org Reg.		
Trade confirmations: Copies of purchase and sale confirmations for securities other than security-based swaps, and copies of trade acknowledgments and verifications for security-based swaps. Exchange Act rule 18a-5(b)(6) [17 CFR 240.18a-5(b)(6)][9];	**Trade confirmations**: Investment Firms are required to keep detailed records in relation to every client order executed or transmitted. Article 75 MiFID Org Reg. Investment Firms are required to keep the relevant data relating to all transactions in financial instruments which they have carried out, whether on their own account or on behalf of a client. Article 25(1) MiFIR. An Investment Firm that has carried out an order on behalf of a client (including by executing an order as principal with its client) must promptly provide the client, in a durable medium, with the essential information concerning the execution of that order and send a notice to the client in a	Article 25(1) MiFIR which is made reference to is directly applicable Article 25(6) has been transposed into Article 211 SSMA and Article 3 RD 217/2008 Article 59 and 75 MiFID Org Reg. which is made reference to is directly applicable Article 16(6) MiFID has been transposed into Article 194(1) SSMA and Article 32(1) RD 217/2008 Article 9(2) and Article 11(1)(a) EMIR which are made reference to are directly applicable Article 25(5) MiFID has been transposed into Article 218 SSMA and 82 RD 217/2008	**Trade confirmations**: The record retention schedules under Article 9(2) of EMIR specify how long counterparties must keep a record of any derivative contract they have concluded and any modification thereto. Article 25(1) MiFIR requires Investment Firms to keep the relevant data relating to all transactions in financial instruments which they have carried out, whether on their own account or on behalf of a client, while Article 75 MiFID Org Reg. requires Investment Firms to keep detailed records in relation to every client order executed or transmitted. Article 25(5) MiFID requires an Investment Firm to establish a record that includes the document or documents agreed between the firm and the client

[9] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
1. What records are firms required to make with regard to their transactions and other activities?			
	durable medium confirming execution of the order. In addition, Investment Firms must supply the client, on request, with information about the status of its order. Article 25(6) MiFID and Article 59 MiFID Org Reg. The information provided forms part of the records that must be kept in order to satisfy an Investment Firm's general recordkeeping obligations. Article 16(6) MiFID. FCs and NFCs are required to confirm the terms of each uncleared OTC derivative contract in a timely manner and by electronic means where available. EMIR, Article 11(1)(a). Counterparties (including FCs and NFCs) must keep a record of any derivative contract they have concluded and any modification. Article 9(2) EMIR. Investment Firms are required to establish a record that includes the document or documents		that set out the rights and obligations of the parties. These requirements are comparable to the requirements in relation to confirmations in Exchange Act rule 18a-5(b)(6).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
1. What records are firms required to make with regard to their transactions and other activities?			
	agreed between an Investment Firm and a client that set out the rights and obligations of the parties, and the other terms on which an Investment Firm will provide services to a client. Article 25(5) MiFID.		
Counterparty information: For each security-based swap account, a record of the counterparty's unique identification code, name and address, and of the authorization for each person with authority to transact on behalf of the counterparty. Exchange Act rule 18a-5(b)(7) [17 CFR 240.18a-5(b)(7)][10].	**Counterparty information**: An Investment Firm that has carried out an order on behalf of a client must promptly provide the client, in a durable medium, with the essential information concerning the execution of that order and send a notice to the client in a durable medium confirming execution of the order. In addition, Investment Firms must supply the client, on request, with information about the status of its order. Article 59 MiFID Org Reg. An Investment Firm shall, in	Articles 74, 75, 76 and Annex IV MiFID Org Reg. which are made reference to are directly applicable Article 25(1) MiFIR which is made reference to is directly applicable Articles 11 and 13 MLD4 have been transposed into national law in Article 3-7 **SMLA**[11] Articles 213(3) and 215 SSMA provides when Credit Institutions are entitled to assume that these	**Counterparty information**: Article 25(1) MiFIR requires that the records must contain all the information and details of the identity of the client. Articles 74, 75 and Annex IV MiFID Org Reg. require Investment Firms to record specific information, such as name and designation of the client and the name and designation of any relevant person acting on behalf of the client, in relation to every initial order received and every initial decision to deal taken. Credit Institutions are further required

[10] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[11] Law 10/2010, of 28 April, on the prevention of money laundering and terrorist financing

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
1. What records are firms required to make with regard to their transactions and other activities?			
	relation to every initial order received from a client and in relation to every initial decision to deal taken, immediately record the details set out of Annex IV to the extent they are applicable to the order, such as name and designation of the client and the name and designation of any relevant person acting on behalf of the client. Articles 74, 75 and Annex IV MiFID Org Reg. Investment Firms are required to record all forms of telephone conversations and electronic communications regarding client orders. Article 76 MiFID Org Reg. For transactions carried out on behalf of clients, the records must contain all the information and details of the identity of the client, and the information required under the laws on the prevention of the use of the financial system for the purpose of money laundering. Article 25(1)	criteria are met for professional clients in relation to appropriateness and for certain types of professional clients in relation to suitability. Article 9(2) EMIR is directly applicable	to under Article 11 and Article 13 MLD4 to collect various counterparty information. A number of other requirements under EU law and related Spanish law also indirectly require the keeping of counterparty information in practice. These are comparable to the counterparty information requirements of Exchange Act rule 18a-5(b)(7).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
1. What records are firms required to make with regard to their transactions and other activities?			
	MiFIR. Various types of counterparty information must be collected as part of a Credit Institution's customer due diligence including, for example, with regards to the customer's identity, its beneficial owner and the purpose and intended nature of the business relationship. Article 11 and Article 13 MLD4. It must be verified that any person purporting to act on behalf of the customer is duly authorised and identify and verify the identity of that person. Article 13(1) MLD4. Investment Firms must collect a variety of information regarding their clients. Examples include information regarding customers in order to conduct suitability (for investment advice) and appropriateness (for product types) assessments, where		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
1. What records are firms required to make with regard to their transactions and other activities?			
	relevant. This includes information regarding the client's knowledge and experience in the investment field relevant to the specific type of product or service and that person's financial situation including his ability to bear losses. Article 25(2) MiFID. (Investment Firms are entitled to assume that these criteria are met for professional clients in relation to appropriateness and for certain types of professional clients in relation to suitability). Counterparties (including FCs and NFCs) must keep a record of any derivative contract they have concluded and any modification. Article 9(2) EMIR.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
2. What records are firms required to make with regard to their positions and other potential financial liabilities?			
Records to be created: **Securities records or ledgers**: • For securities other than security-based swaps, this includes information regarding long or short positions, location-related information and account-related information. For security-based swaps, this includes information such as the reference security, transaction and counterparty identifiers, whether the position is bought or sold, and clearing-related information. For dealers with a prudential regulator, the requirement extends only to security-based swaps and securities positions related to the firm's business as a dealer.	An Investment Firm must arrange for records to be kept of all services and transactions undertaken by it which must be sufficient to enable the regulator to fulfil its supervisory tasks and to perform enforcement actions under MiFID, MiFIR, CSMAD, MAR, and in particular to ascertain that the Investment Firm has complied with all obligations with respect to clients or potential clients and the integrity of the market. Article 16(6) MiFID. The provisions referenced below in response to this question and in response to the question set forth in section 2.b.1 above apply to transactions in securities, security-based swaps and options positions, whether verified or not. The provisions referenced above	See above for Article 16(6) MiFID See above for MiFID Org Reg articles 59, 74, 75, 76 and Annex IV, MiFIR article 25(1), and EMIR articles 9(2) and 11(1)(a). Articles 103 and 103(b)(ii) CRR. which are made reference to are directly applicable	**Comparability of outcomes**: The EU position and liability recordkeeping requirements provide for a comparable regulatory outcome to the SEC position and liability recordkeeping requirements. In particular, both regulatory regimes require firms to record and maintain a variety of records about positions and financial liabilities to facilitate regulatory oversight and enforcement and to promote the integrity of the market. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
2. What records are firms required to make with regard to their positions and other potential financial liabilities?			
Exchange Act rule 18a-5(b)(3) [17 CFR 240.18a-5(b)(3)][12]; **Non-verified security-based swaps**: • Records of each security-based swap that has not been verified, including transaction and counterparty identifiers. Exchange Act rule 18a-5(b)(11) [17 CFR 240.18a-5(b)(11)][13].	in response to the question set forth in section b.1 above – specifically, MiFID Org Reg articles 59, 74, 75, 76 and Annex IV, MiFIR article 25(1), and EMIR articles 9(2) and 11(1)(a) – also apply to this question. **Securities records or ledgers**: • Credit Institutions must monitor position limits for trading book positions. Articles 103 and 103(b)(ii) CRR. In practice, this will require that Credit Institutions have a record of their long and short positions to enable these to be monitored. • Please also refer to the provisions referenced in response to the question set forth in section 2.b.1 above, which also enable firms to		completeness. **<u>Comparability of specific requirements:</u>** The EU requirements are comparable to analogous SEC requirements in that both require firms to record and maintain information on securities identifiers, positions and counterparties, etc.

[12] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[13] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
2. What records are firms required to make with regard to their positions and other potential financial liabilities?			
	establish records of their positions.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
3. What records are firms required to make with regard to their personnel, including records regarding the background of individuals?			
Records to be created: A questionnaire[14] or employment application for each associated natural person who effects or is involved in effecting security-based swaps on the firm's behalf, containing identifying and background information (e.g., information regarding disciplinary actions, and arrests and indictments). The firm must also make a record that lists the offices associated with each associated person of the firm.	The following requirements entail the creation of information and records in relation to a Credit Institution's staff: Credit Institutions must record information including, among other items, disclosure of criminal records, investigations, enforcement proceedings and dismissals, which may need to be provided to the regulators in order to enable them to assess the suitability of the management body. The due diligence	Article 91(1)(8) CRD IV has been transposed into Article 24(1) LOSSEC and expands the requirements to the general director and assimilated staff Article 21(1)(a) and 35 MiFID Org Reg. which are made reference to are directly applicable in Spain Article 88 CRD (IV) has been transposed into national law in Article 29(2) LOSSEC	**<u>Comparability of outcomes</u>**: The EU personnel recordkeeping requirements provide for a comparable regulatory outcome to the SEC personnel recordkeeping requirements. In particular, both regulatory regimes require firms to record and maintain a variety of personnel information to ensure that personnel are qualified to perform their duties. While the SEC Guidance does not

[14] There may be situations in which firms are prohibited by applicable non-U.S. law from receiving, creating, or maintaining records with respect to certain information that needs to be recorded pursuant to the questionnaire requirement. Therefore, the SEC has proposed additional provisions in Rule 18a-5 to address those situations. *See* Proposed Cross-Border Swap Requirements, *available at* https://www.sec.gov/rules/proposed/2019/34-85823.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
3. What records are firms required to make with regard to their personnel, including records regarding the background of individuals?			
Exchange Act rule 18a-5(b)(8) [17 CFR 240.18a-5(b)(8)][15].	requirements for members of a Credit Institution's management body are an example of an area where member states may introduce similar or additional requirements applicable to other types of employees of the firm. Records must be maintained by Credit Institutions in order to be able to comply with governance requirements imposed on their management body, such as: • Each member of the management body of a Credit Institution must be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties. Article 91(1) CRD IV. member state laws will, in many cases, expand the scope of these requirements to include other relevant staff of a Credit	Article 9(1) MiFID which refers to article 88 and 91 of CRD IV has been transposed into Article 29(1) LOSSEC and articles 30 and 31 od RD 84/2015 Article 16(3) MiFID has been transposed into Article 108(1) SSMA	require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements:</u>** The below EU requirements are comparable to analogous SEC requirements in the following ways: • **Associated offices**. The US regime requires records of offices associated with each associated person of the firm. The EU regime requires the identification and recording of conflicts of interest, which will include the disclosure and recording of associated offices.

[15] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
3. What records are firms required to make with regard to their personnel, including records regarding the background of individuals?			
	Institution. • Members of the management body must act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making. Article 9(1) MiFID and Article 91(8) CRD IV. member state laws will, in many cases, expand the scope of these requirements to include other relevant staff of a Credit Institution. • Investment Firms must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. Article 21(1)(a) MiFID Org Reg.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
3. What records are firms required to make with regard to their personnel, including records regarding the background of individuals?			
	• A Credit Institution's management body must define, oversee and be accountable for the implementation of the governance arrangements including, among other matters, ensuring the prevention of conflicts of interest. Article 9(1) MiFID and Article 88 CRD IV. This will include managing conflicts with associated offices. Investment Firms must maintain a record of all conflicts of interest. Article 16(3) MiFID and Article 35 MiFID Org Reg.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
4. What records are firms required to make regarding the control of customer funds and securities?			
Records to be created: **Transaction information**: • Ledger accounts or other records to itemize separately, as to each account, information such as purchases and sales, receipts and deliveries of securities and commodities, and other debits and credits, along with additional information regarding security-based swaps. Exchange Act rule 18a-5(b)(2) [17 CFR 240.18a-5(b)(2)] [16]; and **Compliance records**: • Records of compliance with the possession or control requirement under the applicable segregation rule, and of the reserve computation required under the segregation rule.	**Transaction information and compliance records**: When holding financial instruments belonging to clients, Investment Firms must make adequate arrangements to safeguard the ownership rights of clients, especially in the event of the Investment Firm's insolvency, and to prevent the use of a client's financial instruments on own account except with the client's express consent. Article 16(8) MiFID. An Investment Firm, when holding funds belonging to clients, must make adequate arrangements to safeguard the rights of clients. Article 16(9) MiFID. To this end, Investment Firms must: keep records and accounts	Article 16(8) MiFID has been transposed into Article 193(2)(f) SSMA and Article 30quáter(1) RD 217/2008 Article 16(9) MiFID has been transposed into Article 193(3)(d) SSMA and Article 30quáter(2) RD 217/2008 Article 2 MiFID Delegated Directive transposed into Article 41 RD 217/2008 Articles 72(1), 74 and 75 MiFID Org Reg. which are made reference to are directly applicable Article 39(4) EMIR which is made reference to is directly applicable	**Comparability of outcomes**: The EU control of customer funds and securities recordkeeping requirements provide for a comparable regulatory outcome to the SEC control of customer funds and securities recordkeeping requirements. In particular, both regulatory regimes require firms to record and maintain a variety of information about client funds to ensure the segregation between firm funds and client funds and protect the safety of client funds. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

[16] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
4. What records are firms required to make regarding the control of customer funds and securities?			
Exchange Act rule 18a-5(b)(9), (10) [17 CFR 240.18a-5(b)(9), (10)][17].	enabling them at any time and without delay to distinguish assets held for one client from assets held for any other client and from their own assets; maintain their records and accounts in a way that ensures their accuracy, and in particular their correspondence to the financial instruments and funds held for clients and that they may be used as an audit trail; conduct, on a regular basis, reconciliations between their internal accounts and records and those of any third-parties by whom those assets are held; take the necessary steps to ensure that any client financial instruments deposited with a third-party are identifiable separately from the financial instruments belonging to the Investment Firm and from financial instruments belonging to that third-party, by means of differently titled accounts on the		**<u>Comparability of specific requirements:</u>** The below EU requirements are comparable to analogous SEC requirements in the following ways: • **Transaction information**. The transaction information required under Article 2 MiFID Delegated Directive and Articles 72, 74 and 75 MiFID Org Reg. is comparable to that required by Exchange Act rule 18a-5(b)(2). • **Compliance records**. Articles 16(8) and (9) MiFID require that Investment Firms make adequate arrangements to protect client funds, including, as set out by Article 2 MiFID Delegated Directive maintaining records

[17] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
4. What records are firms required to make regarding the control of customer funds and securities?			
	books of the third-party or other equivalent measures that achieve the same level of protection; take the necessary steps to ensure that client funds deposited in a central bank, a Credit Institution or a bank authorised in a non-EEA jurisdiction or a qualifying money market fund are held in an account or accounts identified separately from any accounts used to hold funds belonging to the Investment Firm; and introduce adequate organizational arrangements to minimise the risk of the loss or diminution of client assets, or of rights in connection with those assets, as a result of misuse of the assets, fraud, poor administration, inadequate record-keeping or negligence. Article 2 MiFID Delegated Directive. Investment Firms must keep detailed records in relation to every client order and decision to		of client money and client assets possessed or controlled (such money and assets also being subject to a segregation requirement) which is analogous to the requirements in relation to compliance records under Exchange Act rules 18a-5(b)(9), (10)

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
4. What records are firms required to make regarding the control of customer funds and securities?			
	deal, and every client order executed or transmitted. Articles 74 and 75 MiFID Org Reg. Records must be retained in a medium allowing, among other things, the storage of information in a way accessible for future reference by the regulator, and in a form/manner allowing the regulator to access them readily and reconstitute each key stage of processing each transaction. Article 72(1) MiFID Org Reg. An Investment Firm must keep separate records and accounts that enable it to distinguish both in accounts held with the CCP and in its own accounts its assets and positions from the assets and positions held for the account of its clients at the CCP. Article 39(4) EMIR.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
5. What records are firms required to make regarding business conduct practices?			
Records to be created: **Compliance with business conduct standards***:* • Records regarding compliance with business conduct standards that address, among other respects: verification related to counterparty status; certain disclosures related to the daily mark and its calculation; disclosures regarding material incentives, conflicts of interest, material risks and characteristics of the security-based swap, and certain clearing rights; certain "know your counterparty" and suitability obligations; supervisory requirements, including written policies and procedures; certain requirements regarding interactions with special entities; provisions intended to prevent dealers from	An Investment Firm must arrange for records to be kept of all services, activities and transactions undertaken by it which must be sufficient to enable the regulator fulfil its supervisory tasks and to perform enforcement actions under MiFID, MiFIR, CSMAD, MAR, and in particular to ascertain that the Investment Firm has complied with all obligations with respect to clients or potential clients and the integrity of the market. Article 16(6) MiFID. **Compliance with business conduct standards**: • Investment Firms must retain all records in relation to communications with clients in respect of the reception, transmission and execution of orders. Article 16(7) MiFID and Article 76(8)(b) MiFID Org Reg. Records setting out the rights and obligations of the	See above for Articles 16(6) and 16(7) MiFID Articles 72,73 ,76(8)(b) and Annex I Mifid Org Reg. and Article 39(5) EMIR which are made reference to are directly applicable	**Comparability of outcomes**: The EU business conduct recordkeeping requirements provide for a comparable regulatory outcome to the SEC business conduct recordkeeping requirements. In particular, both regulatory regimes require firms to record and maintain a variety of information about transactions and compliance with business conduct standards to facilitate regulatory supervision and enforcement, protect clients and promote the integrity of the market While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific**

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
5. What records are firms required to make regarding business conduct practices?			
engaging in certain "pay to play" activities; and certain minimum requirements relating to CCOs. Exchange Act rules 18a-5(b)(12), (13) [17 CFR 240.18a-5(b)(12), (13)][18].	Investment Firm/client under the service agreement, or the terms of service, must also be retained. Article 73 MiFID Org Reg. • The minimum records Investment Firms must keep include: the information and communications provided to clients on the services provided, the Investment Firm itself, costs and charges and marketing; client agreements; suitability and appropriateness assessments; client order and order-handling (i.e. order aggregation) records; assets and instruments held by the Investment Firm or third-parties for the client and their use by the Investment Firm; investment advice to retail clients; investment research; reports and records on		**requirements:** The below EU requirements are comparable to analogous SEC requirements in the following way: • **Compliance with business conduct standards**: The information required under Article 16(7) MiFID and Article 76(8)(b) is comparable to the information required under Exchange Act rules 18a-5(b)(12), (13). We note that, while there are certain limited respects where the EU compliance obligations differ from the US ones (for example, no 'pay to play' restrictions or related recordkeeping obligations apply in the EU), the information required under Article 72 and Annex I MIFID Org Reg. (including suitability and appropriateness

[18] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
5. What records are firms required to make regarding business conduct practices?			
	business and internal organization, compliance; conflicts, inducements, risk management, internal audit, complaints-handling and personal transaction. Article 72 and Annex I MIFID Org Reg. • Investment Firms must retain records in relation to communications with clients in respect of clearing rights and, in particular, regarding the choice between omnibus client segregation and individual client segregation. Clients must be informed of the costs and level of protection associated with each option and the client must confirm its choice in writing. Article 39(5) EMIR.		assessments, compliance, conflicts, inducements, risk management, internal audit, and complaints-handling) is comparable to the information regarding compliance with business conduct standards required under Exchange Act rules 18a-5(b)(12), (13).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
6. To what extent are firms required to make periodic securities counts or similar records to help ensure the proper care and protection of assets?			
Dealers with a prudential regulator are not subject to securities counts requirements under the Exchange Act.	N/A	N/A	N/A

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
7. (Part A) Are there potential restrictions or prohibitions on the ability of firms to receive, create or maintain certain types of information, such as information regarding counterparties and associated persons?			
There may be situations in which firms are prohibited by applicable non-U.S. law from receiving, creating, or maintaining records with respect to information regarding associated natural persons that needs to be recorded pursuant to the questionnaire requirement. The SEC has proposed additional provisions in Rule 18a-5 to	Recordkeeping and creation requirements must be followed in a manner that is consistent with privacy laws (including the GDPR) that Investment Firms are subject to in respect of personal data (i.e. relating to identified or identifiable natural persons). Among the records listed by the SEC Guidance, some could contain personal data. Although	CNMV is not supervisory authority of the entities regarding GDPR issues and does not confirm GDPR assessments in this document.	**<u>Comparability of outcomes</u>**: The EU restrictions on firm record creation provide for a comparable regulatory outcome to the SEC restrictions on firm record creation. In particular, while the EU GDPR could result in situations where personal data cannot be collected or processed, these situations are narrow, and should

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
7. (Part A) Are there potential restrictions or prohibitions on the ability of firms to receive, create or maintain certain types of information, such as information regarding counterparties and associated persons?			
address those situations. *See* Exchange Act Release No. 85823 (May 10, 2019), 84 FR 24206, 24242-44, 24294 (May 24, 2019) (**Proposed Cross-Border Swap Requirements**).[19]	record creation and compliance with GDPR should be considered on a case-by-case basis, having regard to the relevant personal data and the purpose for which that data will be processed, it is generally possible for Credit Institutions and Investment Firms to collect and process the type of personal data that the records listed may entail in a manner that is compliant with GDPR. For instance, data collected in establishing a client relationship could be processed further within the Credit Institution or the Investment Firm if the "controller" has a legitimate interest that is not overridden by the rights or freedoms of the affected data subjects. Accordingly, it is reasonable to assume that creation and maintenance of records for the purpose of complying with its		not broadly alter the ability of Investment Firms to retain the records at issue here.

[19] https://www.sec.gov/rules/proposed/2019/34-85823.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
7. (Part A) Are there potential restrictions or prohibitions on the ability of firms to receive, create or maintain certain types of information, such as information regarding counterparties and associated persons?			
	obligations as a swap dealer would be capable of being accommodated under GDPR. Moreover, much of the information that is required to be recorded by Credit Institutions and Investment Firms pursuant to the provisions of EU law referenced in the responses to the questions set forth in sections 2.b.1-2.b.6 above may not fall within the definition of personal data (to the extent that it is information that does not relate to an identified or identifiable natural person). This answer does not address the sharing of such information outside of the Credit Institution or the Investment Firm, for which please see the response in Part B to the question set forth in section 2.b.7 below.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Record Creation			
7. (Part B) Are there potentially any restrictions on the ability of the SEC to access particular types of records?			
In general, Credit Institutions and Investment Firms are able to share their own data directly with the SEC (subject to considerations regarding privacy and client confidentiality) without restrictions. Exceptions to this are reports from, and correspondence with, a Credit Institution's or Investment Firm's regulator, which the regulator often requires the firm to keep confidential (though this would vary on a case-by-case basis with different regulators). Beyond this, the working group recognizes that substituted compliance on recordkeeping not only requires a comparability finding, but also a framework that would permit the SEC to examine and inspect regulated firms' compliance with the applicable securities laws. However, the working group further understands that there are multiple variations of the question of access to data protected by, e.g., GDPR, including as a request to obtain assurances on records access, a registration opinion required from non-US entity registrants, and in the context of negotiations of memoranda of understanding between EU member state authorities and the SEC each of which, in itself, should give the SEC the assurance that, even accounting for privacy laws and client confidentiality, records access can be obtained either directly or through supervisory channels. The working group does not propose to add another variation of the discussion, in addition to the three aforementioned venues.			

c. Subcategory: Record Preservation

The preservation of records requirements – regarding firms' financial status, positions, activities and compliance with applicable requirements – promote effective SEC oversight.

Registered firms must keep applicable books and records in the form and manner, and for the period, prescribed by the SEC, and keep those books and records open to inspection and examination by SEC representatives. Exchange Act sections 15F(f)(1)(B), (C) [15 U.S.C. 78o-10(f)(1)(B), (C)].[20] For firms that have a prudential regulator, the recordkeeping requirements specifically apply to the firm's business as a dealer. 15F(f)(1)(B) [15 U.S.C. 78o-10(f)(1)(B)].[21]

Firms must maintain daily trading records (including records of each counterparty) of security-based swaps, and related records and recorded communications, for the period prescribed by the SEC. Firms must maintain a complete audit trail for trade reconstructions. Exchange Act section 15F(g) [15 U.S.C. 78o-10(g)].[22]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
1. What are the general provisions regarding the preservation period and accessibility?			
SEC rules incorporate a number of elements regarding how long particular records must be preserved, accessibility of records, and related matters. *See* below for details.	MiFID contains extensive recordkeeping requirements, including with respect to how long particular records must be preserved, accessibility of records, and related matters. *See* below for details.		**<u>Comparability of outcomes</u>**: The EU record preservation and accessibility requirements provide for a comparable regulatory outcome to the SEC record preservation and accessibility requirements. In particular, both regulatory regimes contain detailed, comprehensive requirements on record

[20] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[21] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[22] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
1. What are the general provisions regarding the preservation period and accessibility?			
			preservation to promote information accessibility for market participants and facilitate regulatory supervision.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
Firms are required to maintain a variety of records:	**General recordkeeping requirement:** An Investment Firm must arrange for records to be kept of all services and transactions undertaken by it which must be sufficient to enable the regulator to fulfil its supervisory tasks and to perform enforcement actions under MiFID, MiFIR, CSMAD and MAR. Article 16(6) MiFID. Records must be retained in a medium allowing the storage of information in a way accessible	See above for Article 16(6) MiFID Article 72(1) MiFID Org Reg. which is made reference to is directly applicable	**<u>Comparability of outcomes</u>**: The EU record preservation requirements provide for a comparable regulatory outcome to the SEC record preservation requirements. In particular, both regulatory regimes contain detailed requirements for different types of information about firms and transactions, in order to promote information accessibility for market participants and facilitate regulatory supervision and

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
	for future reference by the regulator, and in a form/manner allowing (i) the regulator to access them readily and reconstitute each key stage of processing each transaction; (ii) corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained; (iii) it must not be possible for the records otherwise to be manipulated or altered; and (iv) IT or any other sufficient exploitation when the analysis of the data cannot easily be carried out due to the volume and nature of the data. Article 72(1) MiFID Org Reg.		enforcement. *See* Article 16(6) MiFID and Article 72(1) MiFID Org Reg. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements:</u>** The below EU requirements are comparable to analogous SEC requirements in the following ways:
Ledgers and transaction information: Records related to trade blotters, ledgers, ledger accounts and security records/ledgers for at	**Ledgers and transaction information**: Please refer to the responses to question set forth in sections 2.b.1 at "Trade blotters", 2.b.2 at "Securities records or ledgers",	See above for Articles 16(6) and 16(7) MiFID Article 69(2) MiFID is transposed	**Ledgers and transaction information**: Requirements on transaction records under Articles 16(6), 16(7) and 69(2) MiFID, Articles 74-76

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
least six years, the first two years in an easily accessible place. Exchange Act rule 18a-6(a)(2) [17 CFR 240.18a-6(a)(2)][23]; Information required to be made pursuant to rule 18a-5, including records related to the above information regarding brokerage orders/instructions, security-based swap transactions for the firm account, confirmations and trade acknowledgments/verifications, security-based swap counterparty information, options positions, trial balances, current exposure calculations, segregation, non-verified security-based swaps, and business conduct compliance for at least three years, the first two years in an easily accessible place. This portion of the record preservation requirement does not address the record-making	and 2.b.4 at "Ledger accounts and compliance records" regarding the records that must be preserved, as well as the "General recordkeeping requirement" noted above in this response. Additionally, Investment Firms must keep at the disposal of the regulator, for five years, the relevant data relating to all transactions in financial instruments which they have carried out, whether on their own account or on behalf of a client. For transactions carried out on behalf of clients, the records must contain all the information and details of the identity of the client, and the information required under the laws on the prevention of the use of the financial system for the purpose of money laundering. Article 25(1)	into Article 234 SSMA Articles 74-76 and Annex IV MiFID Org Reg., Article 25(1) MiFIR and Article 9(2) EMIR to which reference is made are directly applicable.	and Annex IV MiFID Org Reg. and Article 25(1) MiFIR are comparable to those under Exchange Act rules 18a-6(a)(2) and 18a-6(b)(2).

[23] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
requirement related to associated persons. Exchange Act rule 18a-6(b)(2)(i) [17 CFR 240.18a-6(b)(2)(i)][24];	MiFIR. Counterparties must keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract. Article 9(2) EMIR.		
Trade instructions, confirmations and positions: Originals of communications received and copies of communications sent (and approvals of communications sent), including inter-office memoranda and communications, as well as sales scripts and recordings of telephone calls required to be maintained pursuant to Exchange Act section 15F(g)(1) (related to daily trading records) for at least three years, the first two years in an easily accessible place. Exchange Act	**Trade instructions, confirmations and positions**: Please refer to the responses to the questions set forth in sections 2.b.1 at "Trade confirmations" and "Counterparty information", 2.b.2 at "Securities records or ledgers", and 2.b.5 at "Compliance with business conduct standards" regarding the records that must be preserved as well as the "General recordkeeping requirement" noted above in this response regarding the preservation of such records.	Corresponding national legislation see above	**Trade instructions, confirmations and positions**: Requirements on client communication records under Articles 25(5) and 25(6) MiFID, Article 59 MiFID Org Reg., and Articles 9(2) and 11(1)(a) EMIR are comparable to those set forth in Exchange Act rule 18a-6(b)(2)(ii).

[24] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
rule 18a-6(b)(2)(ii) [17 CFR 240.18a-6(b)(2)(ii)][25];			
Communication records: Originals of communications received and copies of communications sent (and approvals of communications sent), including inter-office memoranda and communications, as well as sales scripts and recordings of telephone calls required to be maintained pursuant to Exchange Act section 15F(g)(1) (related to daily trading records) for at least three years, the first two years in an easily accessible place. Exchange Act rule 18a-6(b)(2)(ii) [17 CFR 240.18a-6(b)(2)(ii)][26];	**Communication records**: Credit Institutions must monitor position limits for trading book positions. Articles 103 and 103(b)(ii) CRR. In practice, this will require that Credit Institutions have a record of their long and short positions to enable these to be monitored. An Investment Firm that has carried out an order on behalf of a client must promptly provide the client, in a durable medium, with the essential information concerning the execution of that order and send a notice to the client in a durable medium confirming execution of the order. Article 59 Regulation Org Reg.	Article 16(7) MiFID has been transposed into Article 194(2)(3)of SSMA and Article 32(2)-(8) of RD 217/2008 Articles 59, 72, 73, 74, 75, 76 (8) and Annex I MiFID Org Reg. are directly applicable Article 25(1) MiFIR is directly applicable Articles 9(2) and 11(1)(a) EMIR are directly applicable	**Communication records**: Requirements under Article 16(7) MiFID and Article 76 MiFID Org Reg. are comparable to those under Exchange Act rule 18a-6(b)(2)(ii).

[25] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[26] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
	The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, and in such a form and manner that corrections or other amendments can be easily ascertained and it is not possible for the records otherwise to be manipulated or altered. Investment Firms shall keep at least the records identified in Annex I such as Client Order and transactions and reporting to clients. Article 72 and Annex I MiFID Org Reg. Records which set out the respective rights and obligations of the Investment Firm and the client under an agreement to provide services, or the terms on which the firm provides services to the client, shall be retained for at least the duration of the relationship with the client.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
	Article 73 MiFID Org Reg. Please refer to the responses to question set forth in sections 2.b.1 at "Trade confirmations" and "Counterparty Information" for Articles 74 and 75 MiFID Org Reg. Investment Firms must retain records in relation to communications with clients in respect of the reception, transmission and execution of orders for five years or, where requested by its regulator, up to seven years. Article 16(7) MiFID and Article 76(8)(b) MiFID Org Reg. Investment Firms must record all forms of telephone conversations and electronic communications regarding client orders (even where these do not result in the conclusion of a transaction or the provision of a service). Article		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
	16(7) MiFID and Article 76 MiFID Org Reg. Please refer to the "General recordkeeping requirement" noted above in this response regarding the preservation of such records. Investment firms shall keep at the disposal of the competent authority, for five years, the relevant data relating to all orders and all transactions in financial instruments which they have carried out, whether on own account or on behalf of a client. Article 25 MiFIR. Counterparties must keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract. Article 9(2) EMIR. FCs and NFCs are required to confirm the terms of each		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
	uncleared OTC derivative contract in a timely manner and by electronic means where available. EMIR, Article 11(1)(a).		
Account documents: Account documents, including guarantees of accounts and powers of attorney and other evidence of the granting of any discretionary authority given in respect of any account, as well as copies of resolutions empowering an agent to act on behalf of a corporation for at least three years, the first two years in an easily accessible place. Exchange Act rule 18a-6(b)(2)(iii) [17 CFR 240.18a-6(b)(2)(iii)][27];	**Account documents**: An Investment Firm must establish a record that includes the documents agreed between the Investment Firm and the client that set out the rights and obligations of the parties, and the other terms on which the Investment Firm will provide services to the client. Article 25(5) MiFID. Records setting out the rights and obligations of the firm/client under the service agreement, or the terms of service, must be retained for at least the duration of the client relationship. Article	Article 25(5) MiFID has been transposed into Article 218 SSMA and 82 RD 217/2008 Articles 72(1) and 73 MiFID Org Reg. are directly applicable MiFIR article 25(1) and EMIR article 9(2) are directly applicable	**Account documents**: Requirements under the Articles 16(6) and 25(5) MiFID and Article 73 MiFID Org Reg., in connection with the general requirement to preserve derivative contracts under Article 9(2) EMIR, are comparable to those under Exchange Act rule 18a-6(b)(2)(iii).

[27] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
	73 MiFID Org Reg. Please also refer to the "General recordkeeping requirement" noted above in this response regarding the records that must be preserved and the preservation of such records. Please refer to the responses to question set forth in sections 2.c.2 at "Communication Records" regarding for MiFID Org Reg article 72(1), MiFIR article 25(1), and EMIR article 9(2).		
Written agreements: Written agreements (or copies) relating to the firm's business as such, including agreements with respect to any account. Written agreements with respect to a security-based swap customer or noncustomer – including governing documents or any document establishing the terms	**Written agreements**: Please refer to the section on "2(e) Account documents" noted above in this response regarding the records that must be preserved and the preservation of such records. Please also refer to the response to the question set forth in	Corresponding national legislation see above	**Written agreements**: Requirements on maintaining records of written agreements with clients under Articles 16(6) and 25(5), 25(6) MiFID, Articles 59 and 73 MiFID Org Reg. and Articles 9(2) and 11(1)(a) EMIR are comparable to those under Exchange Act rule 18a-6(b)(2)(iv).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
and conditions of the security-based swaps – must be maintained with the account records of the customer or non-customer for at least three years, the first two years in an easily accessible place. Exchange Act rule 18a-6(b)(2)(iv) [17 CFR 240.18a-6(b)(2)(iv)][28];	section 2.b.1 at "Trade confirmations" regarding the records that must be preserved as well as the "General recordkeeping requirement" noted above in this response regarding the preservation of such records.		
Financial statements: Information supporting financial statements including information supporting amounts included in FOCUS reports and in required financial statements, including money balances, positions in securities, futures, commodities and options, and records relating to margin and segregation for at least three years, the first two years in an easily accessible place. This requirement applies only to firms without a prudential	**Financial statements:** Please refer to response regarding "Financial/capital reports" in section 2(d)(1) below on the records that must be preserved and the preservation of such records.	Articles CRR to which reference is made and CRR Reporting ITS are directly applicable	**Financial statements**: Requirements under Articles 99, 394 and 430 and Part Six: Title II & Title III CRR and the CRR Reporting ITS are comparable to those under Exchange Act rule 18a-6(b)(2)(v).

[28] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
regulator, except for the segregation-related possession or control information. *Exchange Act rule 18a-6(b)(2)(v) [17 CFR 240.18a-6(b)(2)(v)]*[29];			
Submission of information to a repository: Information the firm is required to submit to a repository pursuant to Regulation SBSR. For firms without a prudential regulator, this information includes documentation of internal risk management systems, periodic reviews of such systems conducted by internal audit staff and annual reviews of such systems conducted by independent certified public accountants for at least three years, the first two years in an easily accessible place. For firms with prudential regulators, this	**Submission of information to a repository**: Counterparties must ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported to a trade repository. Article 9(1) EMIR. Counterparties must keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of that contract. Article 9(2) EMIR.	Articles 9(1) and (2) EMIR are directly applicable	**Submission of information to a repository**: Article 9(1) requires counterparties to ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported to a trade repository. Article 9(2) of EMIR requires counterparties to keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of that contract. Exchange Act rule 6(b)(2)(vi).

[29] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
information includes counterparty and transaction information, secondary trade information, life cycle events, and the identity of parent and affiliated entities. Exchange Act rule 18a-6(b)(2)(vi) [17 CFR 240.18a-6(b)(2)(vi)][30]; and			
Due diligence information: Documents related to applicable business conduct standards, and documents used to make certain determinations with respect to special entities, including information relating to financial status, tax status and the investment or financing objectives of the special entity for at least three years, the first two years in an easily accessible place. Exchange Act rule 18a-6(b)(2)(vii), (viii) [17 CFR 240.18a-6(b)(2)(vii), (viii)][31];	**Due diligence information:** Various types of counterparty information must be collected as part of customer due diligence including, for example, with regards to the customer's identity, its beneficial owner and the purpose and intended nature of the business relationship. Articles 11 and 13 MLD4. Please also refer to the "General recordkeeping requirement" noted above in this response regarding the records that must	Articles 11 and 13 MLD4 have been transposed into Article 3-7 SMLA MiFID Org Reg article 72(1), MiFIR article 25(1), and EMIR article 9(2) are directly applicable	**Due diligence information**: Requirements under Articles 11 and 13 MLD4 are comparable to those under Exchange Act rule 18a-6(b)(2)(vii), (viii).

[30] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[31] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
	be preserved and the preservation of such records. Please refer to the responses to question set forth in sections 2.c.2 at "Communication Records" for MiFID Org Reg article 72(1), MiFIR article 25(1), and EMIR article 9(2).		
Registration documents: Records such as partnership articles, articles of incorporation, minute books and stock certificate books (depending on the form of the legal entity); and copies of the applicable firm registration forms (forms SBSE, SBSE-A, SBSE-C or SBSE-W), as well as amendments to those forms and other documentation showing the firm's registration with securities regulatory authorities or the CFTC for the life of the enterprise and any successor enterprise. Exchange	**Registration documents:** The forms and supporting documents required for an Investment Firm to become authorized in an EU member state in order to be able to provide investment services are set out in individual member state rules and regulations. In practice, any such application for authorization to a regulator broadly requires the submission by the Investment Firm of documentation including: articles of association and related constitutional documentation, supporting documentation		**Registration documents**: Investment Firms must preserve relevant types of records on an ongoing basis that are relevant to their regulatory status and their general recordkeeping obligations. This is comparable to the requirements of Exchange Act rule 18a-6(c).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
Act rule 18a-6(c) [17 CFR 240.18a-6(c)];[32]	regarding its senior management (including their skills and expertise, criminal background, etc.), accounting documents and related financial and operational information and certain policies and procedures. The information requirements are member state-specific and may vary from jurisdiction to jurisdiction. Once authorized, Investment Firms will have general record-keeping obligations which, in practice, means that they would need to have a record of many of the items mentioned above.		
Associated persons: Information regarding associated persons in an easily accessible place. Exchange Act rule 18a-6(d)(1) [17 CFR 240.18a-6(d)(1)];[33]	**Associated persons:** Please refer to the response to the question set forth in 2.b.3 regarding the records that must be preserved as well as the "General recordkeeping requirement" noted above in this		**Associated persons**: Requirements under Guidelines 74-75, 172 and Annex III EBA/ESMA Guidelines on Management Suitability are comparable to those under Exchange Act rule 18a-6(d)(1).

[32] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[33] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
	response regarding the preservation of such records.		
Settlement: Records related to orders or settlement, including reports that a securities regulatory authority or the CFTC (or a prudential regulator, if applicable) has required the firm to make and furnish pursuant to an order or settlement, and related examinations reports until three years after the date of the report in an easily accessible place. Exchange Act rule 18a-6(d)(2)(ii) [17 CFR 240.18a-6(d)(2)(ii)][34];	**Settlement:** Regulators are able to require Investment Firms to hold any additional records beyond those required to be retained under normal circumstances. Article 72(3) MiFID Org Reg. Please refer to the responses to question set forth in sections 2.c.2 at "Communication Records" for MiFID Org Reg article 72(1), MiFIR article 25(1), and EMIR article 9(2).	Articles 72(1) and (3) MiFID Org Reg. are directly applicable MiFIR article 25(1), and EMIR article 9(2) are directly applicable	**Settlement**: Requirements under Article 72(3) MiFID Org Reg. are analogous to those under Exchange Act rule 18a-6(d)(2)(ii).
Compliance manuals: Compliance, supervisory and procedures manuals related to compliance with applicable requirements and the supervision of associated natural persons,	**Compliance manuals:** MiFID requires the maintenance of a range of compliance policies and procedures in respect of the Investment Firm's, and its managers, employees and tied	Article 16(2) MiFID has been transposed into Article 193(2)(a) SSMA and Article 30(2) RD 217/2008	**Compliance manuals**: Requirements under Articles 16(2), 16(6) and 16(7) MiFID, Articles 72, 73 and 76(8)(b) and Annex I MiFID Org Reg. are comparable to those under

[34] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
until three years after termination of the use of the manual in an easily accessible place. For firms with a prudential regulator, this requirement relates to compliance with laws and rules relating to security-based swap activities. Exchange Act rule 18a-6(d)(3)(ii) [17 CFR 240.18a-6(d)(3)(ii)][35]; and	agents, compliance with MiFID obligations. Article 16(2) MiFID. Please also refer to the response to the question set forth in section 2.b.5 at "Compliance with business conduct standards" regarding the records that must be preserved as well as the "General recordkeeping requirement" noted above in this response regarding the preservation of such records. Please refer to the responses to question set forth in sections 2.c.2 at "Communication Records" for MiFID Org Reg articles 72, 73, 76(8)(b) and Annex I, MiFIR article 25(1), and EMIR article 9(2)	MiFID Org Reg. articles 72, 73, 76(8)(b) and Annex I, MiFIR article 25(1), and EMIR article 9(2) are directly applicable	Exchange Act rule 18a-6(d)(3)(ii).
Post-relationship documentation: Written policies and procedures required under the risk mitigation	**Post-relationship documentation:** Please refer to the section on "2(e) Account documents" noted		**Post-relationship documentation**: Requirements under the Articles

[35] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
requirements until three years after their termination, written portfolio reconciliation agreements until three years after the termination of the agreement and related transactions, trading relationship documentation until three years after the termination of the documentation and related transactions, and audit results related to trading relationship documentation until three years after the conclusion of the audit in an easily accessible place. Exchange Act rule 18a-6(d)(5) [17 CFR 240.18a-6(d)(5)].[36]	above in this response regarding the records that must be preserved and the preservation of such records. MiFID requires the maintenance of a range of risk management records, including internal audit reports which must be submitted to the Investment Firm's management body at least annually. Article 16(5) MiFID and Articles 24 and 25(2) MiFID Org Reg. Please refer to the responses to question set forth in sections 2.c.2 at "Communication Records" for MiFID Org Reg 72(1) and 73, MiFIR article 25(1), and EMIR article 9(2)	Article 16(5) MiFID has been transposed into national law in Article 193(3) SSMA Article 16(6) MiFID has been transposed into national law in Article 194(1) SSMA and Article 32(1) RD 217/2008 Articles 24, 25(2), 72(1) and 73 MiFID Org Reg. are directly applicable MiFIR article 25(1), and EMIR article 9(2) are directly applicable	16(2), 16(5), 16(6) and 25(5) MiFID and Articles 24, 25(2) and 73 MiFID Org Reg. are comparable to those under Exchange Act rule 18a-6(d).

[36] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
3. To what extent are firms required to preserve specific information regarding associated persons?			
This provision requires preservation of the above information related to associated persons, in an easily accessible place until at least three years after the termination of the associated person's employment or other connection with the firm. Exchange Act rule 18a-6(d)(1) [17 CFR 240.18a-6(d)(1)].[37]	Investment firms shall establish, implement and maintain decision-making procedures and an organisational structure which clearly and in documented manner specifies reporting lines and allocates functions and responsibilities. Article 21(1)(a) MiFID Org Reg. Investment firms shall keep and regularly update a record of services or activities giving rise to detrimental conflict of interest. Article 35 MiFID Org Reg. A Credit Institution must prepare and retain the records related to the requirements applicable to a Credit Institution's staff, as set out in response to the question set forth in section 2.b.3 above. These requirements apply at all times. Article 91(1) CRD IV. An Investment Firm must retain	Article 91(1) CRD IV has been transposed into national law in Article 24(1) LOSSEC Articles 21(1)(a), 35 and 72(1) MiFID Org Reg. are directly applicable.	**Comparability of outcomes**: The EU relevant employees/personnel record preservation requirements provide for a comparable regulatory outcome to the SEC associated person record preservation requirements. In particular, both regulatory regimes contain detailed requirements on preservation of information about associated persons, in order to ensure the associated persons' qualification, promote information accessibility for market participants and facilitate regulatory supervision and enforcement.

[37] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
3. To what extent are firms required to preserve specific information regarding associated persons?			
	records in relation to all its services, activities and transactions in a medium allowing the storage of information in a way accessible for future reference by the regulator, and in a form/manner allowing the regulator to access them readily. Article 72(1) MiFID Org Reg.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
4. What requirements address firms' use of electronic storage systems and third-party contractors in connection with record preservation?			
Comparability of outcomes: The EU electronic storage and third-party record preservation requirements provide for a comparable regulatory outcome to the SEC electronic storage and third-party record preservation requirements. In particular, both regulatory regimes stipulate requirements on electronic storage and third-party contractors as record keepers, in order to promote easier access to information and ensure information safety. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements:**			

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
4. What requirements address firms' use of electronic storage systems and third-party contractors in connection with record preservation?			
The below EU requirements are comparable to analogous SEC requirements in the following ways:			
Electronic storage: The records required to be maintained and preserved may be produced by means of an electronic storage system, subject to a number of conditions including the capacity to readily download into the readable format the indexes and records preserved in the system, the use of duplicate records stored separately, an audit system, and undertakings by senior officers. *See* Exchange Act rule 18a-6(e) [17 CFR 240.18a-6(e)].[38]	Electronic storage: An Investment Firm can make use of electronic storage systems as long as it complies with the following requirements: an Investment Firm must retain records in relation to all its services, activities and transactions in a medium allowing the storage of information in a way accessible for future reference by the regulator, and in a form/manner allowing (i) the regulator to access them readily and reconstitute each key stage of processing each transaction; (ii) corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained; (iii) it must not be possible for the records otherwise to be manipulated or altered; and	Article 16(5) MiFID has been transposed into national law in Article 193(3)(a)(b)SSMA Article 16(6) MiFID has been transposed into national law in Article 194(1) SSMA and Article 32(1) RD 217/2008 Article 25(5) MiFID has been transposed into Article 218 SSMA and 82 RD 217/2008 Articles 21(2), 58, 72(1) and 72(3) MiFID Org Reg. are directly applicable MiFIR article 25(1) and EMIR article 9(2) are directly applicable	**Electronic storage**: Requirements on the accessibility of storage systems under Article 72(1) MiFID Org Reg. are comparable to those under Exchange Act rule 18a-6(e).

[38] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
4. What requirements address firms' use of electronic storage systems and third-party contractors in connection with record preservation?			
	(iv) IT or any other sufficient exploitation when the analysis of the data cannot easily be carried out due to the volume and nature of the data. Article 72(1) MiFID Org Reg. Investment Firms are required to arrange for records to be kept of all services and transactions undertaken which must be sufficient to enable the relevant regulator to fulfil its supervisory tasks and to perform enforcement actions under MiFID, MiFIR, CSMAD and MAR, and in particular to ascertain that an Investment Firm has complied with all obligations with respect to clients or potential clients and the integrity of the market. Article 16(6) MiFID. an Investment Firm must retain records of any policies and procedures required to be maintained under MiFID, MiFIR, CSMAD and MAR must be maintained in writing. Article		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
4. What requirements address firms' use of electronic storage systems and third-party contractors in connection with record preservation?			
	72(3) MiFID Org Reg. an Investment Firm must establish in writing and on paper or another durable medium a record that includes the document or documents agreed between the Investment Firm and the client that set out the rights and obligations of the parties, and the other terms on which the Investment Firm will provide services to the client. Article 25(5) MiFID and Article 58 MiFID Org Reg. Investment Firms must have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems, and to have sound security mechanisms in place to guarantee the security and authentication of the means of transfer of		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
4. What requirements address firms' use of electronic storage systems and third-party contractors in connection with record preservation?			
	information, minimize the risk of data corruption and unauthorized access and to prevent information leakage maintaining the confidentiality of the data at all times. Article 16(5) MiFID. Investment Firms must establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question. Article 21(2) MiFID Org Reg. Please refer to the responses to question set forth in sections 2.c.2 at "Communication Records" for MiFIR article 25(1), and EMIR article 9(2)		
Third-party contractors: If a firm uses a third-party to prepare or maintain records, the rule requires the third-party to file	**Third-party contractors**: MiFID treats third-party contractors brought into the firm to work alongside other staff in	Corresponding national provision see above	**Third-party contractors**: Requirements under Article 16(5) MiFID on qualifications of third-party contractors as record

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
4. What requirements address firms' use of electronic storage systems and third-party contractors in connection with record preservation?			
an undertaking with the SEC stating, among other things, that the records are the property of the firm and will be promptly furnished to the SEC or its designee. *See* Exchange Act rule 18a-6(f) [17 CFR 240.18a-6(f)].[39]	the same way as an Investment Firm's employees (both are captured within policies and procedures relating to "staff"). Accordingly, the provisions noted above will apply. Where an Investment Firm uses an external third-party contractor, outsourcing requirements may be applicable. Where an Investment Firm outsources critical or important operational functions, it will remain fully responsible for discharging all of its MiFID obligations. Article 31(1) MiFID Org Reg. An Investment Firm must ensure, when relying on an outsourced service provider for the performance of operational functions which are critical for the provision of continuous and satisfactory service to clients and the performance of investment activities on a continuous and satisfactory basis, that it takes	Article 31(1) and 72(1) MiFID Org Reg. are directly applicable MiFIR article 25(1), and EMIR article 9(2) are directly applicable	keepers are comparable to those under Exchange Act rule 18a-6(f).

[39] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
4. What requirements address firms' use of electronic storage systems and third-party contractors in connection with record preservation?			
	reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the regulator to monitor the Investment Firm's compliance with all obligations. Article 16(5) MiFID. Credit Institutions are required to ensure that its regulators have access to the information held by, and premises of, and rights to audit critical or important outsourced functions. Section 13.3 EBA Guidelines on Outsourcing. Please refer to the responses to question set forth in sections 2.c.2 at "Communication Records" for MiFID Org Reg 72(1) MiFIR article 25(1), and EMIR article 9(2)		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
5. (Part A) Are there potentially any restrictions or prohibitions on the ability of firms to maintain certain of those types of information?			
The SEC Guidance recognizes that there may be situations in which firms are prohibited by applicable non-U.S. law from receiving, creating, or maintaining records with respect to information regarding associated natural persons that needs to be recorded pursuant to the questionnaire requirement. The SEC has adopted Rule 18a-5(b)(8)(iii) to address those situations. Specifically, as exceptions to the general rule to make and keep current the AP questionnaires: (1) an SBS Entity would not need to make or keep current such questionnaires or employment applications if the entity is excluded from the statutory disqualification prohibition in Exchange Act 15F(b)(6) with respect to the associated person;	All recordkeeping and creation requirements are subject to data privacy and confidentiality laws, where applicable, as further described in response to the question set forth in section 2.b.7 above.		**Comparability of outcomes**: The EU restrictions on preservation of certain records provide for a comparable regulatory outcome to the SEC restrictions on preservation of certain records. In particular, both regulatory regimes contemplate situations where firms are not allowed to maintain certain information. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements:** The specific requirements under the EU regime are more detailed

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
5. (Part A) Are there potentially any restrictions or prohibitions on the ability of firms to maintain certain of those types of information?			
and, (2) A questionnaire or application for employment executed by an associated person who is not a U.S. resident need not include the information described in paragraphs (b)(8)(i)(A) through (H) of Rule 18a-5, unless the SBS Entity (a) is required to obtain such information under local law in the jurisdiction in which the associated person is employed or located, or (b) obtains such information in conducting a background check that is customary for such firms in that jurisdiction, and the creation or maintenance of records reflecting that information would not result in a violation of applicable law in the jurisdiction in which the associated person is employed or located.			than the US regime. The EU regime stipulates specific situations where firms are subject to additional confidentiality requirements and are prevented from collecting certain information (e.g., under the GDPR). In contrast, the US regime only broadly contemplates that firms may be subject to non-US law and therefore restricted in information collection.

SEC Requirement and/or Policy Goal Summary per SEC (with link	EU Requirement and/or Policy	Spanish Law Provisions	Comparability Assessment

to the US rule)	Goal Summary		
c. Subcategory: Record Preservation			
5. (Part B) Are there potentially any restrictions on the ability of the SEC to access particular types of records?			
In general, Credit Institutions and Investment Firms are able to share their own data directly with the SEC (subject to considerations regarding privacy and client confidentiality) without restrictions. Exceptions to this are reports from, and correspondence with, a Credit Institution's or Investment Firm's regulator, which the regulator often requires the firm to keep confidential (though this would vary on a case-by-case basis with different regulators). Beyond this, the working group recognizes that substituted compliance on recordkeeping not only requires a comparability finding, but also a framework that would permit the SEC to examine and inspect regulated firms' compliance with the applicable securities laws. However, the working group further understands that there are multiple variations of the question of access to data protected by, e.g., GDPR, including as a request to obtain assurances on records access, a registration opinion required from non-US entity registrants, and in the context of negotiations of memoranda of understanding between EU member state authorities and the SEC each of which, in itself, should give the SEC the assurance that even accounting for privacy laws and client confidentiality, records access can be obtained either directly or through supervisory channels. The working group does not propose to add another variation of the discussion, in addition to the three aforementioned venues			

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
6. Are firms required to furnish records promptly to regulators upon request?			
Upon request, firms must furnish promptly to a representative of the SEC legible, true, complete, and current copies of records that the firm is required to make or preserve. *See* Exchange Act rule 18a-6(g) [17 CFR 240.18a-6(g)].[40]	Regulators are given very broad information-access powers under MiFID, including with regards to access to information upon request. Article 69(2) MiFID. Regulators have powers to: have access to any document or other	See above for Article 69(2) MiFID	**<u>Comparability of outcomes</u>**: The EU requirements to furnish records to EU regulators provide for a comparable regulatory outcome to the SEC requirements to furnish records to the SEC. In particular, both regulatory

[40] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Record Preservation			
6. Are firms required to furnish records promptly to regulators upon request?			
	data in any form which the regulator considers could be relevant for the performance of its duties and receive or take a copy of it; to require or demand the provision of information from any person and if necessary to summon and question a person with a view to obtaining information; to carry out on-site inspections or investigations; and to require existing recordings of telephone conversations or electronic communications or other data traffic records held by an Investment Firm, a Credit Institution, or any other entity regulated by MiFID or MiFIR. Article 69(2) MiFID.		regimes allow the SEC/EU regulators (as applicable) to have prompt access to information upon request.

d. Subcategory: Reports and Notifications

The reports and notices that firms must provide regarding their financial condition and regarding operational issues and deficiencies are necessary to provide for effective SEC oversight of registered entities.

Registered firms must make reports that the SEC requires regarding transactions, positions and financial condition. Exchange Act section 15F(f)(1)(A) [15 U.S.C. 78o-10(f)(1)(A)].[41]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
1. What reports are firms required to make regarding financial, operational and compliance matters? To what extent is the information associated with the required reports similar to, or different from, the information presented in FOCUS reports, and in annual reports required under the Exchange Act?			
Comparability of outcomes: The EU requirements to make reports provide for a comparable regulatory outcome to the SEC requirements to make reports. In particular, both regulatory regimes require that firms provide periodic, detailed information on their financials, operations, trading, and communication with clients, in order to improve information availability to market participants and facilitate regulatory oversight and enforcement. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements:** The below EU requirements are comparable to analogous SEC requirements in the following ways:			
Firms are required to make a number of reports:	Firms are required to make a number of reports, and in addition to the following, regulators have the power to	CRR and CRR Reporting ITS are directly applicable	Firms are required to make a number of reports: **Financial/capital reports**:

[41] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
1. What reports are firms required to make regarding financial, operational and compliance matters? To what extent is the information associated with the required reports similar to, or different from, the information presented in FOCUS reports, and in annual reports required under the Exchange Act?			
Financial/capital reports: Firms must file FOCUS reports to provide the SEC with, *inter alia*, unaudited reports about their financial and operational condition. Exchange Act rule 18a-7(a)(2) [17 CFR 240.18a-7(a)(2)][42];	impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions. Article 104(1)(j) CRR. **Financial/capital reports**: Reports must be submitted by Credit Institutions on the following matters (among others): capital/own funds (Article 99 CRR and Annexes I and II CRR Reporting ITS), accounting information (Article 99 CRR and Annexes III, IV and V CRR Reporting ITS), counterparty credit risk (Article 99 CRR), large exposures (Article 394 CRR and Annexes VIII and IX CRR Reporting ITS), liquidity coverage and stable funding (Part Six: Title II & Title III CRR and Annexes XII and XIII CRR Reporting ITS), and leverage ratios		Financial and capital information required under CRR and CRR Reporting ITS is comparable to that required under Exchange Act rule 18a-7(a)(2).

[42] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
1. What reports are firms required to make regarding financial, operational and compliance matters? To what extent is the information associated with the required reports similar to, or different from, the information presented in FOCUS reports, and in annual reports required under the Exchange Act?			
	(Article 430 CRR and Annexes X and XI CRR Reporting ITS).		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
2. To what extent does your jurisdiction require reports that address the use of internal models for purposes of calculating net capital?			
Dealers with a prudential regulator are not subject to the requirements to submit reports that address the use of internal models for the purposes of calculating net capital under the Exchange Act.	N/A	N/A	N/A

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment

d. Subcategory: Reports and Notifications			
3. Does your jurisdiction require firms to make financial and capital information publicly available online? If so, what are the contents of the required disclosures?			
Firms with a prudential regulator are not subject to the requirement to make financial and capital information publicly available online under the Exchange Act.	N/A	N/A	N/A

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	**EU Requirement and/or Policy Goal Summary**	**Spanish Law Provisions**	**Comparability Assessment**
d. Subcategory: Reports and Notifications			
4. What notices are firms required to make regarding matters such as capital adequacy and deficiencies, failures to comply with books and records requirements, failures to comply with segregation requirements, and material weaknesses?			
Firms must provide notices regarding: 1. Dealers' capital category adjustments: Dealers with a prudential regulator are required to give notice to the SEC when they file an adjustment of reported capital category with a prudential regulator. Exchange Act rule 18a-8(c) [17 CFR 240.18a-8(c)];[43]	Breach reporting requirements apply to Credit Institutions. The detail of breach reporting requirements is reserved to the local law of each EU member state. Regulators must establish effective and reliable mechanisms to encourage reporting to regulators of potential or actual breaches of CRR and MiFIR and national provisions transposing CRD IV and MiFID. Article 73	The requirement to establish mechanisms to encourage breach reporting to regulators according to Article 71 CRD IV is transposed into Articles 116, 119, 121 and 122 LOSSEC	**Comparability of outcomes**: The EU notice requirements provide for a comparable regulatory outcome to the SEC notice requirements. In particular, both regulatory regimes aim to establish reporting mechanisms so that the regulators will be promptly notified of these events, in order to facilitate regulatory oversight and enforcement and protect market participants.

[43] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_68

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
4. What notices are firms required to make regarding matters such as capital adequacy and deficiencies, failures to comply with books and records requirements, failures to comply with segregation requirements, and material weaknesses?			
2. Failures regarding books and records: Firms that fail to make and keep current the required books and records must notify the SEC on the day that the failure arises, and, within forty-eight hours of the original notice, provide a report stating what the firm has done or is doing to correct the situation. Exchange Act rule 18a-8(d) [17 CFR 240.18a-8(d)];[44]and 3. Failures to make required reserve account deposits: Dealers must give notice to the SEC if they fail to make a deposit into their customer reserve account, as required by the segregation rule. Exchange Act rule 18a-8(g) [17 CFR 240.18a-8(g)].[45]	MiFID and Article 71 CRD IV.		While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements:</u>** The specific EU requirements are different from the specific US requirements. The US regime specifies how firms must notify the regulators of these events (including timing, content, etc.). By contrast, these detailed reporting requirements are reserved to the local law of each EU member state, not at the EU level. The EU regime specifies

[44] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_68
[45] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_68

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
4. What notices are firms required to make regarding matters such as capital adequacy and deficiencies, failures to comply with books and records requirements, failures to comply with segregation requirements, and material weaknesses?			
			requirements of how member states must establish the reporting mechanism.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
5. To what extent does your jurisdiction require financial reports or other information to be reviewed by an independent accountant?			
Dealers with a prudential regulator are not subject to the independent accountant requirements under the Exchange Act.	N/A	N/A	N/A

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			

6. Are there potentially any restrictions or prohibitions on the ability of the SEC to access reports or notices made pursuant to the requirements of your jurisdiction?
In general, Credit Institutions and Investment Firms are able to share their own data directly with the SEC (subject to considerations regarding privacy and client confidentiality) without restrictions. Exceptions to this are reports from, and correspondence with, a Credit Institution's or Investment Firm's regulator, which the regulator often requires the firm to keep confidential (though this would vary on a case-by-case basis with different regulators). Beyond this, the working group recognizes that substituted compliance on recordkeeping not only requires a comparability finding, but also a framework that would permit the SEC to examine and inspect regulated firms' compliance with the applicable securities laws. However, the working group further understands that there are multiple variations of the question of access to data protected by, e.g., GDPR, including as a request to obtain assurances on records access, a registration opinion required from non-US entity registrants, and in the context of negotiations of memoranda of understanding between EU member state authorities and the SEC each of which, in itself, should give the SEC the assurance that even accounting for privacy laws and client confidentiality, records access can be obtained either directly or through supervisory channels. The working group does not propose to add another variation of the discussion, in addition to the three aforementioned venues.

3. Category: Supervision and Chief Compliance Officer Requirements

a. Executive Summary

The supervision and CCO requirements promote registered entities' use of structures, processes and responsible personnel reasonably designed to promote compliance with applicable law and to identify and cure instances of non-compliance, in part through the designation of an individual with responsibility and authority over compliance matters.

b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors

Firms are required to have internal supervision systems with qualified supervisory personnel. When making a substituted compliance determination with regard to supervision requirements, the SEC will consider whether "the mandates for supervisory systems under the requirements of the foreign financial regulatory system, and the duties imposed by the foreign financial regulatory system" are comparable to those associated with the applicable Exchange Act provisions and underlying rules. Exchange Act rule 3a71-6(d)(1) [17 CFR 240.3a71-6(d)(1)].[1]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
1. To what extent are firms required to have systems for the internal supervision of their security-based swap business and personnel? How are those systems required to be reasonably designed to prevent violations of the applicable laws? How is the effectiveness of those systems assessed?			
<u>Comparability of outcomes</u>: The EU requirements to establish internal supervisory systems provide a comparable regulatory outcome to the SEC internal supervisory system requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(1) and MiFID and CRD IV are consistent in that each requires firms to establish internal supervisory systems designed to ensure compliance with applicable laws, and each provide for mechanisms to assess the effectiveness of those systems. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.			

[1] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	**EU Requirement and/or Policy Goal Summary**	**Spanish Law Provisions**	**Comparability Assessment**
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
1. To what extent are firms required to have systems for the internal supervision of their security-based swap business and personnel? How are those systems required to be reasonably designed to prevent violations of the applicable laws? How is the effectiveness of those systems assessed?			
Comparability of specific requirements: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Supervisory systems to prevent violations Firms are required to conform with rules that the SEC prescribes with regard to diligent supervision of the firm's business. Exchange Act section 15F(h)(1)(B) [15 U.S.C. 78o-10(h)(1)(B)].[2] Under SEC rules, each firm is required to "establish and maintain a system to supervise, and shall diligently supervise," its business and the activities of its associated persons relating to security-based swaps. The system must "be reasonably designed to prevent violations	**Supervisory systems to prevent violations** An Investment Firm must establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm including its managers, employees and tied agents with its obligations under MiFID. Article 16(2) MiFID. MiFID also contains extensive requirements regarding the supervisory measures that must be taken by Investment Firms in order to supervise their business and their staff, and to prevent violations of applicable rules and regulations.	Article 193(2)(a) SSMA and Article 30(2)(3) RD 217/2008 in conjunction with Articles 21-29 MiFID Org Reg.	**Supervisory systems to prevent violations** Article 21 MiFID Org Reg. requires Investment Firms to ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities and maintain internal compliance and reporting mechanisms. Article 25 MiFID Org Reg. requires Investment Firms to ensure that senior management, and, where appropriate, the supervisory function, are responsible for ensuring that the Investment Firm complies with its obligations under MiFID. Article 16(2) MiFID requires an Investment Firm to establish adequate policies

[2] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
1. To what extent are firms required to have systems for the internal supervision of their security-based swap business and personnel? How are those systems required to be reasonably designed to prevent violations of the applicable laws? How is the effectiveness of those systems assessed?			
of the provisions of applicable federal securities laws and the rules and regulations thereunder" relating to the firm's business. Exchange Act rule 15Fh-3(h)(1) [17 CFR 240.15Fh-3(h)(1)].[3]	Examples include: • Investment Firms must ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities; establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Investment Firm; and establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the Investment Firm. Article 21 MiFID Org Reg.		and procedures sufficient to ensure compliance of the Investment Firm including its managers, employees and tied agents with its obligations under MiFID. Articles 27, 28 and 29 MiFID Org Reg. provide various requirements to ensure that an Investment Firm's staff complies with their regulatory obligations regarding remuneration and personal transactions matters. Article 88 CRD IV requires the management body to ensure the integrity of the accounting and financial reporting systems, including financial and operational controls, and compliance with the law and relevant standards. These requirements are comparable to the supervisory system requirements prescribed by Exchange Act rule 15Fh-3(h).

[3] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
1. To what extent are firms required to have systems for the internal supervision of their security-based swap business and personnel? How are those systems required to be reasonably designed to prevent violations of the applicable laws? How is the effectiveness of those systems assessed?			
	• Investment Firms must ensure that their senior management, and, where appropriate, the supervisory function, are responsible for ensuring that the Investment Firm complies with its obligations under MiFID. Article 25 MiFID Org Reg. MiFID imposes a range of requirements, including in relation to remuneration and personal transactions, to ensure that an Investment Firm's staff comply with their obligations. Articles 27, 28 and 29 MiFID Org Reg.		
System assessments Firms are required to conform to rules that the SEC prescribes with regard to diligent supervision of the firm's	**System assessments** Investment Firms must establish and maintain a permanent and effective compliance function which operates independently	Article 29 LOSSEC in conjunction with article 22 MIFID Org. Reg.	**System assessments** Article 22 MiFID Org Reg. requires firms to maintain an independent compliance function that assesses the adequacy and effectiveness of

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
1. To what extent are firms required to have systems for the internal supervision of their security-based swap business and personnel? How are those systems required to be reasonably designed to prevent violations of the applicable laws? How is the effectiveness of those systems assessed?			
business. Exchange Act section 15F(h)(1)(B) [15 U.S.C. 78o-10(h)(1)(B)].[4] Under SEC rules, each firm is required to "establish and maintain a system to supervise, and shall diligently supervise," its business and the activities of its associated persons relating to security-based swaps. The system must "be reasonably designed to prevent violations of the provisions of applicable federal securities laws and the rules and regulations thereunder" relating to the firm's business. Exchange Act rule 15Fh-3(h)(1) [17 CFR 240.15Fh-3(h)(1)].[5]	and has responsibilities including: monitoring and assessing the adequacy and effectiveness of measures, policies and procedures to detect a failure in the Investment Firm's obligations under MiFID; advising and assisting relevant persons responsible for carrying out investment services and activities to comply with the Investment Firm's obligations under MiFID; reporting to the management body on the implementation and effectiveness of the overall control environment, identified risks and remedial actions; and monitoring the complaints-handling process. Article 22 of MiFID Org Reg.		procedures and systems in place to ensure compliance with MiFID. The management body must ensure the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards. These requirements are analogous to the system assessment requirement set forth in Exchange Act rule 15Fh-3(h).

[4] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[5] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
1. To what extent are firms required to have systems for the internal supervision of their security-based swap business and personnel? How are those systems required to be reasonably designed to prevent violations of the applicable laws? How is the effectiveness of those systems assessed?			
	The management body must define, oversee and be accountable for matters including the implementation of the governance arrangements that ensure effective and prudent management. Among other requirements, the management body must ensure the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards. Article 88 CRD IV.		

SEC Requirement/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
2. What requirements govern firms' designation of supervisory personnel, and the authority, responsibility and capacity of those personnel?			
Comparability of outcomes:			

SEC Requirement/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
2. What requirements govern firms' designation of supervisory personnel, and the authority, responsibility and capacity of those personnel?			
The EU requirements regarding the designation, responsibility and capacity of supervisory personnel provide a comparable regulatory outcome to the SEC requirements regarding the designation, responsibility and capacity of supervisory personnel. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2) and MiFID are consistent in that each requires firms to designate qualified supervisory personnel responsible for ensuring compliance with applicable laws. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Authority and responsibility Firms must designate at least one qualified person with authority to carry out supervisory responsibilities. The designation requirement applies to each type of business for which registration is required. Exchange Act rule 15Fh-3(h)(2)(i) [17 CFR 240.15Fh-3(h)(2)(i)].[6]	**Authority and responsibility** An Investment Firm must establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm including its managers, employees and tied agents with its obligations under MiFID. Article 16(2) MiFID. An Investment Firm must ensure that senior management, and, where appropriate, the supervisory function, are	Article 193(2)(a) SSMA and Article 30(2)(3) RD 217/2008 in conjunction with Articles 22-25 MiFID Org Reg.	**Authority and responsibility** Article 22(3) MiFID Org Reg. requires Investment Firms to appoint a compliance officer responsible for the compliance function and for any reporting as to compliance required by MiFID. Additionally, Article 22(3) MiFID Org Reg. requires that persons involved in the compliance function must not be involved in the performance of services or activities they monitor and the method of determining

[6] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
2. What requirements govern firms' designation of supervisory personnel, and the authority, responsibility and capacity of those personnel?			
	responsible for ensuring that the Investment Firm complies with its obligations under MiFID. Article 25 MiFID Org Reg. An Investment Firm must appoint a compliance officer responsible for the compliance function and for any reporting concerning compliance matters required by MiFID. The persons involved in the compliance function must not be involved in the performance of services or activities they monitor and the method of determining their remuneration must not, and must not be likely to, compromise their objectivity. Article 22(3) MiFID Org Reg. Investment Firms must, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of the investment services and activities undertaken in the		their remuneration must not, and must not be likely to, compromise their objectivity. Article 25 MiFID Org Reg. requires an Investment Firm to ensure that senior management, and, where appropriate, the supervisory function, are responsible for ensuring that the Investment Firm complies with its obligations under MiFID. Where appropriate, Articles 23 and 24 MiFID Org Reg. require Investment Firms to establish an independent risk management function and an internal audit function, which will assist the Investment Firm in ensuring that it complies with its obligations under MiFID. These requirement are analogous to the designation requirement set forth in Exchange Act rule 15Fh-3(h)(2).

SEC Requirement/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
2. What requirements govern firms' designation of supervisory personnel, and the authority, responsibility and capacity of those personnel?			
	course of that business, establish and maintain a risk management function that operates independently. This function must be responsible for the implementation of relevant policies and procedures and the provision of reports and advice to senior management. Article 23 MiFID Org Reg. Investment Firms must, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the Investment Firm. The responsibilities of this function must include to: establish, implement and maintain an audit plan to		

SEC Requirement/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
2. What requirements govern firms' designation of supervisory personnel, and the authority, responsibility and capacity of those personnel?			
	examine and evaluate the adequacy and effectiveness of the Investment Firm's systems, internal control mechanisms and arrangements; issue recommendations based on the result of this work and verify compliance with those recommendations; and report to senior management in relation to internal audit matters. Article 24 MiFID Org Reg.		
Capacity Firms must designate at least one qualified person with authority to carry out supervisory responsibilities. The designation requirement applies to each type of business for which registration is required. Exchange Act rule 15Fh-3(h)(2)(i) [17 CFR 240.15Fh-3(h)(2)(i)].[7]	**Capacity** Investment firms (among other obligations) must: employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them; and ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent those persons	Article 182(2)(a) SSMA in conjunction with article 21(1)(d) MiFID Org. Reg.	**Capacity** The Article 21 MiFID Org Reg. requirements regarding skills, knowledge and expertise are comparable to the supervisory personnel requirements set forth in Exchange Act rule 15Fh-3(h)(2).

[7] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
2. What requirements govern firms' designation of supervisory personnel, and the authority, responsibility and capacity of those personnel?			
	from discharging any particular function soundly, honestly, and professionally. Article 21 MiFID Org Reg.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
3. What requirements govern the qualification of supervisory personnel?			

Comparability of outcomes:

The EU requirements regarding the qualification of supervisory personnel provide a comparable regulatory outcome to the SEC requirements regarding the qualification of supervisory personnel. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(ii) and MiFID are consistent in that each requires firms to ensure that supervisory personnel are qualified to carry out their responsibilities.

While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

Comparability of specific requirements:

The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:

Qualification Firms must make use of supervisors that are qualified	**Qualification** MiFID imposes general qualification requirements on an	Article 182(2)(a) SSMA, Article 24(2)	**Qualification** Article 21 MiFID Org Reg. requires

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
3. What requirements govern the qualification of supervisory personnel?			
to carry out their responsibilities. Qualification may be established via experience or training. Exchange Act rule 15Fh-3(h)(2)(ii) [17 CFR 240.15Fh-3(h)(2)(ii)].[8]	Investment Firm's relevant staff and internal functions with regards to their knowledge, skills and expertise. These include: • Investment Firms must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. Article 21 MiFID Org Reg. • The compliance function must have, among other things, the necessary expertise in order to be able to discharge its responsibilities properly and independently. Article 22(3) MiFID Org Reg.	LOSSEC in conjunction with Articles 21(1)(d), 22(3)(a) MiFID Org Reg.	firms to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them; and ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally. Additionally, Article 22 MiFID Org Reg. requires that persons involved in the compliance function must have appropriate expertise. These requirements are analogous to the supervisory personnel qualification requirements set forth in Exchange Act rule 15Fh-3(h)(2)(ii).

[8] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

c. Subcategory: Supervisory System Policies and Procedures

Firms are required to establish, maintain and enforce written supervisory policies and procedures that are reasonably designed to prevent violations of applicable law. When making a substituted compliance determination with regard to supervision requirements, the SEC will consider whether "the mandates for supervisory systems under the requirements of the foreign financial regulatory system, and the duties imposed by the foreign financial regulatory system" are comparable to those associated with the applicable Exchange Act provisions and underlying rules. Exchange Act rule 3a71-6(d)(1) [17 CFR 240.3a71-6(d)(1)].[9]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
Comparability of outcomes: The EU requirements to establish and enforce written supervisory policies and procedures provide a comparable regulatory outcome to the SEC requirements to establish and enforce supervisory policies and procedures. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii) and MiFID and CRD IV are consistent in that each requires firms to establish a variety of policies and procedures meant to ensure that effective and thorough supervisory systems are in place to mitigate risk. MiFID requires the establishment of a 'three lines of defence' model in relation to governance, risk and compliance oversight by Investment Firms. The first line of defence comprises the front office, as directed by the policies and procedures (including in respect of conflicts of interest) that the Investment Firm is obliged to establish and front office staff are required to follow. The second line of defence comprises the compliance and risk management teams – these teams conduct supervision of the front office. The third line of defence comprises the internal/external audit team, which ensures the effectiveness of the compliance and risk management teams. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**:			

[9] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Supervisory policies and procedures: **Establishing robust risk management systems** SEC rules require that firms establish, maintain and enforce written policies and procedures that address the firm's security-based swap business, including associated persons. Those policies and procedures must be "reasonably designed to prevent violations" of applicable securities laws and regulations. Exchange Act rule 15Fh-3(h)(2)(iii) [17 CFR 240.15Fh-3(h)(2)(iii)].[10] Under SEC rules, those policies and procedures at a minimum must include certain elements (addressed below).	**Supervisory policies and procedures**: **Establishing robust risk management systems** **<u>MiFID</u>** Investment Firms must establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm, including its managers, employees and tied agents, with its obligations under MiFID. Article 16(2) MiFID. Investment Firms must have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems.	Articles 193(3)(a)(b)(c)(e) SSMA and Articles 30 sexies(2) and 30 ter(1)(2) RD 217/2008 in conjunction with Articles 21-24 MiFID Org Reg. Articles 29(1), 37(2)(b) and 38 LOSSEC and Article 42 RD 84/2015 Articles 103, 286, 287, 288 and 293 CRR are directly applicable.	**Supervisory policies and procedures**: **Establishing robust risk management systems** Article 16(5) MiFID requires Investment Firms to have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems. Article 23 MiFID Org Reg. requires Investment Firms to establish, implement and maintain adequate risk management policies and procedures that identify the risks relating to the Investment Firm's activities, processes and systems and, where appropriate, set the level of risk tolerated by the Investment Firm. Article 21(3)

[10] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
In adopting these requirements, the SEC noted that the minimum requirements listed in the rule "are not an exhaustive list," and that entities "should keep in mind their overarching obligation . . . to establish and maintain a supervisory system that is reasonably designed to prevent violations of applicable federal securities laws and the rules and regulations thereunder" relating to the firm's security-based swap business. *See* Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR at 30005-06 (May 13, 2016) (**Business Conduct Adopting Release**)[11] (suggesting that entities "generally should consider" providing for the supervisory review of recorded oral communications, and consider how to supervise certain	Article 16(5) MiFID. Investment Firms must establish, implement and maintain adequate risk management policies and procedures that identify the risks relating to the Investment Firm's activities, processes and systems and, where appropriate, set the level of risk tolerated by the Investment Firm. The requirement encompasses monitoring the effectiveness and adequacy of the Investment Firm's risk management policies and procedures, together with the level of compliance by the Investment Firm and its personnel with the arrangements, processes and mechanisms adopted and the adequacy and effectiveness of measures taken to address deficiencies in them. Article 23		MiFID Org Reg. requires that Investment Firms must establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of investment services and activities. In practice, these requirements result in written policies and procedures that are comparable to the supervisory system requirements under Exchange Act rule 15Fh-3(h)(2)(iii) Article 74 CRD IV requires Credit Institutions to have robust governance arrangements, with adequate internal control mechanisms, including sound administrative and accounting procedures. Article 76(3) CRD IV requires that Credit Institution management must approve and periodically review the strategies

[11] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
disclosures orally communicated). The supervisory system must encompass procedures for compliance with duties set forth in Exchange Act section 15F(j). Exchange Act rule 15Fh-3(h)(2)(iii)(I) [17 CFR 240.15Fh-3(h)(2)(iii)(I)].[12] Section 15F(j) contains self-executing requirements that, *inter alia*, impose on firms duties related to: Exchange Act section 15F(j)(2) [15 U.S.C. 78o-10(j)(2)];[13] and Exchange Act rule 15Fh-3(h)(2)(iii)(I) [17 CFR 240.15Fh-3(h)(2)(iii)(I)];[14]	MiFID Org Reg. A specific risk management function is required where appropriate and proportionate that must: (i) operate independently, (ii) implement the Investment Firm's risk management policies and procedures, and (iii) provide required reports and advice. Article 23(2) MiFID Org Reg. An Investment Firm must take reasonable steps to ensure continuity and regularity in the performance of its regulated activities. To this end, the Investment Firm must employ appropriate and proportionate systems, resources and procedures, and ensure, when relying on a third-party for the performance of operational functions which are critical for		and policies for taking up, managing, monitoring and mitigating the risks the entity is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle. Article 76(1) CRD IV also requires firms of significant size, internal organization, and nature, scope and complexity of their activities to establish a risk committee composed of members of the management body who do not perform any executive function in the entity concerned. Articles 287 and 288 CRR further require Credit Institutions that have permission to use internal models for calculating their CCR requirements to have a risk control unit and a collateral management unit and regularly conduct an independent review of its CCR

[12] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[13] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[14] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
	the provision of continuous and satisfactory service to clients and the performance of investment activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. Articles 16(4), 16(5) MiFID. Investment Firms must establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of investment services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their investment services and activities. This requires Investment Firms to establish and maintain a		management system through its internal auditing process. Finally, Article 2 Margin RTS require counterparties to establish, apply and document risk management procedures for the exchange of collateral for non-centrally cleared OTC derivative contracts.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
	business continuity and disaster recovery plan, which must allow for the timely resumption of its investment services and activities and for the preservation of essential data and functions. Article 21(3) MiFID Org Reg. An Investment Firm, where appropriate and proportionate, must have an internal audit function, separate and independent from the other functions that is responsible for establishing, implementing and maintaining an audit plan to evaluate the adequacy and effectiveness of the Investment Firm's systems and internal control mechanisms and arrangements; and to issue and oversee the implementation of recommendations based on the plan. Article 24 MiFID Org Reg. **CRD IV**		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
	Credit Institutions must have robust governance arrangements, with adequate internal control mechanisms, including sound administrative and accounting procedures. Article 74 CRD IV. The management body must approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the Credit Institution is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle. Article 76(1) CRD IV. Credit Institutions that are significant in terms of size, internal organization and nature, scope and complexity of their activities must establish a risk committee composed of members of the management		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
	body who do not perform any executive function in the entity concerned. Article 76(3) CRD IV. **<u>CRR</u>** Credit Institutions that have permission to use internal models for calculating their CCR requirements required to establish and maintain a CCR management framework are specifically required to take into account trading and credit limits for the purposes of their CCR risk framework, and are required to include information about appropriate measures taken in terms of position limits in their daily reports on the output of their risk measurement models. Credit Institutions are required to have a risk control unit and a collateral management unit. A Credit Institution shall regularly conduct an independent review of its CCR management system		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
	through its internal auditing process. Articles 286, 287, 288 and 293 CRR. **Margin RTS** Counterparties shall establish, apply and document risk management procedures for the exchange of collateral for non-centrally cleared OTC derivative contracts. Article 2 Margin RTS.		
Disclosing certain information to regulators Firms must disclose, to the SEC and prudential regulators (as applicable), information concerning: terms and conditions of its security-based swaps; security-based swap trading operations, mechanisms, and practices; financial integrity protections relating to security-based swaps; and other information relevant to the firm's trading in	**Disclosing certain information to regulators** Reports to the Investment Firm's regulator must be made in respect of transactions in financial instruments which are (a) admitted to trading, or traded, on a trading venue or for which a request for admission to trading has been made; (b) the underlying is a financial instrument traded on a trading venue; or (c) the underlying is an index or a basket composed of	Article 26 MiFIR is directly applicable	**Disclosing certain information to regulators** Article 26 MiFIR requires Investment Firms to make reports to regulators, where relevant, containing granular trade-by-trade information including with respect to parties and precise trade details. These requirements are comparable to the requirements under Exchange Act rule 15F(j)(3) [15 U.S.C. 78o-10(j)(3)].

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
security-based swaps. Exchange Act section 15F(j)(3) [15 U.S.C. 78o-10(j)(3)];[15]	financial instruments traded on a trading venue. For these purposes, "trading venues" include EU regulated markets (i.e. exchanges), multilateral trading facilities and organized trading facilities. Transaction reporting contains very granular trade-by-trade information, including (among others), the parties, the precise trade details (e.g. instrument type, position taken, price, quantity, etc.) and the decision makers (e.g. the natural person executing the trade) (the Transaction Reporting RTS sets out the full fields to be addressed in these reports). Article 26 MiFIR.		
Obtaining necessary information Firms must establish and enforce internal systems and procedures to obtain	**Obtaining necessary information** Please see "**Establishing robust risk management systems**" above in response to the	Article 69(2) MiFID has been transpose in Article 234 SSMA and	**Obtaining necessary information** Article 21(1) MiFID Org Reg. requires an Investment Firm to establish adequate policies and procedures sufficient to ensure

[15] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
information needed to perform functions required by law or regulation, and to provide the information to the SEC and prudential regulators on request. Substituted compliance similarly is not available in connection with the information provision part of that duty. *See* Exchange Act rule 3a71-6(d)(1) [17 CFR 240.3a71-6(d)(1)][16] (further excluding section 15F(j)(4)(B) from the availability of substituted compliance. Exchange Act section 15F(j)(4) [15 U.S.C. 78o-10(j)(4)]);[17]	question set forth in this section 3.c.1 in relation to robust operations, mechanisms and practices. An Investment Firm must establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm including its managers, employees and tied agents with its obligations under MiFID. Article 16(2) MiFID. Investment Firms must establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Investment Firm. Article 21(1) MiFID Org Reg. Regulators have broad information-gathering powers. This means that, in practice, Credit Institutions must have the	Article 65 CRD IV has been transposed in Article 50 LOSSEC	compliance of the Investment Firm including its managers, employees and tied agents with its obligations under MiFID. Article 21 (1) MiFID Org Reg. requires Investment Firms to establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Investment Firm. Article 69(2) MiFID and Article 65 CRD IV provide applicable regulators with broad information-gathering powers. This means that, in practice, Credit Institutions must have the relevant systems and procedures to enable them to comply with such requests. These requirements are comparable to the requirements under Exchange Act section 15F(j)(4) [15 U.S.C. 78o-10(j)(4)].

[16] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf
[17] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
	relevant systems and procedures to enable them to comply with such requests. Article 69(2) MiFID and Article 65 CRD IV.		
Implementing conflict of interest systems and procedures Exchange Act section 15F(j)(5) [15 U.S.C. 78o-10(j)(5)];[18] and	**Implementing conflict of interest systems and procedures** An Investment Firm must maintain and operate effective organizational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients. Article 16(3) MiFID. The management body must define, oversee and is accountable for the implementation of the governance arrangements that	Article 182(1) SSMA, Article 30bis RD 217/2008 and Article 29(2) LOSSEC in conjunction with Articles 33and 34 MiFID Org Reg.	**Implementing conflict of interest systems and procedures** Article 16(3) MIFID requires an Investment Firm to maintain and operate effective organizational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients. Article 88 CRD IV requires the management body to define, oversee and be accountable for the implementation of the governance arrangements that ensure effective and prudent management, including the segregation of duties in the organization and the prevention of conflicts of interest. These

[18] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
	ensure effective and prudent management, including the segregation of duties in the organization and the prevention of conflicts of interest. Article 88 CRD IV.		requirements are comparable to the requirements addressing conflicts of interest under Exchange Act section 15F(j)(5) [15 U.S.C. 78o-10(j)(5)].
Addressing antitrust considerations Exchange Act section 15F(j)(6) [15 U.S.C. 78o-10(j)(6)].[19]	**Addressing antitrust considerations** Under the EU antitrust regime, EU regulated firms including Credit Institutions are required to comply with EU antitrust laws.		**Addressing antitrust considerations** Because the EU antitrust regime requires Credit Institutions to comply with antitrust laws, the ultimate regulatory outcome of the EU antitrust regime is comparable to that set forth in Exchange Act section 15F(j)(6).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
2. In what ways are firms required to have supervisory policies and procedures for the review of transactions?			
Comparability of outcomes:			

[19] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
2. In what ways are firms required to have supervisory policies and procedures for the review of transactions?			
The EU requirements for supervisory review of transactions provide a comparable regulatory outcome to the SEC requirements for supervisory review of transactions. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(A) and MiFID are consistent in that each requires that firms establish procedures through which qualified supervisors review transactions. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Review of transactions Firms are required to have procedures for supervisory review of transactions for which registration as a dealer is required. Exchange Act rule 15Fh-3(h)(2)(iii)(A) [17 CFR 240.15Fh-3(h)(2)(iii)(A)].[20]	**Review of transactions** An Investment Firm must establish adequate policies and procedures sufficient to ensure its compliance with its obligations under MiFID. Article 16(2) MiFID. These policies will need to address the monitoring of the transactions entered into by the Investment Firm, including security-based swap transactions. Credit Institutions that have a permission to use internal	Articles 221,222, 223 and 224 SSMA and Article 79 RD 217/2009 Articles 286 and 293 CRR are directly applicable	**Review of transactions** Article 16(2) MiFID requires Investment Firms to have policies and procedures that address the monitoring of all the Investment Firm's activities, including its transactions in security-based swaps. This requirement is comparable to that set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(A).

[20] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
2. In what ways are firms required to have supervisory policies and procedures for the review of transactions?			
	models for calculating their CCR requirements are required to establish and maintain a CCR management framework, are specifically required to take into account trading and credit limits for the purposes of their CCR risk framework, and are required to include information about appropriate measures taken in terms of position limits in their daily reports on the output of their risk measurement models. Articles 286 and 293 CRR.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
3. In what ways are firms required to have supervisory policies and procedures for the review of correspondence and internal communications? Are firms also required to have supervisory policies and procedures for the supervision of oral communications?			
Comparability of outcomes: The EU requirements to supervise communications provide for a comparable regulatory outcome to the SEC requirements to supervise communications. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(B) and MiFID are consistent in that			

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
3. In what ways are firms required to have supervisory policies and procedures for the review of correspondence and internal communications? Are firms also required to have supervisory policies and procedures for the supervision of oral communications?			
each requires that firms establish procedures to supervise all types of external and internal communications in order to mitigate risk. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Supervised communications Supervisory policies and procedures at a minimum must include elements regarding: Correspondence and internal communication review: Firms are required to have procedures for supervisory review of incoming and outgoing written – including electronic – correspondence with counterparties or potential counterparties, and of internal written communications relating to the firm's security-based swap	**Supervised communications** Investment Firms must establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the Investment Firm. Article 21 MiFID Org Reg. An Investment Firm must arrange for records to be kept of all services, activities and transactions undertaken by it which must be sufficient to enable the regulator to fulfil its supervisory tasks and to enforce MiFID, MiFIR, MAR and CSMAD,	Articles 194(1)(2) SSMA and Articles 32 RD 217/2008 in conjunction with Articles 21, 74, 75 and 76 MiFID Org Reg.	**Supervised communications** Article 21 MiFID Org Reg. requires Investment Firms to establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the Investment Firm. In addition to the general requirement under Articles 74, 75 and Annex IV MiFID Org Reg. that Investment Firms keep detailed records in relation to every client order and decision to deal, and every client order executed or transmitted, Article 16(7) MiFID and Article 76 MiFID Org Reg. specifically require Investment

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
3. In what ways are firms required to have supervisory policies and procedures for the review of correspondence and internal communications? Are firms also required to have supervisory policies and procedures for the supervision of oral communications?			
business. Exchange Act rule 15Fh-3(h)(2)(iii)(B) [17 CFR 240.15Fh-3(h)(2)(iii)(B)].[21]	and in particular to ascertain that the Investment Firm has complied with all obligations including those with respect to clients or potential clients and to the integrity of the market. Article 16(6) MiFID. To this end, Investment Firms must record all forms of telephone conversations and electronic communications regarding client orders (even where these do not result in the conclusion of a transaction or the provision of a service). Investment Firms must notify new and existing clients that telephone communications or conversations between the Investment Firms and clients that result or may result in transactions, will be recorded. Investment Firms must not provide, by phone, investment		Firms to record all forms of telephone conversations and electronic communications regarding client orders (even where these do not result in the conclusion of a transaction or the provision of a service). These requirements are comparable, and even more onerous with regards to supervision of oral communications, to the supervisory requirements set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(B).

[21] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
3. In what ways are firms required to have supervisory policies and procedures for the review of correspondence and internal communications? Are firms also required to have supervisory policies and procedures for the supervision of oral communications?			
	services and activities to clients who have not been notified in advance about the recording of their telephone communications or conversations, where such investment services and activities relate to the reception, transmission and execution of client orders. Article 16(7) MiFID and Article 76 MiFID Org Reg. Investment are subject to recordkeeping requirements in relation to client's orders and execution orders. Please refer to the responses to question set forth in section 2.b.1 at "Trade confirmations" and "Counterparty Information" regarding Articles 74, 75 and Annex IV MiFID Org Reg.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment

c. Subcategory: Supervisory System Policies and Procedures

4. In what ways are firms required to have supervisory policies and procedures for annual or periodic review that are intended to prevent and detect violations of applicable law?

Comparability of outcomes:

The EU periodic supervisory review requirements provide a comparable regulatory outcome to the SEC periodic supervisory review requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(C) and MiFID are consistent in that each requires that firms establish procedures to periodically review their compliance with applicable laws.

While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

Comparability of specific requirements:

The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:

Periodic Review Firms are required to have procedures for periodic review, at least annually, of the firm's security-based swap business that are "reasonably designed to assist in detecting and preventing violations" of applicable requirements. Exchange Act rule 15Fh-3(h)(2)(iii)(C) [17 CFR 240.15Fh-3(h)(2)(iii)(C)].[22]	**Periodic Review** Senior management must receive on a frequent basis, and at least annually, written reports on the matters regarding compliance, risk management and internal audit (covered by Articles 22, 23 and 24 MiFID Org Reg.) indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports	Article 35 RD 217/2008 in conjunction with 25 MiFID Org Reg.	**Periodic review** Article 25 MiFID Org Reg. requires that an Investment Firm's senior management receive on a frequent basis, and at least annually, written reports on the matters regarding compliance, risk management and internal audit (covered by Articles 22, 23 and 24 MiFID Org Reg.) indicating whether appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports on the same matters.

[22] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
4. In what ways are firms required to have supervisory policies and procedures for annual or periodic review that are intended to prevent and detect violations of applicable law?			
	on the same matters. Article 25 MiFID Org Reg. Investment Firms must establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the Investment Firm to comply with its obligations under MiFID, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the regulators to exercise their powers effectively under MiFID. Article 22 MiFID Org Reg. The compliance function must monitor and regularly assess the actions taken to address any deficiencies in an Investment Firm's compliance with its obligations under MiFID. Article 22 MiFID Org Reg. Investment Firms are obligated		Article 22 MiFID Org Reg. requires the compliance function to monitor and regularly assess the actions taken to address any deficiencies in an Investment Firm's compliance with its obligations under MiFID. Article 24 MiFID Org Reg. imposes a similar requirement in relation to Investment Firms' internal audit function. Article 23 MiFID Org Reg. requires Investment Firms to establish, implement and maintain adequate risk management policies and procedures that identify the risks related to the Investment Firms' activities processes and systems. These requirements are comparable to those set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(C).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
4. In what ways are firms required to have supervisory policies and procedures for annual or periodic review that are intended to prevent and detect violations of applicable law?			
	to establish, implement and maintain adequate risk management policies and procedures that identify the risks relating to the Investment Firms' activities, processes and systems (please see the response to the question set forth in section 3.c.1 above). Article 23 MiFID Org Reg. Investment Firms are obligated to have, where appropriate and proportionate, an internal audit function responsible for establishing, implementing and maintaining an audit plan to evaluate the adequacy and effectiveness of the Investment Firm's systems and internal control mechanisms (please see the response to the question set forth in section 3.b.2 above). Article 24 MiFID Org Reg.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
5. In what ways are firms required to have supervisory policies and procedures for investigating the character, business repute, qualifications, and experience of associated persons?			
Comparability of outcomes: The EU requirements to investigate personnel provide a comparable regulatory outcome to the SEC requirements to investigate personnel. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(D) and MiFID are consistent in that each requires that firms establish procedures to ensure that personnel associated with the firm are sufficiently qualified and of good character. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Investigation of personnel Firms are required to have procedures for investigation of "the good character, business repute, qualifications, and experience" of persons prior to their association with the firm. Exchange Act rule 15Fh-3(h)(2)(iii)(D) [17 CFR 240.15Fh-3(h)(2)(iii)(D)].[23]	**Investigation of personnel** Each member of the management body of Credit Institutions must be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties and to act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior	Article 24 LOSSEC and Articles 30 and 31 RD 84/2015 (good repute, knowledge and expertise) Article 61 RD 217/2008 (conflicts of interests)	**Investigation of personnel** Article 91(1) CRD IV requires each member of the management body of a Credit Institution to be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties. Article 91(8) CRD IV requires each member of the management body to act with honesty, integrity and independence of mind to effectively assess and challenge the decisions

[23] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
5. In what ways are firms required to have supervisory policies and procedures for investigating the character, business repute, qualifications, and experience of associated persons?			
	management where necessary and to effectively oversee and monitor management decision-making. Article 91(1) CRD IV. Member state laws will, in many cases, expand the scope of these requirements to include other relevant staff of a Credit Institution. Investment Firms must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. Article 21(1)(a) MiFID Org Reg. Investment Firms must take all reasonable steps to identify conflicts of interest between themselves, including their managers, employees and tied agents or any persons directly or indirectly linked to them by control and their clients or between one client and another,		of the senior management where necessary and to effectively oversee and monitor management decision-making. Article 21(1)(a) MiFID Org Reg. requires Investment Firms employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. These regulations are comparable to the requirements set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(D). We note that Exchange Act rule 15Fh-3(h)(2)(iii)(D) requires personnel considerations to take place prior to the relevant individual's association with the firm. While the EU requirements do not specify that such considerations must be made prior to an individual's association with a Credit Institution, the stated obligations are on-going and therefore apply at the outset and throughout such

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
5. In what ways are firms required to have supervisory policies and procedures for investigating the character, business repute, qualifications, and experience of associated persons?			
	that arise in the course of providing any investment and ancillary services, or combinations thereof. Article 23(1) MiFID.		association.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
6. In what ways are firms required to have supervisory policies and procedures for approving and supervising the outside trading of associated persons?			

Comparability of outcomes:

The EU requirements regarding the supervision of associated persons provide a comparable regulatory outcome to the SEC requirements regarding the supervision of associated persons. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(E) and MiFID are consistent in that each requires that firms establish procedures to supervise actions of associated persons and ensure that such actions do not put the firm at risk.

While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

Comparability of specific requirements:

The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
6. In what ways are firms required to have supervisory policies and procedures for approving and supervising the outside trading of associated persons?			
Actions of associated persons Firms are required to have procedures to consider whether associated persons may establish or maintain securities or commodities accounts or trading relationships at other firms, and, if permitted, procedures for the supervision of that outside trading. Exchange Act rule 15Fh-3(h)(2)(iii)(E) [17 CFR 240.15Fh-3(h)(2)(iii)(E)].[24]	**Actions of associated persons** MiFID imposes a range of requirements, including in relation to personal transactions, to ensure that a firm's staff comply with their obligations. Articles 28 and 29 MiFID Org Reg. Investment Firms must establish, implement and maintain adequate arrangements aimed at preventing certain staff from entering into personal transactions, advising or recommending that others enter into transactions, or disclosing information that would or would be likely to result in a person entering into a transaction or advising or recommending that another person enters into a transaction, in each case where	Article 193(2)(a) SSMA and 30(2) RD 217/2008 in conjunction with Articles 28, 29 and 37 MiFID Org Reg.	**Actions of associated persons** Articles 28 and 29 MiFID Org Reg. impose a range of requirements in relation to personal transactions to ensure that an Investment Firm's staff comply with their obligations. Article 29 MiFID Org Reg. requires Investment Firms, among other things, to establish, implement and maintain adequate arrangements aimed at preventing certain staff from entering into personal transactions. Article 37 MiFID Org Reg. imposes specific personal transactions restrictions on financial analysts and other staff involved in the production of investment research. Article 16(2) MiFID require the maintenance of a range of risk management records, including personal transaction records. These requirements are comparable to the requirements set forth in Exchange

[24] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
6. In what ways are firms required to have supervisory policies and procedures for approving and supervising the outside trading of associated persons?			
	doing so would be prohibited under MAR (i.e. contrary to inside information and market abuse restrictions), involve the misuse or improper disclosure of that confidential information, or would conflict or be likely to conflict with an obligation of the investment firm under MiFID. Article 29 MiFID Org Reg. Specific restrictions apply in respect of financial analysts and other staff involved in the production of investment research such that they cannot trade in a personal capacity, for another person (including the relevant Investment Firm) in financial instruments to which investment research relates, or in any related financial instruments. Article 37 MiFID Org Reg. MiFID requires the maintenance of a range of risk management		Act rule 15Fh-3(h)(2)(iii)(E).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
6. In what ways are firms required to have supervisory policies and procedures for approving and supervising the outside trading of associated persons?			
	records, including personal transaction records. Article 16(2) MiFID.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
7. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?			

Comparability of outcomes:

The EU prohibitions against self-supervision provide a comparable regulatory outcome to the SEC prohibitions against self-supervision. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(G) and MiFID and CRD IV are consistent in that each requires that firms establish procedures to prevent self-supervision and address it where unavoidable in furtherance of risk mitigation efforts.

While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

Comparability of specific requirements:

The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:

Self-supervision Firms must keep records of	**Self-supervision**		**Self-supervision** Article 22 MiFID Org Reg. requires

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
7. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?			
descriptions of supervisory systems, including titles, qualifications, locations and responsibilities of supervisory persons. Exchange Act rule 15Fh-3(h)(2)(iii)(F) [17 CFR 240.15Fh-3(h)(2)(iii)(F)];[25] and Prohibitions against self-supervision: Firms are required to have procedures prohibiting an associated person who performs a supervisory function from supervising his or her own activities or reporting to, or having his or her compensation or continued employment determined by, a person or persons he or she is supervising. This prohibition does not apply if the firm determines compliance is not possible "because of the firm's size or a supervisory person's position within the firm." In	**MiFID** MiFID requires the establishment of a 'three lines of defense' model in relation to governance, risk and compliance oversight by Investment Firms. The first line of defense comprises the front office, as directed by the policies and procedures (including in respect of conflicts of interest) that the Investment Firm is obliged to establish and front office staff are required to follow. The second line of defense comprises the compliance and risk management teams – these teams conduct supervision of the front office. The third line of defense comprises the internal/external audit team, which ensures the effectiveness of the compliance and risk	Article 32(1) LOSSEC in conjunction with Articles 22, 23 and 24 MiFID Org Reg. are directly applicable	Investment Firms to appoint a compliance officer responsible for the compliance function, ensure that persons involved in the compliance function are not involved in the performance of services or activities they monitor and the method of determining their remuneration must not, and must not be likely to, compromise their objectivity. Article 92(2) CRD IV requires senior management and staff engaged in control functions (among others) to be subjected to enhanced remuneration oversight requirements. Staff in control functions must be independent from the business units they oversee, have appropriate authority, and are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control. Article 92(2) CRD IV

[25] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
7. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?			
that case the firm must document the factors used to reach that determination, and how the supervisory arrangement with respect to that supervisory personnel otherwise complies with the diligent supervision requirement. Exchange Act rule 15Fh-3(h)(2)(iii)(G) [17 CFR 240.15Fh-3(h)(2)(iii)(G)].[26]	management teams. Investment Firms must establish and maintain a permanent and effective compliance function which operates independently and has responsibilities including advising and assisting relevant persons responsible for carrying out investment services and activities to comply with the Investment Firm's obligations under MiFID. Article 22 MiFID Org Reg. The persons involved in the compliance function must not be involved in the performance of services or activities they monitor and the method of determining their remuneration must not, and must not be likely to, compromise their objectivity. Article 22(3)(d)-(e) MiFID Org		further requires that remuneration of senior officers in the risk management and compliance functions be directly overseen by the remuneration committee or, if such a committee has not been established, by the management body in its supervisory function. These requirements are comparable to the requirements to establish procedures to prevent self-supervision set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(G). We note that the EU regulations are generally calibrated such that self-supervision will not arise (per the requirement in Article 22(3) MiFID Org Reg. that staff in the compliance function must not be involved in the performance of services or activities they monitor). To the extent that this is unavoidable (which is expected to be very rare), Article 23(1) MiFID

[26] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
7. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?			
	Reg. Where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, Investment Firms must also establish an independent function. Article 23 MiFID Org Reg. Together, these provisions ensure the independence of the second line of defense such that front office staff do not self-supervise. Investment Firms must, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, establish and maintain an		regarding the identification, prevention and, where necessary, management of conflicts of interests provides a robust mechanism through which such issues can be resolved.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
7. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?			
	internal audit function which is separate and independent from the other functions and activities of the Investment Firm. Article 24 MiFID Org Reg. This ensures the independence of the third line of defense such that compliance and risk management staff do not self-supervise. Further provisions on conflicts of interest apply across all three lines of defense: (a) An Investment Firm must maintain and operate effective organizational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients. Article 16(3) MiFID;		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
7. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?			
	(b) Investment Firms must take all reasonable steps to identify conflicts of interest between themselves, including their managers, employees and tied agents or any persons directly or indirectly linked to them by control and their clients or between one client and another, that arise in the course of providing any investment and ancillary services, or combinations thereof. Article 23(1) MiFID; and (c) A Credit Institution's management body must define, oversee and be accountable for the implementation of the governance arrangements that ensure effective and prudent management of the Credit Institution, including the segregation of duties in		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
7. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?			
	the organization and the prevention of conflicts of interest. Article 88 CRD IV. **<u>CRD IV</u>** Provisions under CRD IV are focused on preventing structural conflicts of interest and self-supervision. Credit Institutions must have remuneration policies and practices that are consistent with and promote sound and effective risk management. Article 74 CRD IV. Senior management and staff engaged in control functions (among others) must be subjected to enhanced remuneration oversight requirements. Article 92(2) CRD IV. Staff in control functions must be independent from the	Articles 29(1), 32, 33(1), 37(2)(c) and 38 LOSSEC	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
7. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?			
	business units they oversee, have appropriate authority, and be remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control. Article 92(2)(e) CRD IV. The remuneration of senior officers in the risk management and compliance functions must be directly overseen by the remuneration committee or, if such a committee has not been established, by the management body in its supervisory function. Article 92(2)(f) CRD IV.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment

c. Subcategory: Supervisory System Policies and Procedures

8. In what ways are firms required to have supervisory policies and procedures to prevent the supervisory system from being compromised due to conflicts of interest?

Comparability of outcomes:

The EU requirements to prevent conflicts of interest in supervisory systems provide a comparable regulatory outcome to the SEC requirements to prevent conflicts of interest in supervisory systems. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(H) and Exchange Act section 15F(j)(5) and MiFID and CRD IV are consistent in that each requires that firms establish procedures to prevent supervisory systems from being compromised due to conflicts of interest.

While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

Comparability of specific requirements:

The following EU requirements taken together are comparable to those set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(H) and Exchange Act section 15F(j)(5):

Conflicts of interest policies and procedures: Firms are required to have procedures reasonably designed to prevent the supervisory system from being compromised due to the conflicts of interest with respect to associated persons, including their positions, the revenue they generate, or compensation that the supervisor may derive from the associated person being supervised. Exchange Act rule	**Conflicts of interest policies and procedures**: Please refer to the response to the question set forth in section 3.c.7 above with regards to the following requirements: 1. **Independence**. **Segregation of duties**. The persons involved in the compliance function not being involved in the performance of services or activities they monitor and the restrictions around their method of	Articles 182(1, 2nd paragraph), (2)(c) and 193(2)(b) SSMA in conjunction with Articles 33-35 MiFID Org Reg. Articles 29(2), 33(1)(b) LOSSEC	**Conflicts of interest policies and procedures**: 1. **Independence**. **Segregation of duties**. Article 23(1) MiFID requires Investment Firms to take all reasonable steps to identify and address conflicts of interest that they know or should know between themselves, including their managers, employees and tied agents or any persons directly or indirectly linked to them by control and their clients or between one client and

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
8. In what ways are firms required to have supervisory policies and procedures to prevent the supervisory system from being compromised due to conflicts of interest?			
15Fh-3(h)(2)(iii)(H) [17 CFR 240.15Fh-3(h)(2)(iii)(H)].[27] The supervisory system must encompass procedures for compliance with duties set forth in Exchange Act section 15F(j), including implementing conflict of interest systems and procedures. Exchange Act rule 15Fh-3(h)(2)(iii)(I) [17 CFR 240.15Fh-3(h)(2)(iii)(I)];[28] and Exchange Act section 15F(j)(5) [15 U.S.C. 78o-10(j)(5)].[29]	determining their remuneration. Article 22(3) MiFID Org Reg. The obligation on Investment Firms to establish and maintain an internal audit function separate and independent from the other functions and activities of the Investment Firm. Article 24 MiFID Org Reg. The obligation on Investment Firms to identify conflicts of interest and related requirements. Article 23(1) MiFID. The obligation on the management body to define, oversee and be accountable for the		another, that arise in the course of providing any investment and ancillary services, or combinations thereof. Article 16(3) MIFID requires an Investment Firm to maintain and operate effective organizational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients. Article 22 MiFID Org Reg. requires Investment Firms to appoint a compliance officer responsible for the compliance function and ensure that persons involved in the compliance function must not be involved in the performance

[27] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[28] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[29] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
8. In what ways are firms required to have supervisory policies and procedures to prevent the supervisory system from being compromised due to conflicts of interest?			
	implementation of the governance arrangements, including in relation to segregation of duties matters. Article 88 CRD IV. The obligation on an Investment Firm to maintain and operate effective organizational and administrative arrangements to prevent conflicts of interest. Article 16(3) MIFID. 2. **Remuneration**. The obligation on Credit Institutions to have remuneration policies and practices consistent with sound and effective risk management. Article 74 CRD IV. The requirement regarding (i) staff in control functions to be independent from the		of services or activities they monitor and the method of determining their remuneration must not, and must not be likely to, compromise their objectivity. Article 24 MiFID Org Reg. requires an Investment Firm to establish and maintain an internal audit function separate and independent from the other functions and activities of the Investment Firm. Article 88 CRD IV requires that a Credit Institution's management body oversees and is accountable for the prevention of conflicts of interest. 2. **Remuneration**. Article 74 CRD IV requires Credit Institutions to have remuneration policies and practices consistent with sound and effective risk management. Article 92(2) CRD IV requires

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
8. In what ways are firms required to have supervisory policies and procedures to prevent the supervisory system from being compromised due to conflicts of interest?			
	business units they oversee, have appropriate authority, and be remunerated independently of the performance of the business areas they control. Article 92(2)(e) CRD IV; and (ii) staff and staff engaged in control functions (among others) to be subjected to enhanced remuneration oversight requirements. Article 92(2) CRD IV. The requirement that the remuneration of senior officers in the risk management and compliance functions to be directly overseen by the remuneration committee or by the management body in its supervisory function. Article 92(2)(f) CRD IV. 3. **Conflicts of interest documentation.** Investment		staff in control functions to be remunerated independently of the performance of business areas they control and to be subjected to enhanced remuneration oversight requirements, including (where necessary) through oversight by a remuneration committee or the management body. 3. **Conflicts of interest documentation**. Article 34 MiFID Org Reg. requires Investment Firms to have a written conflicts of interest policy appropriate to the size and organization of the Investment Firm. Under Article 35 MiFID Org Reg., Investment Firms must keep and regularly update a record of the kinds of investment or ancillary service or investment activity carried out by or on behalf of the Investment Firm in which a conflict of interest entailing a

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
8. In what ways are firms required to have supervisory policies and procedures to prevent the supervisory system from being compromised due to conflicts of interest?			
	Firms must have a written conflicts of interest policy appropriate to the size and organization of the Investment Firm. Where the Investment Firm is in a group, this policy must also take into account the circumstances which may give rise to conflicts of interest arising as a result of the structure and business activities of other members of the group. Article 34 MiFID Org Reg. The conflicts policy must identify the circumstances which might give rise to a conflict entailing a material risk of damage to the interests of one or more client and specify procedures to be followed to manage such conflicts. The procedures must include (as		material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
8. In what ways are firms required to have supervisory policies and procedures to prevent the supervisory system from being compromised due to conflicts of interest?			
	necessary/appropriate): (i) procedures to prevent/control information exchange; (ii) separate supervision of persons who provide services to clients whose interests may conflict (with other clients or with the Investment Firm); (iii) removal of any direct link between the remuneration of persons engaged in one activity and the remuneration of different persons, engaged in a different activity, where there may be a conflict in relation to those activities; (iv) preventing/limiting any person from exercising inappropriate influence over provision of a service; and (v) preventing/controlling the simultaneous/sequential involvement of a person in different activities where		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
8. In what ways are firms required to have supervisory policies and procedures to prevent the supervisory system from being compromised due to conflicts of interest?			
	such involvement might impair management of conflicts of interest. Article 34(3) MiFID Org Reg. Investment Firms must keep and regularly update a record of the kinds of investment or ancillary service or investment activity carried out by or on behalf of the Investment Firm in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise. Article 35 MiFID Org Reg.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment

c. Subcategory: Supervisory System Policies and Procedures

9. When are firms required to amend their policies and procedures?

Comparability of outcomes:

The EU policy and procedure amendment requirements provide a comparable regulatory outcome to the SEC policy and procedure amendment requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(4) and MiFID are consistent in that each requires that firms establish procedures to review and amend procedures to account for deficiencies, including deficiencies caused by changes to regulations and business conduct.

While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

Comparability of specific requirements:

The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:

Amendments Firms must amend their written supervisory procedures to reflect material changes in applicable laws or regulations, or in the firm's business or supervisory system. Material amendments must be promptly communicated to relevant associated persons. Exchange Act rule 15Fh-3(h)(4) [17 CFR 240.15Fh-3(h)(4)].[30]	**Amendments** An Investment Firm must establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm including its managers, employees and tied agents with its obligations under MiFID. Article 16(2) MiFID. The compliance function must monitor and regularly assess the actions taken to address any deficiencies in an Investment Firm's compliance with its obligations under MiFID. Article	Article 183(1) SSMA and Article 29(3)(a) LOSSEC in conjunction with Articles 21-26 MiFID Org Reg.	**Amendments** Article 25 MiFID Org Reg. requires senior management (and, where appropriate, the supervisory function) to assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under MiFID, and to take appropriate measures to address any deficiencies. Article 25 MiFID Org Reg. also requires that senior management and the supervisory function must receive on a frequent basis, and at least

[30] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
9. When are firms required to amend their policies and procedures?			
	22 MiFID Org Reg. Investment Firms must ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities; establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Investment Firm; and establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the Investment Firm. Article 21 MiFID Org Reg. In practice, this means that changes to policies and procedures reflecting changes in applicable laws or regulations, or in the Investment Firm's business or supervisory system must be communicated at all levels of the Investment Firm in order to be able to		annually, written reports on compliance, risk management and internal audit (covered by Articles 22, 23 and 24 MiFID Org Reg.) indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies. These requirements are comparable to the requirements in Exchange Act rule 15Fh-3(h)(4)(i). We note that the Exchange Act requirements to promptly communicate amendments to supervisory policies to relevant associated persons are not expressly set forth in the EU regulations. However, in practice this obligation applies in order for Investment Firms to meet their obligation under Article 21 MiFID Org Reg. to have effective internal reporting and communication of information at all relevant levels of the Investment Firm and for the relevant persons to be able to properly discharge their

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
9. When are firms required to amend their policies and procedures?			
	comply with Article 21 MiFID Org Reg. Senior management must receive on a frequent basis, and at least annually, written reports on the matters regarding compliance, risk management and internal audit (covered by Articles 22, 23 and 24 MiFID Org Reg.) indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports on the same matters. Article 25 MiFID Org Reg. Investment Firms must assess and periodically review, on an at least annual basis, the conflicts of interest policy. Article 35 MiFID Org Reg. requires senior management to receive on a frequent basis, and at least annually, written reports on the		responsibilities.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
9. When are firms required to amend their policies and procedures?			
	client conflicts of interest record. Article 34 MiFID Org Reg. Credit Institutions' remuneration policies must be reviewed at least on an annual basis. Article 92 CRD IV.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
10. What is the potential liability that firms or their personnel may face for failing to supervise compliance with requirements applicable to their security-based swap businesses? Does following policies and procedures provide a safe harbour from this potential liability or otherwise reduce the potential liability? If so, what are the prerequisites (e.g., no "red flags") for that safe harbour or reduction of liability?			
A firm or its associated persons will not be deemed to have failed to diligently supervise if the firm establishes, maintains and applies written policies and procedures that would reasonably be expected to prevent and detect violations, so long as the firm and its associated persons reasonably	There are a range of supervisory actions that regulators can take in response to failures in Credit Institutions' implementation of CRD IV, CRR or MiFID. Article 104 CRD IV and Article 69 MiFID. Regulators have the power to issue public statements of breach, cease and desist orders,	Articles 283, 284, 287, 296, 298(2) and 300 SSMA (Infringements) Articles 302-308 and 310 SSMA (Sanctions)	**Comparability of outcomes**: The regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(3) and CRD IV are consistent in that each subject firms and/or their personnel to potential liability for failure to supervise or satisfy other compliance obligations. The EU regime is more onerous in this

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
10. What is the potential liability that firms or their personnel may face for failing to supervise compliance with requirements applicable to their security-based swap businesses? Does following policies and procedures provide a safe harbour from this potential liability or otherwise reduce the potential liability? If so, what are the prerequisites (e.g., no "red flags") for that safe harbour or reduction of liability?			
have discharged the associated duties and did not have a reasonable basis to believe that the policies and procedures were not being followed. Exchange Act rule 15Fh-3(h)(3) [17 CFR 240.15Fh-3(h)(3)].[31]	and monetary fines of up to 10% annual net turnover (legal persons) or EUR 500,000 (natural persons). Article 66 CRD IV and Article 70 MiFID. The severity of the consequence (e.g. the amount of fines) is determined at the discretion of regulators in accordance with member state laws. There is no formal safe harbour established in EU law for compliance with a Credit Institution's policies and procedures, etc. (though these may be established in the laws of member states).		respect, as it does not provide for a safe harbour for compliance with a Credit Institution's policies and procedures, etc.

[31] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security

The supervision and CCO requirements in part address the need for firms to designate individuals with responsibility and adequate authority over compliance matters. In making a substituted compliance determination, the SEC will consider the specificity of the CCO designation, duties and annual report requirements set forth in Exchange Act section 15F, and will consider whether "the requirements of the foreign financial regulatory system regarding CCO obligations" are comparable. Exchange Act rule 3a71-6(d)(2) [17 CFR 240.3a71-6(d)(2)].[32]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security			
1. Are firms required to establish a chief compliance officer or similar function?			
CCO appointment The Exchange Act requires firms to designate an individual to serve as a CCO. Exchange Act section 15F(k)(1) [15 U.S.C. 78o-10(k)(1)];[33] *see* also Exchange Act rule 15Fk-1(a) [17 CFR 240.15Fk-1(a)].[34]	**CCO appointment** An Investment Firm must appoint a compliance officer responsible for the compliance function and for any reporting as to compliance. Article 22(3) MiFID Org Reg.	Article 43(1)(c) RD 84/2015	**<u>Comparability of outcomes and specific requirements</u>**: While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **CCO appointment** Exchange Act section 15F(k)(1) and Exchange Act rule 15Fk-1(a) and MiFID are consistent in that each requires that firms appoint a CCO. *See* Article 22(3) MiFID Org Reg.,

[32] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf
[33] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[34] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security			
1. Are firms required to establish a chief compliance officer or similar function?			
			which requires that Investment Firms appoint a compliance officer responsible for the compliance function and for any reporting as to compliance.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security			
2. How do the requirements of your jurisdiction address lines of reporting for the chief compliance officer or similar function? How do those requirements otherwise help ensure that those persons have necessary authority and resources?			
CCO reporting line The CCO must report "directly to the board of directors or to the senior officer" of the firm. Exchange Act section 15F(k)(2)(A) [15 U.S.C. 78o-10(k)(2)(A)];[35] *see also* Exchange Act rule 15Fk-1(b)(1) [17 CFR 240.15Fk-1(b)(1)].[36]	**CCO reporting line** The compliance officer may only be appointed and replaced by the management body. Article 22(3) MiFID Org Reg. The compliance officer must submit reports directly to senior management, frequently, and at least annually, and directly to the management body. Articles 22(2)(c) and 25(2) MiFID Org	Article 35(2) RD 217/2008 in conjunction with Article 22 MiFID Org Reg.	**<u>Comparability of outcomes</u>**: The EU requirements for compliance officer reporting, authority and resources provide a comparable regulatory outcome to the SEC requirements for compliance officer reporting, authority and resources. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(2)(A) and Exchange Act rule

[35] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[36] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security			
2. How do the requirements of your jurisdiction address lines of reporting for the chief compliance officer or similar function? How do those requirements otherwise help ensure that those persons have necessary authority and resources?			
	Reg. In practice, these requirements dictate that the compliance officer will be a senior member of staff.		15Fk-1(b)(1) and MiFID are consistent in that each ultimately requires that the CCO has a reporting line to the management body. *See* also Article 22(3) MiFID Org Reg., which provides that the CCO may only be appointed and replaced by the management body.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security			
3. Do the requirements of your jurisdiction provide protections to the chief compliance officer or similar function with regard to removal, compensation or sanctioning? If so, what are those protections?			
CCO removal, compensation and sanctioning A majority of a firm's board of directors must approve the compensation and removal of a	**CCO removal, compensation and sanctioning** The remuneration of senior officers in the risk management and compliance functions must	Article 32(1) LOSSEC in conjunction with Article 22 MiFID Org Reg.	**<u>Comparability of outcomes</u>**: The EU requirements regarding the removal, compensation and sanctioning of compliance officers provide a comparable regulatory

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security			
3. Do the requirements of your jurisdiction provide protections to the chief compliance officer or similar function with regard to removal, compensation or sanctioning? If so, what are those protections?			
CCO. Exchange Act rule 15Fk-1(d) [17 CFR 240.15Fk-1(d)].[37]	be directly overseen by the remuneration committee or, if such a committee has not been established, by the management body in its supervisory function. Article 92 CRD IV. The method for determining the remuneration of staff in the compliance function, which will include the CCO, must not compromise their objectivity or be likely to do so. Article 22(3)(e) MiFID Org Reg. An Investment Firm that can demonstrate that, due to the nature, scale and complexity of its business and the nature and range of the investment services and activities that it conducts, is not obliged to meet this requirement so long as its compliance function continues		outcome to the SEC requirements regarding the removal, compensation and sanctioning of compliance officers. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fk-1(d) and MiFID and CRD IV are consistent in that, although MiFID and CRD IV do not specifically address CCO compensation and removal requirements, each require management to oversee and decide upon such matters. *See* Article 92 CRD IV, which provides that remuneration of senior officers in the risk management and compliance functions must be directly overseen by the remuneration committee or, if such a committee has not been established, by the management body in its supervisory function. *See also* Article 22(3) MiFID Org Reg.,

[37] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security			
3. Do the requirements of your jurisdiction provide protections to the chief compliance officer or similar function with regard to removal, compensation or sanctioning? If so, what are those protections?			
	to be effective. This effectiveness must be assessed on a regular basis). Investment Firms must establish and maintain a permanent and effective compliance function which operates independently. Article 22(2) MiFID Org Reg. In addition, Article 22(3) MiFID Org Reg. provides that the CCO may only be appointed and replaced by the management body.		which provides that the CCO may only be appointed and replaced by the management body.

e. Subcategory: Chief Compliance Officer Policies and Procedures

CCOs must ensure that firms establish, follow and update appropriate compliance policies and procedures. When making a substituted compliance determination, the SEC will consider the specificity of the CCO designation, duties and annual report requirements set forth in Exchange Act section 15F, and will consider whether "the requirements of the foreign financial regulatory system regarding CCO obligations" are comparable. Exchange Act rule 3a71-6(d)(2) [17 CFR 240.3a71-6(d)(2)].[38]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
1. Is the chief compliance officer or similar function required periodically to review the firm's compliance with applicable requirements? Is a written assessment required?			
Comparability of outcomes: The EU requirements regarding periodic compliance review provide a similar regulatory outcome to the SEC requirements regarding periodic compliance review. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fk-1(b)(2)(i) and MiFID are consistent in that each requires that the CCO or a similar function periodically reviews a firm's policies and procedures to ensure compliance with applicable laws. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Periodic review CCOs must "review the compliance" of a firm. Exchange Act section	**Periodic review** Senior management must receive on a frequent basis, and at least annually, written reports	Article 35 RD 217/2008 in conjunction with 25 MiFID Org Reg.	**Periodic review** Article 25 MiFID Org Reg. requires that senior management must receive on a frequent basis, and at

[38] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
1. Is the chief compliance officer or similar function required periodically to review the firm's compliance with applicable requirements? Is a written assessment required?			
15F(k)(2)(B) [15 U.S.C. 78o-10(k)(2)(B)].[39] CCOs must review a firm's compliance with respect to requirements under Exchange Act section 15F and underlying rules and regulations, "where the review shall involve preparing the registrant's annual assessment of its written policies and procedures reasonably designed to achieve compliance with" the statute and the rules by a firm. Exchange Act rule 15Fk-1(b)(2)(i) [17 CFR 240.15Fk-1(b)(2)(i)].[40]	on compliance, risk management and internal audit (covered by Articles 22, 23 and 24 MiFID Org Reg.) indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports on the same matters. Article 25 MiFID Org Reg.		least annually, written reports on compliance, risk management and internal audit indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports on the same matters. This requirement is comparable to the requirement set forth in Exchange Act rule 15Fk-1(b)(2)(i).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment

[39] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[40] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

e. Subcategory: Chief Compliance Officer Policies and Procedures

2. Is the chief compliance officer or similar function required to ensure that the firm implements policies and procedures to remediate noncompliance? What methods are to be used to identify noncompliance?

Comparability of outcomes:

The EU requirements to ensure compliance and identify noncompliance provide a comparable regulatory outcome to the SEC requirements to ensure compliance and identify noncompliance. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(2) and Exchange Act rule 15Fk-1(b) and MiFID are consistent in that each requires that the CCO or a similar function ensure that firms implement policies and procedures to identify and remediate noncompliance. In practice it is likely that the CCO will head the compliance function and will ensure the implementation of changes recommended by the audit function.

While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

Comparability of specific requirements:

The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:

Ensure compliance CCOs must "ensure compliance". Exchange Act section 15F(k)(2)(E) [15 U.S.C. 78o-10(k)(2)(E)].[41] CCOs must take "reasonable steps" to ensure that: A firm "establishes, maintains and reviews written policies and procedures reasonably designed to achieve compliance with" the Exchange Act and underlying rules and	**Ensure compliance** An Investment Firm must establish a compliance function to monitor and regularly assess the actions taken to address any deficiencies in an Investment Firm's compliance with its obligations under MiFID. The compliance function must report to senior management on the implementation and effectiveness of the overall control environment. Article 22	Articles 22 and 25 MiFID Org Reg. are directly applicable	**Ensure compliance** Article 22 MiFID Org Reg. requires the compliance function to monitor and regularly assess the actions taken to address any deficiencies in an Investment Firm's compliance with its obligations under MiFID. Article 25 MiFID Org Reg. requires senior management (and, where appropriate, the supervisory function) to assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply

[41] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
2. Is the chief compliance officer or similar function required to ensure that the firm implements policies and procedures to remediate noncompliance? What methods are to be used to identify noncompliance?			
regulations relating to its business as a dealer. Exchange Act rule 15Fk-1(b)(2) [17 CFR 240.15Fk-1(b)(2)];[42] The registrant establishes and follows procedures for the "handling, management response, remediation, retesting, and resolution" of non-compliance issues. Exchange Act rule 15Fk-1(b)(2)(iii) [17 CFR 240.15Fk-1(b)(2)(iii)];[43] and Exchange Act section 15F(k)(2)(G) [15 U.S.C. 78o-10(k)(2)(G)];[44] and	MiFID Org Reg. Senior management (and, where appropriate, the supervisory function) must assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under MiFID, and to take appropriate measures to address any deficiencies. Article 25 MiFID Org Reg.		with the obligations under MiFID, and to take appropriate measures to address any deficiencies. Taken as a whole, these requirements are comparable to those set forth in Exchange Act section 15F(k)(2) and Exchange Act rule 15Fk-1(b).
Identify noncompliance A firm "establishes, maintains and reviews" policies and procedures to remediate noncompliance issues that have been identified by means	**Identify noncompliance** Where appropriate and proportionate, an Investment Firm must have an internal audit function, separate and independent from the other	Article 24 MiFID Org Reg. is directly applicable	**Identify noncompliance** Article 24 MiFID Org Reg. requires, where appropriate and proportionate, an Investment Firm to have an internal audit function, separate and independent from the

[42] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[43] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[44] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
2. Is the chief compliance officer or similar function required to ensure that the firm implements policies and procedures to remediate noncompliance? What methods are to be used to identify noncompliance?			
such as compliance office review, look-back, internal or external audit finding, self-reporting, and validated complaints. Exchange Act rule 15Fk-1(b)(2)(ii) [17 CFR 240.15Fk-1(b)(2)(ii)];[45] and Exchange Act section 15F(k)(2)(F) [15 U.S.C. 78o-10(k)(2)(F)].[46]	functions that is responsible for establishing, implementing and maintaining an audit plan to evaluate the adequacy of the Investment Firm's systems and internal control mechanisms, issuing and overseeing the implementation of recommendations based on the plan and reporting to senior management in relation to internal audit matters. Article 24 MiFID Org Reg.		other functions that is responsible for establishing, implementing and maintaining an audit plan to evaluate the adequacy of the Investment Firm's systems and internal control mechanisms, and to issue and oversee the implementation of recommendations based on the plan. These requirements are comparable to those set forth in Exchange Act rule 15Fk-1(b)(2)(ii) and Exchange Act section 15F(k)(2)(F).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
3. Is the chief compliance officer or similar function required to take steps to resolve conflicts of interest? To what extent are board members or senior personnel required to participate in the resolution of conflicts of interest?			
Comparability of outcomes:			

[45] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[46] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
3. Is the chief compliance officer or similar function required to take steps to resolve conflicts of interest? To what extent are board members or senior personnel required to participate in the resolution of conflicts of interest?			
The EU requirements for compliance officers and management to resolve conflicts of interest provide a similar regulatory outcome to the SEC requirements for compliance officers and management to resolve conflicts of interest. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(2)(C) and Exchange Act rule 15Fk-1(b)(3) and MiFID and CRD IV are consistent in that each requires the CCO or a similar function to resolve conflicts of interest. Moreover, although the onus under MiFID is on the Investment Firm, given the obligation to appoint a CCO and to establish, implement and maintain an effective conflicts of interest policy, these duties will, in practice, fall to the CCO. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Conflicts of interest resolution CCOs, in consultation with the board of directors or the senior officer of the firm, must "take reasonable steps to resolve any material conflicts of interest that may arise." Exchange Act rule 15Fk-1(b)(3) [17 CFR 240.15Fk-1(b)(3)];[47] and Exchange Act section	**Conflicts of interest resolution** Investment Firms must take all reasonable steps to identify conflicts of interest, as explained in response to the question set forth in section 3.c.5 above. Article 23(1) MiFID. An Investment Firm must maintain and operate effective organizational and	Articles 30bis and 61 RD 217/2008 in conjunction with 33-34 MiFID Org Reg.	**Conflicts of interest resolution** Article 23(1) MiFID requires Investment Firms to take all reasonable steps to identify conflicts and address conflicts of which they are or should be aware. Article 16(3) MIFID requires an Investment Firm to maintain and operate effective organizational and administrative arrangements with a

[47] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
3. Is the chief compliance officer or similar function required to take steps to resolve conflicts of interest? To what extent are board members or senior personnel required to participate in the resolution of conflicts of interest?			
15F(k)(2)(C) [15 U.S.C. 78o-10(k)(2)(C)].[48]	administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients. Article 16(3) MIFID. As mentioned above in response to the question set forth in section 3.e.2, an Investment Firm must have a compliance function and, where appropriate, an audit function required, among other things, to monitor and regularly assess the actions taken to address any deficiencies in an Investment Firm's compliance with its obligations under MiFID (i.e., including with regards to conflicts of interest matters). Articles 22 and 24 MiFID Org Reg.		view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients. Article 25 MiFID Org Reg. requires senior management (and, where appropriate, the supervisory function) to assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under MiFID, and to take appropriate measures to address any deficiencies. Taken as a whole, these requirements are comparable to those set forth in Exchange Act section 15F(k)(2)(C) and Exchange Act rule 15Fk-1(b)(3).

[48] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
3. Is the chief compliance officer or similar function required to take steps to resolve conflicts of interest? To what extent are board members or senior personnel required to participate in the resolution of conflicts of interest?			
	Senior management (and, where appropriate, the supervisory function) must assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under MiFID, and to take appropriate measures to address any deficiencies. Article 25 MiFID Org Reg. Record-keeping requirements regarding conflicts of interest also apply, as fully described in response to the question set forth in section 3.c.8 above. Article 35 MiFID Org Reg.		
Senior management involvement CCOs, in consultation with the board of directors or the senior officer of the firm, must "take reasonable steps to resolve any material conflicts of interest that may arise." Exchange Act	**Senior management involvement** The management body must define, oversee and be accountable for the implementation of the governance arrangements that ensure effective and prudent	Article 182(1) 2nd paragraph SSMA and Article 35(1) RD217/2008	**Senior management involvement** Article 88 CRD IV requires that management bodies oversee and be accountable for the implementation of the governance arrangements that ensure effective and prudent management, including with regards to the prevention of

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
3. Is the chief compliance officer or similar function required to take steps to resolve conflicts of interest? To what extent are board members or senior personnel required to participate in the resolution of conflicts of interest?			
rule 15Fk-1(b)(3) [17 CFR 240.15Fk-1(b)(3)];[49] and Exchange Act section 15F(k)(2)(C) [15 U.S.C. 78o-10(k)(2)(C)].[50]	management of the Credit Institution, including the segregation of duties in the organization and the prevention of conflicts of interest Article 88 CRD IV.		conflicts of interest. Article 35 MiFID Org Reg. requires senior management to receive on a frequent basis, and at least annually, written reports on the client conflicts of interest record. These requirements are comparable to those set forth in Exchange Act section 15F(k)(2)(C) and Exchange Act rule 15Fk-1(b)(3).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
4. Is the chief compliance officer or similar function required to administer all policies and procedures that are required by law?			
Comparability of outcomes: The EU compliance officer requirements provide a comparable regulatory outcome to the SEC compliance officer requirements. While administrative responsibilities are slightly different under MiFID (responsibility rests with senior management, rather than with the CCO, to ensure that they assess and periodically review the effectiveness of the Investment Firm's policies, procedures and arrangements), in practice, the CCO of an Investment Firm will (i) head the compliance function and (ii) ensure that reports on that function are made to senior			

[49] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[50] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
4. Is the chief compliance officer or similar function required to administer all policies and procedures that are required by law?			
management. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Required policies and procedures CCOs must administer each policy and procedure that is required to be established. Exchange Act rule 15Fk-1(b)(4) [17 CFR 240.15Fk-1(b)(4)];[51] and Exchange Act section 15F(k)(2)(D) [15 U.S.C. 78o-10(k)(2)(D)].[52]	**Required policies and procedures** Investment Firms must establish and maintain a permanent and effective compliance function that operates independently and has responsibilities including advising and assisting relevant persons responsible for carrying out investment services and activities to comply with the Investment Firm's obligations under MiFID. Article 22(2) MiFID Org Reg. An Investment Firm must	Articles 22 and 25 MiFID Org Reg. is directly applicable	**Required policies and procedures** Article 22(2) MiFID Org Reg. requires Investment Firms to establish and maintain a permanent and effective compliance function that operates independently and has responsibilities including advising and assisting relevant persons responsible for carrying out activities to comply with the Investment Firm's obligations under MiFID. Article 25 MiFID Org Reg. requires an Investment Firm to ensure that senior management, and, where appropriate, the supervisory function, are

[51] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[52] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
4. Is the chief compliance officer or similar function required to administer all policies and procedures that are required by law?			
	appoint a compliance officer responsible for the compliance function and for any reporting as to compliance required by Article 22(2) MiFID Org Reg. and Article 22(3) MiFID Org Reg. An Investment Firm must ensure that senior management, and, where appropriate, the supervisory function, are responsible for ensuring that the Investment Firm complies with its obligations under MiFID. Article 25 MiFID Org Reg.		responsible for ensuring that the Investment Firm complies with its obligations under MiFID. Taken as a whole, these requirements are comparable to the requirements in Exchange Act section 15F(k)(2)(D) and Exchange Act rule 15Fk-1(b)(4).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
5. Are firms permitted to rely on another corporate officer to perform a similar function to a chief compliance officer? If so, to what extent is that job function similar the chief compliance officer job function described by Exchange Act requirements?			
Performance of the CCO function Firms must appoint a CCO. *See*	**Performance of the CCO function** As explained above in response	Article 22(2) and 22(3) MiFID Org	**<u>Comparability of outcomes</u>**: The EU requirements to establish a compliance framework and officer

Exchange Act rule 15Fk-1 [17 CFR 240.15Fk-1];[53] and Exchange Act section 15F(k) [15 U.S.C. 78o-10(k)].[54]	to the questions set forth in sections 3.d.2 and 3.b.2, respectively, Investment Firms must establish and maintain a permanent and effective compliance function and must also appoint a compliance officer responsible for the compliance function. Articles 22(2) and 22(3) MiFID Org Reg.	Reg. is directly applicable	provide a comparable regulatory outcome to the SEC requirements to establish a compliance framework and officer. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k) and Exchange Act rule 15Fk-1 and MiFID are consistent in that each requires the CCO and, from the EU perspective, a similar function to ensure a firm's policies and procedures are compliant with applicable regulations. *See* Article 22(2) of MiFID Org Reg., which requires Investment Firms to establish and maintain a permanent and effective compliance function that operates independently and has responsibilities including advising and assisting relevant persons, such as a CCO, responsible for carrying out investment services and activities to comply with the Investment Firm's obligations under MiFID. *See also* Article 22(3) MiFID Org Reg., which requires Investment Firms to appoint a compliance officer responsible for the compliance function and for any reporting as to compliance required

[53] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[54] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

			by Article 22(2) MiFID Org Reg.

f. Subcategory: Chief Compliance Officer Reports

The supervision and CCO requirements address the need for CCOs (or similar functions) to be responsible for appropriate periodic reports addressing compliance matters. When making a substituted compliance determination, the SEC will consider the specificity of the CCO designation, duties and annual report requirements set forth in Exchange Act section 15F, and will consider whether "the requirements of the foreign financial regulatory system regarding CCO obligations" are comparable. Exchange Act rule 3a71-6(d)(2) [17 CFR 240.3a71-6(d)(2)].[55]

The 2013 CFTC Comparability Determination for the European Union: Certain Entity-Level Requirements (**CFTC Entity-Level Guidance**) found substituted compliance to be applicable because the compliance officer requirements under MiFID, including compliance officer report requirements, are "generally identical in intent" and "comparable to and as comprehensive as" the CFTC requirements. Moreover, the CFTC Entity-Level Guidance recognized that substituted compliance is applicable despite no requirement to provide compliance reports to regulators so long as firms certify and furnish the annual compliance report to the CFTC. CFTC Entity-Level Guidance at 78928.[56]

SEC Requirement/or and Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
1. Are firms required to produce annual or other periodic compliance reports? If so, who is required to prepare them?			
Comparability of outcomes: The EU Requirement and Policy Goal Summary provide for similar outcomes as the SEC Requirement and Policy Goal Summary. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(3)(A) and MiFID are consistent in that each requires the CCO or a similar function to produce compliance reports at least annually. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			

[55] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf
[56] https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2013-30980a.pdf

SEC Requirement/or and Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
1. Are firms required to produce annual or other periodic compliance reports? If so, who is required to prepare them?			
Compliance report CCOs must prepare and sign a compliance report annually. Exchange Act section 15F(k)(3)(A) [15 U.S.C. 78o-10(k)(3)(A)].[57]	**Compliance report** Senior management must receive on a frequent basis, and at least annually, written reports on compliance, risk management and internal audit (covered by Articles 22, 23 and 24 MiFID Org Reg.), indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports on the same matters. Article 25 MiFID Org Reg. These reports must be submitted to senior management by the compliance officer, the risk management department, and the internal (or external) audit department, respectively. Articles 22(3), 23(2)	Article 35(2) RD 217/2008 in conjunction with Article 22(2) MiFID Org Reg.	**Compliance report** Article 25 MiFID Org Reg. requires that an Investment Firm's senior management receive on a frequent basis, and at least annually, written reports on compliance, risk management and internal audit (covered by Articles 22, 23 and 24 MiFID Org Reg.) indicating whether appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports on the same matters. These reports must be submitted to senior management by the compliance officer, the risk management department, and the internal (or external) audit department, respectively. Articles 22(3), 23(2) and 24(c) MiFID Org Reg. These requirements are comparable to the requirements in Exchange Act

[57] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement/or and Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
1. Are firms required to produce annual or other periodic compliance reports? If so, who is required to prepare them?			
	and 24(c) MiFID Org Reg.		section 15F(k)(3)(A).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
2. What are the required contents of the compliance reports?			
Compliance report contents The compliance report must include: 1. Description of the firm's written compliance policies and procedures, including the code of ethics and conflict of interest policies. Exchange Act section 15F(k)(3)(A) [15 U.S.C. 78o-10(k)(3)(A)];[58] 2. Self-assessment of the effectiveness of the	**Compliance report contents** The compliance report submitted to senior management must address the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken. Article 22(2) MiFID Org Reg. This compliance report (and any ad hoc reports, where		**<u>Comparability of outcomes and specific requirements</u>**: The EU compliance report content requirements provide a comparable regulatory outcome to the SEC compliance report content requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(3)(A) and Exchange Act rule 15Fk-1(c)(2) and MiFID are consistent as to the contents of compliance reports in that each requires a description of a firm's compliance procedures, assessment of such procedures, implementation of changes, areas

[58] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
2. What are the required contents of the compliance reports?			
compliance policies and procedures. Exchange Act rule 15Fk-1(c)(2)(i)(A) [17 CFR 240.15Fk-1(c)(2)(i)(A)];[59] 3. Material changes to the firm's policies and procedures. Exchange Act rule 15Fk-1(c)(2)(i)(B) [17 CFR 240.15Fk-1(c)(2)(i)(B)];[60] 4. Areas for improvement. Exchange Act rule 15Fk-1(c)(2)(i)(C) [17 CFR 240.15Fk-1(c)(2)(i)(C)];[61] 5. Material non-compliance matters identified. Exchange	necessary) must address any significant risk of failure by the Investment Firm to comply with its obligations under MiFID. Article 22(3)(c) MiFID Org Reg. The compliance function must have the necessary authority, resources, expertise and access to all relevant information. Article 22(3)(a) MiFID Org Reg.		of improvement, material non-compliance and deficiencies. *See* Article 22(2) MiFID Org Reg., which requires the compliance report submitted to senior management to address the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken. As this report must address compliance with all obligations under MiFID, it must include identification of risks that may arise from any lack of resources or other deficiencies in the compliance department.

[59] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[60] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[61] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
2. What are the required contents of the compliance reports?			
Act rule 15Fk-1(c)(2)(i)(D) [17 CFR 240.15Fk-1(c)(2)(i)(D)];[62] and 6. Compliance resources and deficiencies. Exchange Act rule 15Fk-1(c)(2)(i)(E) [17 CFR 240.15Fk-1(c)(2)(i)(E)].[63]			

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
3. Are such reports required to disclose material non-compliance matters identified and the resources devoted to compliance efforts?			
Compliance report disclosures The compliance report must include: 1. Material non-compliance matters	**Compliance report disclosures** The compliance report submitted to senior management must address the implementation and effectiveness of the overall	Article 22 MiFID Org Reg. is directly applicable	**<u>Comparability of outcomes and specific requirements</u>**: The EU compliance report disclosure requirements provide a comparable regulatory outcome to the SEC compliance report

[62] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[63] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
3. Are such reports required to disclose material non-compliance matters identified and the resources devoted to compliance efforts?			
identified. Exchange Act rule 15Fk-1(c)(2)(i)(D) [17 CFR 240.15Fk-1(c)(2)(i)(D)];[64] and 2. Compliance resources and deficiencies. Exchange Act rule 15Fk-1(c)(2)(i)(E) [17 CFR 240.15Fk-1(c)(2)(i)(E)].[65]	control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken. Article 22(2) MiFID Org Reg. This compliance report (and any ad hoc reports, where necessary) must address any significant risk of failure by the Investment Firm to comply with its obligations under MiFID. Article 22(3)(c) MiFID Org Reg. The compliance function must have the necessary authority, resources, expertise and access to all relevant information. Article 22(3)(a) MiFID Org Reg.		disclosure requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(3)(A) and Exchange Act rule 15Fk-1(c)(2) and MiFID are consistent as to the contents of compliance reports in that each requires a description of a firm's compliance procedures, assessment of such procedures, implementation of changes, areas of improvement, material non-compliance and deficiencies. *See* Article 22(2) MiFID Org Reg., which requires the compliance report submitted to senior management to address the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken. As this report must address compliance with all

[64] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[65] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
3. Are such reports required to disclose material non-compliance matters identified and the resources devoted to compliance efforts?			
			obligations under MiFID, it must include identification of risks that may arise from any lack of resources or other deficiencies in the compliance department.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
4. Are compliance reports subject to certification and internal review requirements? If so, how?			
A compliance report must accompany each appropriate financial report that the firm is required to furnish to the SEC, and include a certification that, under penalty of law, the report is accurate and complete. Exchange Act section 15F(k)(3)(B) [15 U.S.C. 78o-10(k)(3)(B)].[66] **Internal review of compliance reports**	**Internal review of compliance reports** Any compliance-related monitoring and reporting is subject to internal review by various functions or senior management within the Investment Firm. This includes the following requirements: • The compliance function must monitor and regularly		**<u>Comparability of outcomes and specific requirements</u>**: The EU compliance report requirements provide a comparable regulatory outcome to the SEC compliance report requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(3)(B) and Exchange Act rule 15Fk-1(c)(2) and MiFID are consistent as compliance reports are subject to internal review

[66] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
4. Are compliance reports subject to certification and internal review requirements? If so, how?			
Compliance reports must be submitted to the firm's directors and audit committee (or equivalent bodies) and senior officer prior to submission to the SEC. Exchange Act rule 15Fk-1(c)(2)(ii)(B) [17 CFR 240.15Fk-1(c)(2)(ii)(B)].[67] Compliance reports and obligations must be discussed in one or more meetings conducted by the senior officer with the CCO in the preceding twelve months. Exchange Act rule 15Fk-1(c)(2)(ii)(C) [17 CFR 240.15Fk-1(c)(2)(ii)(C)].[68] Compliance reports must include a certification by the CCO or senior officer that, "to the best of his or her knowledge and reasonable belief and under penalty of	assess the actions taken to address any deficiencies in an Investment Firm's compliance with its obligations under MiFID. Article 22 MiFID Org Reg. The Investment Firm's audit function, where one is required, must be separate and independent from the other functions and responsible for establishing, implementing and maintaining an audit plan to evaluate the adequacy of the Investment Firm's systems and internal control mechanisms. Article 24 MiFID Org Reg. • Senior management (and, where appropriate, the supervisory function) must assess and periodically review the effectiveness of		requirements. *See* Article 25 MiFID Org Reg., which requires that an Investment Firm's senior management receives on a frequent basis, and at least annually, written reports on the matters covered by Articles 22, 23 and 24 (compliance, risk management and internal audit) indicating whether appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports on the same matters. We note that, although the EU regulatory framework does not require certification of a compliance report, Article 21 MiFID Org Reg. requires Investment Firms to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them; and ensure that the performance of

[67] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[68] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
4. Are compliance reports subject to certification and internal review requirements? If so, how?			
law, the information contained in the compliance report is accurate and complete in all material respects." Exchange Act rule 15Fk-1(c)(2)(ii)(D) [17 CFR 240.15Fk-1(c)(2)(ii)(A)].[69]	the policies, arrangements and procedures put in place to comply with the obligations under MiFID, and to take appropriate measures to address any deficiencies. Article 25 MiFID Org Reg. Investment Firms must (i) employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them; and (ii) ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally. Article 21 MiFID Org Reg. The compliance function must have, among other things, the		multiple functions by their relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally. The CFTC Entity-Level Guidance specifically addresses this, finding that substituted compliance is generally applicable despite no requirement to certify compliance reports so long as firms certify and furnish the certified annual CCO report to the CFTC. CFTC Entity-Level Guidance at 78928.

[69] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
4. Are compliance reports subject to certification and internal review requirements? If so, how?			
	necessary expertise in order to be able to discharge its responsibilities properly and independently. Article 22(3) MiFID Org Reg. Regulators must take into account compliance with these requirements during an Investment Firm's authorisation process and as part of their ongoing supervision of the Investment Firm. In some member states there is an obligation for the recipient of the compliance report to be expressly identified.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
5. Are the required reports required to be submitted to the regulator? Are reports with material errors or omissions required to be amended?			
Compliance reports must be	There is no requirement to	Article 234(2)(j) SSMA	**Comparability of outcomes**

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
5. Are the required reports required to be submitted to the regulator? Are reports with material errors or omissions required to be amended?			
submitted to the SEC within thirty days[70] following the deadline for filing the firm's annual financial report. Exchange Act rule 15Fk-1(c)(2)(ii)(A) [17 CFR 240.15Fk-1(c)(2)(ii)(A)].[71] Specific rules address amendment of reports that have material errors or omissions, and incorporation by reference. Exchange Act rule 15Fk-1(c)(2)(iv), (v) [17 CFR 240.15Fk-1(c)(2)(iv), (v)].[72]	report to a regulator. Regulators have very broad information-gathering powers to (among other actions): have access to any document or other data in any form which the regulator considers could be relevant for the performance of its duties and receive or take a copy of it; to require or demand the provision of information from any person and if necessary to summon and question a person with a view to obtaining information; to carry out on-site inspections or investigations; and to require existing recordings of telephone conversations or electronic communications or other data traffic records held by an Investment Firm, a Credit		We note that, although the EU regulatory framework does not require submission of a compliance report to a regulator, regulators have very broad information-gathering powers to require the provision of such information by Investment Firms when they consider this to be necessary. The CFTC Entity-Level Guidance specifically addresses this, finding that substituted compliance is generally applicable despite no requirement to provide CCO reports so long as firms certify and furnish the annual CCO report to the CFTC. CFTC Entity-Level Guidance at 78928.

[70] Subject to extensions pursuant to Exchange Act rule 15Fk1(c)(2)(iii) [17 CFR 240.15Fk-1(c)(2)(iii)].
[71] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[72] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
5. Are the required reports required to be submitted to the regulator? Are reports with material errors or omissions required to be amended?			
	Institution, or any other entity regulated by MiFID or MiFIR. Article 69(2) MiFID. Regulators must have all information gathering and investigatory powers that are necessary for the exercise of their functions. Article 65 CRD IV.		

4. Category: Counterparty Protection Requirements

a. Executive Summary

The counterparty protection requirements are intended to bring professional conduct to, and increase transparency in, the security-based swap market and to require registered entities to treat parties to these transactions fairly. The SEC Guidance notes that the counterparty protection requirements set forth below generally only apply to a non-US firm's activities involving US counterparties (unless the transaction is arranged, negotiated or executed in the United States). The primary focus of the cross-border application of the counterparty protection requirements is on protecting counterparties by requiring security-based swap dealers to, among other things, provide certain disclosures to counterparties, [and] adhere to certain standards of business conduct".[1]

The comparability analysis will consider whether the foreign jurisdiction addresses the Exchange Act section 15F counterparty protection requirements of fair and balanced communications; disclosure of certain risks, characteristics, incentives and conflicts; and disclosure of daily marks. Specifically, the SEC will consider whether "the information that is required to be provided to counterparties pursuant to the requirements of the foreign financial regulatory system, the counterparty protections under the requirements of the foreign financial regulatory system, . . . and the duties imposed by the foreign financial regulatory system" are comparable to those associated with the applicable Exchange Act provisions and underlying rules. Exchange Act rule 3a71-6(d)(1) [17 CFR 240.3a71-6(d)(1)].[2]

b. Subcategory: Fair and Balanced Communications[3]

The counterparty protection requirements in part address the need to promote complete and honest communications as part of firms' security-based swap businesses to promote investor protection and prohibit firms "from overstating the benefits or understating the risks to inappropriately influence counterparties' investment decisions." *See* Business Conduct Adopting Release, 81 FR at 30001-02.[4]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment

[1] Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30968, 31010 (May 23, 2013), *available at* https://www.sec.gov/rules/proposed/2013/34-69490.pdf.
[2] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf
[3] Mandated by Exchange Act Section 15F(h)(3)(C) [15 U.S.C. 78o-10(h)(3)(C)] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf; and Exchange Act rule 15Fh-3(g) [17 CFR 240.15Fh-3(g)] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8.
[4] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap

b. Subcategory: Fair and Balanced Communications			
1. To what extent are firms prohibited from engaging in communications that are misleading in fact or by omission?			
The SEC must adopt rules providing that firms communicate with counterparties "in a fair and balanced manner based on principles of fair dealing and good faith." Exchange Act section 15F(h)(3)(C) [15 U.S.C. 78o-10(h)(3)(C)];[5] and Exchange Act rule 15Fh-3(g) [17 CFR 240.15Fh-3(g)].[6]	Member States shall require that when providing investment services or, where appropriate, ancillary services to clients, an Investment Firm must act honestly, fairly and professionally in accordance with the best interests of its clients. Article 24(1) MiFID. All information, including marketing communications, addressed by an Investment Firm to clients or potential clients (retail clients, professional clients and MiFID ECPs) must be fair, clear and not misleading. Marketing communications must be clearly identifiable as such. Articles 24(3) and 30(1) MiFID. The dissemination of information, by any means, that gives or is likely to give false or misleading signals in relation to the supply of, demand for or price of certain financial instruments, or secures or is likely to secure the price of certain financial instruments at an	Article 24(1) MiFID has been transposed into Article 208 SSMA Article 24(3) MiFID has been transposed into Article 209(2) SSMA Article 30(1)(2)(3)(4) MiFID has been transposed into Article 207(1)(2)(3)(4) SSMA Articles MiFID Org Reg. and MAR are directly applicable	**Comparability of outcomes**: The EU's prohibitions on engaging in misleading communications provide a comparable regulatory outcome to the SEC prohibitions against misleading communications. In particular, the regulatory outcomes pursued under Exchange Act section 15F(h)(3)(C) and MiFID are consistent in that each requires that Investment Firms communicate with counterparties truthfully and fairly and prohibit misleading information or material omissions, in order to protect market participants and promote information exchange and the integrity of the market.

[5] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[6] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
1. To what extent are firms prohibited from engaging in communications that are misleading in fact or by omission?			
	abnormal or artificial level, in each case where the person knew or ought to have known that the information was false or misleading, is prohibited (in addition to certain trading conduct which would also constitute market manipulation). Article 12(1)(c) MAR.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
2. To what extent are firms required to provide counterparties with information that is sufficient to promote informed decision-making?			
Communications with counterparties must "provide a sound basis for evaluating the facts" with regard to particular security-based swaps or trading strategies. Exchange Act rule 15Fh-3(g) [17 CFR 240.15Fh-3(g)].[7]	Investment Firms must provide clients or potential clients with the general information on the investment firm and services. Article 47 MiFID Org Reg. Investment Firms must disclose a significant range of information 'in good time' to clients before	Article 24(4) MiFID has been transposed into Article 209(3) SSMA Articles MiFID Org Reg. are directly applicable	**<u>Comparability of outcomes</u>**: The EU's requirements that Investment Firms provide counterparties with information sufficient to make informed decisions provide a comparable regulatory outcome to the SEC counterparty communications

[7] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
2. To what extent are firms required to provide counterparties with information that is sufficient to promote informed decision-making?			
	the provision of any investment services, including in relation to a general description of the nature and risks of financial instruments, the nature of the specific type of financial instrument concerned, the functioning and performance of the financial instrument in different market conditions, including both positive and negative conditions, all costs and related charges and the risks particular to that specific type of financial instrument in sufficient detail to enable clients to take investment decisions on an informed basis. Article 24(4) MiFID II and Articles 46 and 48(1) MiFID Org Reg. The content, timing and manner of disclosure of such information is highly prescriptive under MiFID and the supporting legislation with a view to promoting investor protection, including by facilitating informed decision-making. The ESMA Q&As on		requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(g) and MiFID are consistent in that each requires Investment Firms to provide counterparties with sufficient information in order to protect market participants and facilitate sound decision-making about security-based swap transactions. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: Both regimes require firms to provide information about the underlying securities-based swaps and transaction strategies, but

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
2. To what extent are firms required to provide counterparties with information that is sufficient to promote informed decision-making?			
	MiFID investor protection topics further confirm that disclosures to clients are intended to enable clients to make informed decisions. A detailed description of some of the specific requirements aimed at providing clients with information that is sufficient to promote their informed decision-making is set out in response to the questions set forth in section 4.c below.		the EU regime contains more detailed requirements on the manner and content of such communications.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
3. To what extent do relevant requirements address statements regarding past performance or predictions regarding future performance?			
Communications with counterparties "may not imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast". Exchange Act rule 15Fh-	MiFID imposes disclosure requirements in relation to both past and future performance statements. **Past performance statements**	Articles MiFID Org Reg. are directly applicable	**<u>Comparability of outcomes</u>**: The EU's requirements that Investment Firms qualify statements regarding past and future performance provide a

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
3. To what extent do relevant requirements address statements regarding past performance or predictions regarding future performance?			
3(g) [17 CFR 240.15Fh-3(g)].[8]	Where information provided to a professional client or a retail client (but not an ECP) contains an indication of past performance of a financial instrument, a financial index or an investment service, Investment Firms must ensure that the following conditions are satisfied: 1. that the indication is not the most prominent feature of the communication; 2. the information must include appropriate performance information which covers the preceding five years, or the whole period for which the financial instrument has been offered, the financial index has been established, or the		comparable regulatory outcome to the SEC requirements on communications regarding past performance and future performance predictions. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(g) and MiFID are consistent in that each prohibit Investment Firms from making unwarranted inferences about future performances based on past performances, or about future performances, in order to protect market participants from misleading information and facilitate sound decision-making about securities transactions. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific

[8] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
3. To what extent do relevant requirements address statements regarding past performance or predictions regarding future performance?			
	investment service has been provided where less than five years, or such longer period as the Investment Firm may decide, and in every case that performance information is based on complete twelve-month periods; 3. the reference period and the source of information is clearly stated; 4. the information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results; 5. where the indication relies on figures denominated in a currency other than that of the member state in		requirements below for completeness. **<u>Comparability of specific requirements</u>**: Both regimes regulate how firms may communicate with respect to past and future performances, but the EU regime contains more detailed requirements on the manner and content of such communications.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
3. To what extent do relevant requirements address statements regarding past performance or predictions regarding future performance?			
	which the retail client or potential retail client is resident, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations; 6. where the indication is based on gross performance, the effect of commissions, fees or other charges are disclosed. Article 44(4) MiFID Org Reg. and Article 30 MiFID. Broadly similar requirements apply in respect of information referring to or including simulated past performance. Article 44(5) MiFID Org Reg. **Future performance statements** Where information provided to a professional client or retail client		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
3. To what extent do relevant requirements address statements regarding past performance or predictions regarding future performance?			
	(but not ECPs) contains information on future performance, Investment Firms must ensure that the following conditions are satisfied: 1. the information is not based on or refers to simulated past performance; 2. the information is based on reasonable assumptions supported by objective data; 3. where the information is based on gross performance, the effect of commissions, fees or other charges is disclosed; 4. the information is based on performance scenarios in different market conditions (both negative and positive scenarios), and reflects the nature		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
3. To what extent do relevant requirements address statements regarding past performance or predictions regarding future performance?			
	and risks of the specific types of instruments included in the analysis; and 5. the information contains a prominent warning that such forecasts are not a reliable indicator of future performance. Article 44(6) MiFID Org Reg. and Article 30 MiFID. Investment Firms are required, in their relationship with ECPs, to act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the ECP and of its business. Article 30 MiFID.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment

b. Subcategory: Fair and Balanced Communications			
4. To what extent do relevant requirements mandate that certain types of communications be balanced by disclaimers and/or by contextual information?			
Risk disclosure Communications with counterparties that refer to potential opportunities or advantages presented by a security-based swap must include "an equally detailed statement of the corresponding risks." Exchange Act rule 15Fh-3(g) [17 CFR 240.15Fh-3(g)].[9] Firm "communications with counterparties will be subject to the specific antifraud provisions added to the Exchange Act under Title VII of the Dodd-Frank Act, as well as general antifraud provisions under the federal securities laws." Substituted compliance is not available in connection with those antifraud provisions. *See* Business Conduct Adopting Release, 81 FR at 30001.[10]	The European legislation aimed at promoting investor protection, including with regards to informed investment decision-making, generally contains broad and highly specific disclosure requirements on Investment Firms, requiring that information provided to clients or potential clients is presented in a contextual and balanced manner, containing appropriate disclaimers or warnings. Examples of such instances are set out below. **Risks disclosure** Investment Firms must provide disclosure that meets prescribed conditions in relation to risks associated with the financial instruments in question. The response to the question set forth in section 4.c.1 below describes these conditions in further detail.	Article 24(2) MiFID has been transposed into article 208ter(1)(2) SSMA Articles MiFID Org Reg. are directly applicable	**<u>Comparability of outcomes</u>**: The EU's disclaimer requirements provide a comparable regulatory outcome to the SEC disclaimer requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(g) and MiFID are consistent in that each prohibit Investment Firms from making fraudulent claims and require disclosure of relevant risks, in order to protect market participants and facilitate sound decision-making about securities transactions. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**:

[9] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[10] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
4. To what extent do relevant requirements mandate that certain types of communications be balanced by disclaimers and/or by contextual information?			
	Financial promotions MAR requires that the information of the investment recommendations be objectively presented, and dealers must disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates. Article 20 MAR. MAR also requires that investment recommendations or other information recommending or suggesting an investment strategy are set out in such a matter that (a) facts are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information; (b) all substantially material sources of information are clearly and prominently indicated; (c) all sources of information are reliable or, where there is any		Both regimes require firms to provide information about the underlying securities and transaction strategies, but the EU regime contains more detailed requirements on the manner and content of such communications.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
4. To what extent do relevant requirements mandate that certain types of communications be balanced by disclaimers and/or by contextual information?			
	doubt as to whether a source is reliable, this is clearly indicated; (d) all projections, forecasts and price targets are clearly and prominently labelled as such, and the material assumptions made in producing or using them are indicated; (e) the date and time when the production of the recommendation was completed is clearly and prominently indicated. Article 3 MAR Investment Recommendations Regulation. In addition, dealers must provide the information set out in Article 4 MAR Investment Recommendations Regulation.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment

b. Subcategory: Fair and Balanced Communications			
5. Are the relevant requirements lessened or otherwise modified in connection with certain categories of counterparties? If so, how?			
Firms must communicate with all counterparties in a fair and balanced manner based on principles of fair dealing and good faith. Exchange Act rule 15Fh-3(g) [17 CFR 240.15Fh-3(g)];[11] and Exchange Act section 15F(h)(3)(C) [15 U.S.C. 78o-10(h)(3)(C)].[12]	MiFID information requirements discussed above in response to the questions set forth in sections 4.b.1-4.b.4 generally apply to all types of clients except, where noted, to ECPs (for purposes of MiFID). Where the requirements do not apply where the client is an ECP (for purposes of MiFID), Investment Firms are still required, in their relationship with ECPs, to act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the ECP and of its business. Article 30(1) MiFID. The MAR disclosure requirements apply irrespective of the type of client in question, as their applicability is not driven by the type of client to whom the disclosure is made.		**Comparability of outcomes**: The EU's requirements related to communications provide a comparable regulatory outcome to the SEC disclaimer requirements. In particular, the regulatory outcomes pursued under Exchange Act sections 15Fh-3(g) and 15F(h)(3)(C) and MiFID are consistent in that both regimes generally require disclaimers be made to all counterparties to promote honest communications as part of firms' security-based swap businesses. Both regimes aim to protect all market participants and facilitate sound decision-making about securities-based swap transactions. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for

[11] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[12] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
5. Are the relevant requirements lessened or otherwise modified in connection with certain categories of counterparties? If so, how?			
			completeness. **<u>Comparability of specific requirements</u>**: The specific requirements under the EU regime are comparable to those under the US regime. Whilst the EU regime stipulates that certain MiFID disclosure requirements do not apply where the client is an ECP, Article 30 MiFID still requires Investment Firms, in their relationship with ECPs, to act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the ECP and of its business.

c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest[13]

The objective of the required disclosure of material risks and characteristics is to provide information to a counterparty to help them assess whether, and under what terms, they want to enter into the transaction.

[13] Mandated by Exchange Act section 15F(h)(3)(B)(i), (ii) [15 U.S.C. 78o10(h)(3)(B)(i), (ii)] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf; and Exchange Act rule 15Fh-3(b) [17 CFR 240.15Fh-3(b)] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
1. To what extent are firms required to provide counterparties or potential counterparties with information regarding the features of financial instruments? Is there required disclosure regarding the risks of financial instruments? Is there required disclosure regarding the terms of financial instruments?			
The SEC must adopt rules providing that firms must disclose to counterparties – other than counterparties that are dealers, participants, swap dealers or major swap participants – information regarding the material risks and characteristics[14] of the security-based swap, and any material incentives[15] or conflicts of interest that the firm may have in connection with the security-based swap. Exchange Act section 15F(h)(3)(B)(i), (ii) [15 U.S.C. 78o-10(h)(3)(B)(i), (ii)].[16]	Investment Firms must provide appropriate information in good time to clients/potential clients with regards to matters including the financial instruments and proposed investment strategies, execution venues and all costs and related charges. Article 24(4) MiFID and Articles 48-50 MiFID Org Reg. The information on financial instruments and proposed investment strategies must include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies and whether the financial	Article 24(4) MiFID has been transposed into Articles 209(3), 210 (1) SSMA and Article 77 RD 217/2008 Articles MiFID Org Reg. are directly applicable	**Comparability of outcomes**: The EU's financial instrument disclosure requirements provide a comparable regulatory outcome to the SEC financial instrument disclosure requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15F(h)(3)(B) and MiFID are consistent in that both regulatory regimes require Investment Firms to provide counterparties with details of financial instruments, in order to protect market participants and facilitate sound decision-making about securities transactions.

[14] "Material risks and characteristics" may include: (i) market, credit, liquidity, foreign currency, legal, operational, and other applicable risks; and (ii) material economic terms of the security-based swap, terms relating to the operation of the security-based swap, and the rights and obligations of the parties during the term of the security-based swap. Exchange Act rule 15Fh3(b)(1) [17 CFR 240.15Fh-3(b)(1)].

[15] The term "incentives" does not refer "to any profit or return that the [entity] would expect to earn from the security-based swap itself, or from any related hedging or trading activities . . . but rather to any other financial arrangements pursuant to which [the entity] may have an incentive to encourage the counterparty to enter into the transaction." *See* Business Conduct Adopting Release, 81 FR at 29986.

[16] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
1. To what extent are firms required to provide counterparties or potential counterparties with information regarding the features of financial instruments? Is there required disclosure regarding the risks of financial instruments? Is there required disclosure regarding the terms of financial instruments?			
	instrument is intended for retail or professional clients, taking account of the identified target market. Article 24(4)(b) MiFID. Investment Firms must provide clients/potential clients in good time before the provision of investment services with a general description of the nature and risks of financial instruments, taking into account the client's classification (e.g., as an ECP (for purposes of MiFID), professional or retail client). The description must explain: 1. the nature of the specific type of instrument concerned, 2. the functioning and performance of the instrument in different market conditions (including positive and		While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: Both the EU regime and the US regime require the disclosure of risks and other features of the financial instruments involved. Requirements under Articles 24(3), (4) MiFID and Article 48 MiFID Org Reg. are comparable to those under Exchange Act section 15F(h)(3)(B)(i), (ii); the EU requirements are, in some respects, more detailed on how Investment Firms must describe the risks and other features of

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
1. To what extent are firms required to provide counterparties or potential counterparties with information regarding the features of financial instruments? Is there required disclosure regarding the risks of financial instruments? Is there required disclosure regarding the terms of financial instruments?			
	negative conditions), and 3. risks particular to the specific type of instrument in sufficient detail to enable the client to take investment decisions on an informed basis. Article 48(1) MiFID Org Reg. The description of risks must include the following: 1. the risks associated with that type of financial instrument including an explanation of leverage and its effects and the risk of losing the entire investment including the risks associated with insolvency of the issuer or related events, such as bail in;		financial instruments. Please also see below the comparability of outcomes and specific requirements in relation to the question set forth in section 4.c.2 with regards to conflicts of interest and revenues from third-parties.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
1. To what extent are firms required to provide counterparties or potential counterparties with information regarding the features of financial instruments? Is there required disclosure regarding the risks of financial instruments? Is there required disclosure regarding the terms of financial instruments?			
	2. the volatility of the price of such instruments and any limitations on the available market for such instruments; 3. information on impediments or restrictions for disinvestment, for example as may be the case for illiquid financial instruments or financial instruments with a fixed investment term, including an illustration of the possible exit methods and consequences of any exit, possible constraints and the estimated time frame for the sale of the financial instrument before recovering the initial costs of the transaction in that type of		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
1. To what extent are firms required to provide counterparties or potential counterparties with information regarding the features of financial instruments? Is there required disclosure regarding the risks of financial instruments? Is there required disclosure regarding the terms of financial instruments?			
	financial instruments; 4. the fact that an investor might assume, as a result of transactions in such instruments, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the instruments; and 5. any margin requirements or similar obligations, applicable to instruments of that type. Article 48(2) MiFID Org Reg. Where financial instruments incorporate a guarantee or capital protection, the Investment Firm must provide a client/potential client with information about the scope and nature of such		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
1. To what extent are firms required to provide counterparties or potential counterparties with information regarding the features of financial instruments? Is there required disclosure regarding the risks of financial instruments? Is there required disclosure regarding the terms of financial instruments?			
	guarantee or capital protection. Article 48(5) MiFID Org Reg. **Conflicts of interest** Please see the response below to the question set forth in 4.c.2 with regards to conflicts of interest requirements. **Incentives. Revenues from third-parties** Please see the response below to the question set forth in 4.c.2 with regards to incentives and revenues from third-parties requirements.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment

c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest

2. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?

Comparability of outcomes:

The EU's conflicts of interest disclosure requirements provide a comparable regulatory outcome to the SEC conflicts of interest disclosure requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15F(h)(3)(B) and MiFID and MAR are consistent in that both regulatory regimes require disclosure of conflicts of interest and revenues from third-parties, in order to protect market participants and facilitate sound decision-making about securities-based swaps transactions.

While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

Comparability of specific requirements:

The specific requirements under the EU regime and the US regime are comparable in the following ways:

Conflicts of interest: The SEC must adopt rules providing that firms must disclose to counterparties – other than counterparties that are dealers, participants, swap dealers or major swap participants – information regarding the material risks and characteristics of the security-based swap, and any material incentives or conflicts of interest that the firm may have in connection with the security-based swap. Exchange	**Conflicts of interest**: An Investment Firm must maintain and operate effective organisational and administrative arrangements with a view to identifying and taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of the clients, for example by establishing, implementing and maintaining an effective conflicts of interest policy in accordance with specific requirements.	Article 16(3) MiFID has been transposed into Articles 208bis(1) SSMA and 30bis RD 217/2008 Articles 23(2) and(3) MiFID have been transposed in Article 61(1)(2) RD 217/2008 Articles MiFID Org Reg. and MAR are directly applicable	**Conflicts of interest**: Requirements on disclosure of conflicts of interest to clients or potential clients under Article 23(2)-(3) MiFID and Article 20(1) MAR are comparable to those under Exchange Act sections 15F(h)(3)(B)(i), (ii). In addition, Articles 33-35 MiFID Org Reg. focus on prevention and management of conflicts of interest, by requiring that Investment Firms take measures to detect and prevent conflict of

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
2. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?			
Act sections 15F(h)(3)(B)(i), (ii) [15 U.S.C. 78o-10(h)(3)(B)(i), (ii)].[17]	Articles 33 and 34 MiFID Org Reg. Investment Firms must establish, implement and maintain an effective conflicts of interest policy which shall include the following content: (a) it must identify, with reference to the specific investment services and activities and ancillary services carried out by or on behalf of the Investment Firm, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more clients; (b) it must specify procedures to be followed and measures to be adopted in order to prevent or manage such conflicts. Article 35 MiFID Org Reg. Where the organisational or		interest beforehand, which the US regime does not require. Notably, the CFTC Substituted Compliance Decision on Entity-Level Requirements found that substituted compliance for the Section 23.605(e) requirements regarding disclosure of conflicts of interest to clients or potential clients was appropriate via the general disclosure requirements of the MiFID standards by requiring that each dealer disclose to counterparties any material incentives or conflicts of interest regarding the decision of a counterparty to execute a derivative on a swap execution facility or designated contract maker, or to clear a derivative through a derivatives clearing organization. CFTC Substituted Compliance Decision on Entity-Level Requirements at 78933.

[17] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
2. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?			
	administrative arrangements made by the Investment Firm are not sufficient to ensure with reasonable confidence that risks of damage to client interests will be prevented, the Investment Firm must clearly disclose to the client the general nature and/or sources of conflicts of interest and the steps taken to mitigate those risks before undertaking business on its behalf. The disclosure must include sufficient detail, taking into account the nature of the client, to enable the client to take an informed decision with respect to the service in the context of which the conflict of interest arises. Article 23(2)-(3) MiFID. Such disclosure to clients is a measure of last resort that will only be used where the effective organisational and administrative arrangements made by the Investment Firm are not sufficient. Article 34(4) MiFID Org		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
2. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?			
	Reg. MAR also requires that persons who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy take reasonable care to ensure that such information is objectively presented, and to disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates. Article 20(1) MAR. Any disclosure of conflicts of interest must meet the prescribed requirements set out in Articles 5 and 6 MAR Investment Recommendations Regulation.		
Revenues from third-parties: "Material incentives or conflicts of interest" may encompass "any compensation or other incentives	**Revenues from third-parties**: Investment Firms are regarded as not fulfilling their obligation to act in the client's best interest and to	Article 24(9) MiFID has been transposed into Article 220 quinquies SSMA	**Revenue from third-parties**: Requirements on disclosure of revenues and incentives from third-parties under Article 24(9)

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
2. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?			
from any source other than the counterparty in connection with the security-based swap to be entered into with the counterparty." Exchange Act rule 15Fh-3(b)(2) [17 CFR 240.15Fh-3(b)(2)].[18]	manage conflicts of interest where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the provision of an investment service, to or by any party except the client, except where the payment or benefit is designed to enhance the quality of the service and does not impair compliance with the Investment Firm's duty to act honestly, fairly and professionally in accordance with the best interest of the client. Articles 23(2) and 24(9) MiFID. The existence, nature and amount (or method of calculating that amount where the amount cannot be ascertained) of such payment or benefit must be clearly disclosed to the client, in a manner that is comprehensive,	Article 11(5) MiFID Delegated Directive has been transposed into Article 62(5) RD 217/2008 Articles MiFID Org Reg. are directly applicable	MiFID and Article 11(5) MiFID Delegated Directive are comparable to those under Exchange Act rule 15Fh-3(b)(2), but the limitations on permissible revenues from third-parties are more onerous under the EU regime.

[18] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
2. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?			
	accurate and understandable, prior to the provision of the relevant investment service. The Investment Firm must also inform the client on mechanisms for transferring to the client the fee, commission, monetary or non-monetary benefit received in relation to the provision of the investment service, where applicable. Article 24(9) MiFID. Pursuant to this obligation, Investment Firms must disclose to a professional client or a retail client (but not to MiFID ECPs) the following information: 1. prior to the provision of the relevant investment service, the Investment Firm must disclose to the client information on the payment or benefit concerned. Minor non-monetary benefits may be described in a generic		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
2. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?			
	way. Other non-monetary benefits received or paid by the Investment Firm in connection with the service provided to a client must be priced and disclosed separately; 2. where an Investment Firm is unable to ascertain on an ex-ante basis the amount of any payment or benefit to be received or paid, and instead disclosed to the client the method of calculating that amount, the Investment Firm must also provide its clients with information of the exact amount of the payment or benefit received or paid on an ex-post basis; and 3. at least once a year, as long as (ongoing)		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
2. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?			
	inducements are received by the Investment Firm in relation to the investment services provided to the relevant clients, the Investment Firm must inform its clients on an individual basis about the actual amount of payments or benefits received or paid. Minor non-monetary benefits may be described in a generic way. Article 11(5) MiFID Delegated Directive. Investment Firms are required, in their relationship with MiFID ECPs, to act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the ECP and of its business. Article 30(1)		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
2. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?			
	MiFID.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
3. What provisions govern the timing and manner of required disclosure?			
Disclosures must be made at a "reasonably sufficient time prior" to entering into the security-based swap, and in a "manner reasonably designed to allow the counterparty to assess" risks, characteristics, incentives and conflicts. However, the obligation does not apply unless "the identity of the counterparty is known" to the firm "at a reasonably sufficient time prior to execution" to permit the disclosure. Exchange Act rule	**Features, risks, terms of financial instruments** Investment Firms must provide clients/potential clients in good time before the provision of investment services with a general description of the nature and risks of financial instruments. Article 48(1) MiFID Org Reg. **Incentives. Revenues from third-parties** The disclosure must be made,	<u>Article 48(1) MiFID Org Reg. is directly applicable.</u>	<u>**Comparability of outcomes**</u>: The EU's material risk disclosure requirements provide a comparable regulatory outcome to the SEC material risk disclosure requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(b) and MiFID are consistent in that both regulatory regimes require timely disclosure for counterparties to assess information and make decisions,

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
3. What provisions govern the timing and manner of required disclosure?			
15Fh-3(b) [17 CFR 240.15Fh-3(b)].[19]	subject to the conditions outlined immediately above, prior to the provision of service to the client. Yearly disclosure may also be required where ongoing incentives are received by the Investment Firm. Please see the responses set out above to the questions set forth in sections 4.c.1 and 4.c.2 for an outline on the manner and content of disclosure required in each case.		in order to protect market participants and facilitate sound decision-making about securities-based swap transactions. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The specific requirements under Article 48(1) MiFID Org Reg.are comparable to the requirements under Exchange Act rule 15Fh-3(b), in that both aim to provide counterparties with sufficient time and information (including the risks and other features of the financial instruments involved and

[19] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
3. What provisions govern the timing and manner of required disclosure?			
			conflict of interest) to make decisions. The EU regime also lays out in detail factors that may affect the sufficiency of time and information provided to counterparties.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
4. Is the disclosure requirement lessened or eliminated in connection with certain categories of counterparties? If so, how?			
Firm duties to disclose material risks and characteristics, and material incentives and conflicts of interest do not apply when the counterparty is a dealer, participant, swap dealer or major swap participant. Exchange Act sections 15F(h)(3)(B)(i), (ii) [15 U.S.C. 78o-10(h)(3)(B)(i), (ii)].[20]	Except where noted in response to the questions set forth in sections 4.b.1, 4.b.3, 4.b.4. 4.b.5, 4.c.1 and 4.c.2 above in respect of ECPs (for purposes of MiFID), the disclosure requirements described above apply irrespective of the type of counterparty.		**Comparability of outcomes**: The EU disclosure requirements provide for comparable outcomes as the SEC disclosure requirements. The disclosure requirements under both regimes generally apply in respect of all clients, except ECPs (for purposes of MiFID) in certain cases. This exception reflects the common

[20] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
4. Is the disclosure requirement lessened or eliminated in connection with certain categories of counterparties? If so, how?			
			regulatory focus of protecting less sophisticated investors.

d. Subcategory: Daily Mark Disclosure[21]

Market participants need access to daily mark information to effectively understand and manage their security-based swap positions. The SEC rejected the suggestion that certain counterparties have the right to opt out of the receipt of daily mark disclosures. Business Conduct Adopting Release, 81 FR at 29990-91.[22]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Daily Mark Disclosure			
1. To what extent are firms required to provide counterparties with daily mark information upon request or as a matter of course? How are daily marks calculated for those purposes?			
Disclosure of Daily Mark Information The SEC must adopt rules providing that firms must disclose daily mark information to counterparties that are not certain types of dealers and participants. For cleared security-based swaps, this would encompass receipt of daily mark information from the clearing organization upon request of the counterparty. For uncleared security-based swaps, this would encompass receipt of the daily mark from the firm. Exchange Act	**Calculation of daily mark information** Whilst there is no strict regulatory requirement for parties to provide their counterparties with daily mark information as a matter of course, we note the following requirements relevant to the calculation of the daily mark information. **Mark-to-market**: FCs and NFC+s are required to mark the value of outstanding uncleared OTC derivative contracts to market on a daily basis. EMIR, Article 11(2).	Articles of EMIR, EMIR RTS 2017/104, RTS 148/2013 and RTS 149/2013 are directly applicable	**Comparability of outcomes**: The EU's daily mark disclosure and calculation requirements are not strictly analogous to the SEC daily mark disclosure and calculation requirements. However, taken as a whole, the regulatory outcomes pursued under Exchange Act section 15F(h)(3)(B)(iii) and EMIR are consistent in that the effect of both regulatory regimes is that firms are required to disclose daily mark information to counterparties, in order to allow counterparties to effectively

[21] Mandated by Exchange Act section 15F(h)(3)(B)(iii) [15 U.S.C. 78o-10(h)(3)(B)(iii)] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf; and Exchange Act rule 15Fh-3(c) [17 CFR 240.15Fh-3(c)] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8.
[22] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Daily Mark Disclosure			
1. To what extent are firms required to provide counterparties with daily mark information upon request or as a matter of course? How are daily marks calculated for those purposes?			
section 15F(h)(3)(B)(iii) [15 U.S.C. 78o-10(h)(3)(B)(iii)].[23]	**Disclosure of daily mark information** Whilst there is no strict regulatory requirement for parties to provide their counterparties with daily mark information as a matter of course, we nonetheless note the following relevant obligations: **Portfolio reconciliation**: FCs and NFCs are required to have a written reconciliation process which covers key trade terms, including, at least, the valuation attributed to each contract in accordance with Article 11(2) of EMIR. Reconciliation is only required to be performed on a daily basis (i.e. on each business day) for FCs and NFC+s where the counterparties have 500 or more OTC derivative contracts outstanding with each other. Further details are provided in		understand and manage their transactions and portfolios. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The specific requirements under both the EU and the US regimes are comparable in the following way: • **Daily mark information**. The daily mark information to be disclosed under EMIR, Article 11(2) is comparable to the information required under

[23] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Daily Mark Disclosure			
1. To what extent are firms required to provide counterparties with daily mark information upon request or as a matter of course? How are daily marks calculated for those purposes?			
	response to the question set forth in section 1.f.1. EMIR, Article 11(1)(b) and RTS 149/2013, Article 13.		Exchange Act section 15F(h)(3)(B)(iii).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Daily Mark Disclosure			
2. To what extent do firms also have to disclose underlying assumptions, methodologies or information sources related to daily mark calculations?			
For uncleared security-based swaps, the firm must disclose "the midpoint between the bid and offer, or the calculated equivalent thereof, as of the close of business, unless the parties agree in writing otherwise to a different time, on each business day during the term of the security-based swap." That daily mark "may be based on market quotations for comparable security-based swaps,	FCs and NFCs are required to have a written reconciliation process which covers key trade terms, including, at least, the valuation attributed to each contract in accordance with Article 11(2) of EMIR. FCs and NFCs are also required to have in place detailed procedures and processes in relation to the identification, recording and		**Comparability of outcomes**: *See* response to the above question set forth in section 4.d.1. The regulatory outcome is comparable.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Daily Mark Disclosure			
2. To what extent do firms also have to disclose underlying assumptions, methodologies or information sources related to daily mark calculations?			
mathematical models or a combination thereof," and the firm must disclose its data sources and a description of the underlying methodology and assumptions, and promptly disclose any material changes to the data sources, methodology and assumptions during the term of the security-based swap. Exchange Act rule 15Fh-3(c) [17 CFR 240.15Fh-3(c)].[24]	monitoring of disputes relating to the recognition or valuation of the contract. Consequently, to the extent there is any divergence in the valuation attributed by each counterparty, parties may be requested to clarify their underlying methodologies, assumptions and information sources relating to daily mark calculations, as part of these portfolio reconciliation and dispute resolution processes. Further details are provided in the response to the question set forth in section 1.f.1. EMIR, Article 11(1)(b) and RTS 149/2013, Article 13.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment

[24] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

d. Subcategory: Daily Mark Disclosure			
3. Can firms restrict recipients' use of this daily mark information, or charge recipients for the information?			
Firms must provide the daily mark to the counterparty without charge or restrictions on internal use. Exchange Act rule 15Fh-3(c) [17 CFR 240.15Fh-3(c)].[25]	There are no specific regulatory requirements under EMIR or MiFID which relate to counterparties providing the daily mark information without charge or restrictions on internal use.		**Comparability of outcomes**: The EU requirements do not provide for comparable outcomes to the SEC requirements. Since the EU regime does not directly address this issue, firms may restrict the use of daily mark information or charge counterparties for such information.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	**EU Requirement and/or Policy Goal Summary**	**Spanish Law Provisions**	**Comparability Assessment**
d. Subcategory: Daily Mark Disclosure			
4. Is the disclosure requirement lessened or eliminated in connection with certain categories of counterparties? If so, how?			
The disclosure requirement is lessened for cleared security-based swaps as firms must only disclose the daily mark received from the clearing agency upon their counterparty's request.	The required frequency of portfolio reconciliation (whereby parties compare daily mark valuations) varies depending on the status of the counterparty and the number of outstanding OTC derivative contracts between the specific counterparties. For FCs and NFC+s, portfolio reconciliation must be performed:	Article 13(3) RTS 149/2013 is directly applicable	**Comparability of outcomes**: The EU regime does not prescribe daily mark disclosure requirements such as those required under the SEC regime, but in practice valuation disclosure must occur to satisfy the EU portfolio reconciliation requirements. The EU portfolio reconciliation requirements impose less frequent

[25] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Daily Mark Disclosure			
4. Is the disclosure requirement lessened or eliminated in connection with certain categories of counterparties? If so, how?			
	1. on each business day when the counterparties have 500 or more OTC derivative contracts outstanding with each other, 2. once per week when the counterparties have between fifty-one and 499 OTC derivative contracts outstanding with each other at any time during the week, and 3. once per quarter when the counterparties have fifty or less OTC derivative contracts outstanding with each other at any time during the quarter. For NFC-s, portfolio reconciliation must be performed: 1. once per quarter when the counterparties have more than 100 OTC derivative contracts outstanding with		reconciliation requirements as the number of outstanding OTC derivative contracts decreases among the parties.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
d. Subcategory: Daily Mark Disclosure			
4. Is the disclosure requirement lessened or eliminated in connection with certain categories of counterparties? If so, how?			
	each other at any time during the quarter, or 2. once per year when the counterparties have 100 or less OTC derivative contracts outstanding with each other. RTS 149/2013, Article 13(3).		

e. Subcategory: Know Your Counterparty

Dealers must obtain essential counterparty information to promote effective compliance and risk management. Exchange Act rule 15Fh-3(e) [17 CFR 240.15Fh-3(e)][26] addresses this need.

Dealers must establish, maintain and enforce written policies and procedures "reasonably designed to obtain and retain a record of the essential facts concerning each counterparty whose identity is known . . . that are necessary for conducting business with such counterparty." Exchange Act rule 15Fh-3(e) [17 CFR 240.15Fh-3(e)].[27] The rule further specifies that those "essential facts" are: facts required to "comply with applicable laws, regulations and rules"; facts required to implement the dealer's credit and operational risk management policies in connection with transactions involving the counterparty; and information regarding the authority of any person acting for the counterparty.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Know Your Counterparty			
1. To what extent are firms required to obtain counterparty information necessary to promote compliance with applicable laws and regulations?			
Dealers must establish, maintain and enforce written policies and procedures reasonably designed to obtain and retain a record of the facts required to "comply with applicable laws, regulations and rules" in connection with counterparty transactions. Exchange Act rule 15Fh-3(e) [17 CFR 240.15Fh-3(e)].[28] This requirement "is consistent with basic principles of legal and	Investment Firms must establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm including its managers, employees and tied agents with its obligations under MiFID. Article 16(2) MiFID. Investment Firms must establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the	Articles of MiFID Org Reg are directly applicable Article 11 MLD4 has been transposed into Articles 3 and 7 SMLA Enhanced diligence requirements are transposed into Articles 11-16 SMLA	**<u>Comparability of outcomes</u>**: The EU's requirements to obtain counterparty information provide a comparable regulatory outcome to the SEC requirements to obtain counterparty information. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(e) and MLD4, MLD5 and MiFID are consistent in that both require Investment Firms to collect and

[26] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[27] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[28] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Know Your Counterparty			
1. To what extent are firms required to obtain counterparty information necessary to promote compliance with applicable laws and regulations?			
regulatory compliance . . . ." *See* Business Conduct Adopting Release, 81 FR at 29994.[29]	Investment Firm. Article 21(1) MiFID Org Reg. Investment Firms must establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations. Investment Firms must establish and maintain a permanent and effective compliance function which operates independently (a) to monitor on a permanent basis and to assess, on a regular basis, the adequacy and effectiveness of the measures, policies and procedures put in place and the actions taken to address any deficiencies in the firm's compliance with its obligations; (b) monitor the operations of the complaints-handling process. Article 22 and 26 MiFID Org Reg.		retain information about counterparties, in order to protect market participants and facilitate regulatory oversight and enforcement.

[29] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Know Your Counterparty			
1. To what extent are firms required to obtain counterparty information necessary to promote compliance with applicable laws and regulations?			
	Investment Firms must, when allocating functions internally, ensure that senior management, and, where applicable, the supervisory function, are responsible for ensuring that the firm complies with its obligations. Article 25(1) MiFID Org Reg. Please refer to the response to the question set forth in section 4.f.1 below regarding the suitability and appropriateness information that an Investment Firm must obtain from clients, where relevant. Credit Institutions and Investment Firms are generally subject to MLD4 and MLD5 requirements which impose customer identification obligations. Credit Institutions and Investment Firms must apply customer due diligence measures when (i) establishing a business		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Know Your Counterparty			
1. To what extent are firms required to obtain counterparty information necessary to promote compliance with applicable laws and regulations?			
	relationship, (ii) conducting transactions that meet certain thresholds, and (iii) there are doubts about the veracity or adequacy of previously obtained customer identification data. Article 11 MLD4. Enhanced diligence is required in respect of a 'politically exposed person' and other high risk customers. Ongoing monitoring requirements also apply. The MLD4 and MLD5 customer identification requirements are supplemented by Member State-specific requirements.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment

e. Subcategory: Know Your Counterparty			
2. To what extent are firms required to obtain counterparty information necessary for purposes of the firm's credit and operational risk management policies?			
Dealers must establish, maintain and enforce written policies and procedures reasonably designed to obtain and retain a record of the facts required to implement the dealer's credit and operational risk management policies in connection with counterparty transactions. Exchange Act rule 15Fh-3(e) [17 CFR 240.15Fh-3(e)].[30] This requirement "is consistent with basic principles of . . . operational and credit risk management." *See* Business Conduct Adopting Release, 81 FR at 29994.[31]	Credit Institutions must have robust governance arrangements, which include effective processes to identify, manage, monitor and report the risks they are or might be exposed to, adequate internal control mechanisms, and practices that are consistent with and promote sound and effective risk management. Article 74(1) CRD IV. Regulators must ensure that Credit Institutions implement policies and procedures to evaluate and manage the exposure to operational risk, including model risk, and to cover low-frequency high-severity events, including an articulation of what constitutes operational risk. Article 85(1) CRD IV. These CRD IV requirements will oblige Credit Institutions to obtain information on their counterparties to enable an assessment of credit and	Article 74(1) CRD IV has been transposed into Article 29(1) LOSSEC Article 85(1) CRD IV has been transposed into Article 52(1) RD 84/2015	**Comparability of outcomes**: The EU's counterparty information collection requirements provide a comparable regulatory outcome to the SEC counterparty information collection requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(e) and MDL4 and MLD5 are consistent in that they require Investment Firms to collect and retain counterparty information pursuant to internal risk management policies in order to protect market participants and facilitate regulatory oversight and enforcement.

[30] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[31] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Know Your Counterparty			
2. To what extent are firms required to obtain counterparty information necessary for purposes of the firm's credit and operational risk management policies?			
	operational risk to be made.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Know Your Counterparty			
3. To what extent are firms required to obtain information regarding the authority of persons acting for the counterparty?			
Dealers must establish, maintain and enforce written policies and procedures reasonably designed to obtain and retain a record of the information regarding the authority of any person acting for the counterparty in connection with counterparty transactions. Exchange Act rule 15Fh-3(e) [17 CFR 240.15Fh-3(e)].[32]	When performing customer due diligence measures, Credit Institutions and Investment Firms must verify that any person purporting to act on behalf of the customer is authorized to do so and identify and verify the identity of that person. Article 13(1) MLD4.	Article 13(1) MLD4 has been transposed into Articles 3-6 SMLA	**Comparability of outcomes**: The EU's counterparty due diligence requirements provide a comparable regulatory outcome to the SEC counterparty due diligence requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(e) and MDL4 are consistent in that they require Investment Firms to collect and retain information about the authority of persons acting on behalf of counterparties, in order to

[32] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Know Your Counterparty			
3. To what extent are firms required to obtain information regarding the authority of persons acting for the counterparty?			
			protect market participants from fraudulent acts and facilitate regulatory oversight and enforcement.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Know Your Counterparty			
4. Are such information gathering requirements lessened or eliminated in connection with certain categories of counterparties? If so, how?			
Dealers must establish, maintain and enforce written policies and procedures reasonably designed to obtain and retain a record of the essential facts concerning each counterparty. Exchange Act rule 15Fh-3(e) [17 CFR 240.15Fh-3(e)].[33]	Credit Institutions and Investment Firms must conduct customer due diligence regardless of the nature of the counterparty. The MiFID customer due diligence requirements noted in response to the questions set forth in sections 4.e.1 and 4.f.1 apply in respect of all types of clients. Customer due diligence can either be simplified or enhanced, depending on a range of factors, including: (i) the types of	Annex II and III MLD4 are transposed in Spain in Articles 15, 16, 19 and 22 **RD 304/2014**[34]	**Comparability of outcomes**: The EU's counterparty due diligence requirements provide a comparable regulatory outcome to the SEC counterparty due diligence requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(e) and MDL4 and MiFID are consistent in that they require Investment Firms to collect and retain information about all

[33] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[34] Royal Decree 304/2014 of 5 May on the adoption of Regulation of Law 10/2010 of 28 April, on the prevention of money laundering and terrorist financing.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
e. Subcategory: Know Your Counterparty			
4. Are such information gathering requirements lessened or eliminated in connection with certain categories of counterparties? If so, how?			
	customers in question – for example, legal persons or arrangements that are personal asset-holding vehicles, companies that have nominee shareholders or shares in bearer form, businesses that are cash-intensive, etc. may be considered higher risk customers for whom enhanced due diligence may be required; and (ii) the customers' geographical location. Annexes II and III of MLD4. Additional member state requirements and EU guidelines may also apply in this respect.		counterparties, in order to protect market participants and facilitate regulatory oversight and enforcement. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The specific requirements under the two regimes are analogous except as follows: Annexes II and III of MLD4 allow different levels of due diligence on counterparties based on a number of risk-based factors, but the US regime does not explicitly allow or prohibit such practices.

f. Subcategory: Suitability

The counterparty protection requirements in part account for the need to guard against dealers making unsuitable recommendations.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Suitability			
1. To what extent are market participants prohibited from making unsuitable recommendations?			
The SEC has noted that "the obligation to make only suitable recommendations is a core business conduct requirement for broker-dealers and other financial intermediaries." *See* Business Conduct Adopting Release, 81 FR at 29997;[35] Exchange Act rule 15Fh-3(f) [17 CFR 240.15Fh-3(f)].[36]	MiFID suitability requirements are triggered where an Investment Firm provides investment advice or portfolio management services. Investment Firms must undertake a suitability and appropriateness assessment in relation to recommendations to buy a financial instrument and for all decisions whether to trade, including whether to buy, hold or sell an investment. However, an Investment Firm shall be entitled to assume that a professional client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transaction or product, for which	Article 25(2) MiFID has been transposed into Article 213(1)(2) SSMA Articles 54(10) and 55 MiFID Org Reg. are directly applicable.	**Comparability of outcomes**: The EU's suitability requirements provide a comparable regulatory outcome to the SEC suitability requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(f) and MiFID are consistent in that they prohibit firms from making unsuitable recommendations in order to protect market participants and facilitate sound decision-making. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific

[35] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap
[36] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Suitability			
1. To what extent are market participants prohibited from making unsuitable recommendations?			
	the client is classified as a professional client. Article 55 MiFID Org Reg. **Provision of investment advice or portfolio management** When providing investment advice or portfolio management, Investment Firms must obtain the necessary information regarding the client's/potential client's knowledge and experience in the investment field relevant to the specific type of product or service, that person's financial situation including their ability to bear losses, and their investment objectives including their risk tolerance, so as to enable the Investment Firm to recommend to the client/potential client the investment services and financial instruments that are suitable for the client and, in particular, are in accordance with their risk tolerance and ability to bear losses. Where the Investment		requirements below for completeness. **Comparability of specific requirements**: The specific requirements under the EU regime are more detailed. In addition to the prohibition against unsuitable recommendations under Article 54(10) MiFID Org Reg., the EU regime also lays out factors to consider for evaluation of suitability under Article 25(2) MiFID and Article 55 MiFID Org Reg.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Suitability			
1. To what extent are market participants prohibited from making unsuitable recommendations?			
	Firm provides investment advice recommending a package of services or products bundled, the overall bundled package must be suitable. Article 25(2) MiFID. When providing investment advice or portfolio management, Investment Firms must not recommend or decide to trade where none of the services or instruments are suitable for the client. Article 54(10) MiFID Org Reg.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Suitability			
2. What types of activities constitute "recommendations" or otherwise trigger the application of your jurisdiction's suitability requirement?			
Whether a dealer has made a recommendation turns on the facts and circumstances of the particular situation. Relevant	MiFID suitability requirements are triggered where an Investment Firm provides investment advice or portfolio management services.	Article 9 MiFID Org Reg. is directly applicable	**Comparability of outcomes**: The EU's suitability requirements provide a comparable regulatory

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Suitability			
2. What types of activities constitute "recommendations" or otherwise trigger the application of your jurisdiction's suitability requirement?			
factors include whether the communication "reasonably could be viewed as a 'call to action'" and "reasonably would influence an investor to trade a particular security or group of securities." *See* Business Conduct Adopting Release, 81 FR at 29997.[37]	'Investment advice' requires that a personal recommendation is made to a person in his capacity as an investor, or as an agent for the same, that is presented as suitable for that person, or based on a consideration of the circumstances of that person, and constitutes a recommendation to: buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular financial instrument; or exercise or not exercise any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange, or redeem a financial instrument. A recommendation must not be considered a personal recommendation if it is issued exclusively to the public. Article 9 MiFID Org Reg.		outcome to the SEC suitability requirements. In particular, although the two regimes describe "recommendations" with different language, actions that are treated as "recommendations" under one regime would very likely be treated the same under the other. Both regimes aim to capture "recommendation" broadly to facilitate investor protection.

[37] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Suitability			
3. To what extent do firms and their personnel need to understand the risks and rewards of products subject to the suitability requirement?			
A dealer that recommends a security-based swap, or a trading strategy involving a security-based swap, to a counterparty (other than a counterparty that is a dealer or participant) must undertake "reasonable diligence" to understand the potential risks and rewards associated with the recommendation. Exchange Act rule 15Fh-3(f)(1) [17 CFR 240.15Fh-3(f)(1)].[38]	Investment Firms are required to ensure and to be able to demonstrate to their national regulators on request that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the Investment Firm possess the necessary knowledge and competence to comply with the requirement that all information provided to clients is fair, clear and not misleading. Article 24(3) MiFID and Article 25(1) MiFID. In practice, this means that the relevant individuals at the Investment Firm must be able to understand the potential risks and rewards associated with the recommendations they make in order to be able to comply with Articles 24(3) and 25(1) MiFID. National Member States criteria	Article 25(1) MiFID has been transposed into Article 220 sexies SSMA in conjunction with CNMV Technical Guide 4/2017 on the assessment of knowledge and competence for the staff giving information about investment products and investment services and for staff giving investment advice Article 213(4) SSMA in conjunction with Article 54(8) MiFID Org Reg. Articles of MiFID Org Reg. are directly applicable	**Comparability of outcomes**: The EU's requirements for natural persons giving recommendations provide a comparable regulatory outcome to the SEC natural person recommendation requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(f)(1) and MiFID are consistent in that they require that the person giving recommendations must have necessary knowledge about the features of the financial instruments involved. A person that satisfies the knowledge requirement under Articles 24(3) and 25(1) MiFID is very likely to satisfy the "reasonable diligence" requirement under Exchange Act rule 15Fh-3(f)(1). Both regimes aim to protect market participants from misleading information.

[38] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Suitability			
3. To what extent do firms and their personnel need to understand the risks and rewards of products subject to the suitability requirement?			
	apply in assessing such knowledge and competence.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Suitability			
4. To what extent do firms and their personnel need to have a reasonable basis to conclude that the recommendation is suitable for the counterparty? What information must they obtain about the counterparty to comply with this requirement?			
A dealer that recommends a security-based swap, or a trading strategy involving a security-based swap, to a counterparty (other than a counterparty that is a dealer or participant) must have a "reasonable basis" to believe that the recommendation is suitable for the counterparty, based on information such as the counterparty's investment profile, trading objectives and ability to absorb potential losses. Exchange	When providing investment advice or portfolio management services, the Investment Firm must collect from the client all 'necessary information' required by Article 25(2) MiFID and Article 54(2) MiFID Org Reg. In cases where the Investment Firm does not obtain such information, it must not recommend investment services or financial instruments to that client or potential client. Article		**<u>Comparability of outcomes</u>**: The EU's requirement that recommendations be made only after all 'necessary information' has been obtained provides a comparable regulatory outcome to the SEC's requirement that recommendations be made only if the dealer has a "reasonable basis" to believe the recommendation is suitable. In particular, the regulatory

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Suitability			
4. To what extent do firms and their personnel need to have a reasonable basis to conclude that the recommendation is suitable for the counterparty? What information must they obtain about the counterparty to comply with this requirement?			
Act rule 15Fh-3(f)(1) [17 CFR 240.15Fh-3(f)(1)].[39]	54(8) MiFID Org Reg. The required information has to be considered in light of all the features of the investment advice or portfolio management services. The Investment Firm has to be able to assess the client's ability to understand and financially bear the relevant risks associated with the investment. The depth and detail of the required information are subject to the proportionality principle, for example they can vary depending on the complexity, risks and structure of the financial instrument and on the nature and extent of the service provided. In particular, for more complex and risky products, as well as for the illiquid ones, the Investment Firm should consider whether more in-depth information may need to be collected, so as to be able to carry		outcomes pursued under Exchange Act section 15Fh-3(f)(1) and MiFID and ESMA are consistent in that they require that firms determine the suitability of recommendations based on counterparty-specific information, in order to protect market participants and facilitate sound decision making. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The specific requirements under the EU regime are comparable to

[39] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Suitability			
4. To what extent do firms and their personnel need to have a reasonable basis to conclude that the recommendation is suitable for the counterparty? What information must they obtain about the counterparty to comply with this requirement?			
	out the assessment. Article 54(2) MiFID Org Reg. Investment Firms are responsible for ensuring that the information collected from clients is reliable and need to take reasonable steps to this effect, in accordance with Article 54(7) MiFID Org Reg. **Examples of information required** The information regarding the financial situation of the client/potential client must include, where relevant, information on the source and extent of their regular income, their assets, investments and real property, and their regular financial commitments. Article 54(4) MiFID Org Reg. The information regarding the investment objectives of the client/potential client must		those under the US regime. The counterparty-specific information that Investment Firms must collect and consider when making suitability assessments under Article 25 MiFID and Article 54 MiFID Org Reg. is comparable to the information required under Exchange Act rule 15Fh-3(f)(1).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Suitability			
4. To what extent do firms and their personnel need to have a reasonable basis to conclude that the recommendation is suitable for the counterparty? What information must they obtain about the counterparty to comply with this requirement?			
	include, where relevant, information on the length of time for which the client wishes to hold the investment, their preferences regarding risk taking, their risk profile, and the purposes for their investment. Article 54(5) MiFID Org Reg.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Suitability			
5. Which counterparties are covered by your jurisdiction's suitability requirement? To what extent is the suitability requirement excused or otherwise lessened in connection with certain types of counterparties, such as institutional counterparties?			
A dealer may fulfil its "reasonable basis" requirement with respect to an eligible contract participant (**ECP**)[40] (except those that are non-financial corporations, benefit plans, government	Where an Investment Firm provides investment advice or portfolio management services to a professional client, the Investment Firm is entitled to assume that the client has the	Articles MiFID Org Reg. are directly applicable	**Comparability of outcomes**: The scope of the EU's suitability requirements provide a comparable regulatory outcome to the SEC's suitability

[40] The definition of "eligible contract participant" under Commodity Exchange Act section 1a(18) [7 U.S.C. 1a(18)] includes: corporations and other entities with more than $10 million in assets; individuals with more than $10 million invested on a discretionary basis (or $5 million if hedging); entities with a net worth of at least $1 million that are hedging commercial risk; financial institutions; insurance companies; certain investment companies; commodity pools with more than $5 million in assets under management; certain employee benefit plans; governmental entities; certain brokers and dealers; and certain futures commission merchants.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Suitability			
5. Which counterparties are covered by your jurisdiction's suitability requirement? To what extent is the suitability requirement excused or otherwise lessened in connection with certain types of counterparties, such as institutional counterparties?			
entities and individuals), or other persons with at least $50 million in total assets (**institutional counterparty**) if the dealer reasonably determines that the counterparty, or an agent with decision-making authority, is capable of independently evaluating investment risks; the counterparty or agent affirms it is exercising independent judgment; and the dealer discloses that it is acting as counterparty and is not assessing suitability. Exchange Act rule 15Fh-3(f)(1), (4) [17 CFR 240.15Fh-3(f)(1), (4)].[41] A dealer may satisfy its "reasonable diligence" obligation if the dealer receives written representations that, for a counterparty that is not a special entity,[42] the counterparty has	necessary level of experience and knowledge, and therefore is not required to obtain extensive information from the client. Article 54(3) MiFID Org Reg. Where the investment service consists of the provision of investment advice to a per se professional client (i.e. not a retail client that has elected to be treated as a professional client), the Investment Firm is entitled to assume that the client is able to financially bear any related investment risks consistent with the investment objectives of that client and therefore is not generally required to obtain information on the financial situation of the client. Article 54(3) MiFID Org Reg. Unlike other activities relating to		requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(f) and MiFID are consistent in that they provide for less-onerous suitability requirements for more sophisticated counterparties. The US regime allows exemptions when the counterparty is a professional, experienced market participant, while the EU regime permits Investment Firms to assume certain levels of knowledge and expertise without conducting the client suitability assessment in certain circumstances. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the

[41] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[42] The definition of "special entity" under Exchange Act rule 15Fh-2(d) [17 CFR 240.15Fh-2(d)] includes: US persons that are federal agencies, certain state and local agencies and political subdivisions and instrumentalities, certain employee benefit plans and government plans, and endowments.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
f. Subcategory: Suitability			
5. Which counterparties are covered by your jurisdiction's suitability requirement? To what extent is the suitability requirement excused or otherwise lessened in connection with certain types of counterparties, such as institutional counterparties?			
complied with policies and procedures reasonably designed to ensure that the persons evaluating the recommendation and making trading decisions are capable of doing so. Rule 15Fh-3(f)(3) [17 CFR 240.15Fh-3(f)(3)].[43]	dealing in financial instruments, clients cannot be classified as ECPs for the purposes of investment advice – they must be treated as either retail clients or professional clients – and so even the most sophisticated clients must receive this protection.		comparability of specific requirements below for completeness. **Comparability of specific requirements**: The specific requirements under the EU regime are comparable to those under the US regime, except the following: • **Disclosure**. One of necessary conditions for exemption under the US regimes is that the dealer must disclose that it is not assessing suitability for the counterparty. The EU regime does not require such disclosure.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment

[43] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

f. Subcategory: Suitability			
6. To what extent does the suitability requirement apply – or not apply – in connection with cross-border activities?			
The suitability requirements generally apply only to a non-US firm's activities involving US counterparties (unless the transaction is arranged, negotiated or executed in the US). *See* Exchange Act rule 15Fh-3(f) [17 CFR 240.15Fh-3(f)].[44] For non-US dealers, the business conduct requirements under Exchange Act section 15F(h) (other than internal supervision requirements) apply only to the dealer's transactions with US counterparties (apart from certain transactions conducted through a foreign branch of the US counterparty), or to transactions arranged, negotiated or executed in the US. *See* Exchange Act rule 3a71-3(c) [17 CFR 240.3a71-3(c)];[45] Exchange Act rules 3a71-3(a)(3), (8) and (9) [17 CFR 240.3a71-3(a)(3), (8) and (9)].[46]	MiFID suitability requirements apply to Investment Firms in the context of investment advice (and portfolio management) to retail and professional clients, irrespective of the clients' origin or their physical location.		**<u>Comparability of outcomes</u>**: The applicability of the EU's suitability requirements to cross-border activities provides a comparable but more onerous, regulatory outcome to the SEC's cross-border suitability requirements. The regulatory outcomes pursued under MiFID and ESMA have broader coverage than those under the US regime. In particular, the US regime contains a national element and is applicable to non-US firms only when the counterparty is a US person or entity (or where the relevant transaction is arranged, negotiated or executed in the US). The applicability of the EU regime does not depend on the location or nationality of the counterparty and is therefore more onerous than the US requirements.

[44] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[45] https://www.govinfo.gov/content/pkg/CFR-2016-title17-vol4/pdf/CFR-2016-title17-vol4-sec240-3a71-3.pdf
[46] https://www.govinfo.gov/content/pkg/CFR-2016-title17-vol4/pdf/CFR-2016-title17-vol4-sec240-3a71-3.pdf

g. Subcategory: Disclosure of Clearing Rights

Firms are required to disclose to a counterparty (other than a counterparty that is a dealer or participant) certain information regarding clearing rights. This obligation is only applicable if the identity of the counterparty is known "at a reasonably sufficient time prior to execution of the transaction". Exchange Act rule 15Fh-3(d) [17 CFR 240.15Fh-3(d)];[47] and Exchange Act section 3C [15 U.S.C. 78c-3].[48]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights			
1. To what extent does your jurisdiction mandate the clearing of relevant transactions? In the absence of mandatory clearing of all transactions of a particular type, does your jurisdiction permit counterparties to elect to require clearing? If so, does the counterparty have the right to select the clearing agency?			
Mandatory clearing obligation The SEC requires the clearing of security-based swaps it designates to be subject to mandatory clearing. The SEC has not made any such designations to date. Exchange Act section 3C(a)-(b) 15 U.S.C. 78c-3(a)-(b).[49] **Mandatory clearing: disclosure** For security-based swaps subject to mandatory clearing, the firm would have to: (i) disclose the names of the clearing agencies that accept the security-based swap, and identify which clearing	**Mandatory clearing obligation** **EMIR** All OTC derivative contracts of a class that has been declared subject to the clearing obligation entered into or novated between certain entities which are both required to clear that asset class on or after the date the clearing obligation takes effect must be cleared via a CCP authorized in accordance with Article 14 of EMIR or recognized in accordance with Article 25 of EMIR. EMIR, Article 4.	Articles of EMIR, EMIR Clearing RTS and MiFIR are directly applicable	**Comparability of outcomes**: The EU's clearing requirements provide a comparable regulatory outcome to the SEC's clearing requirements. In particular, the regulatory outcomes pursued under Exchange Act sections 3C(a)-(b) and (g)(5), and 15Fh-3(d) and EMIR, MiFID and ESMA are consistent in that they require regulators have the power to designate certain types of derivatives to be subject to mandatory clearing. Also, under both the EU and US regimes, in respect of derivatives not subject

[47] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[48] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78c-3.pdf
[49] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78c-3.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights			
1. To what extent does your jurisdiction mandate the clearing of relevant transactions? In the absence of mandatory clearing of all transactions of a particular type, does your jurisdiction permit counterparties to elect to require clearing? If so, does the counterparty have the right to select the clearing agency?			
agencies the firm is authorized to use; and (ii) notify the counterparty that it has the sole right to select which clearing agency must be used for clearing. Exchange Act rule 15Fh-3(d)(1) [17 CFR 240.15Fh-3(d)(1)].[50] **Voluntary clearing: disclosure** For security-based swaps not subject to mandatory clearing, the firm must: (i) determine whether the security-based swap is accepted for clearing by one or more clearing agencies; (ii) disclose the names of the clearing agencies that accept the security-based swap, and identify which clearing agencies the firm is authorized to use; and (iii) notify the counterparty that it may elect to require clearing and has the sole right to select the clearing	FCs above the "clearing threshold" and NFC+s are subject to mandatory clearing (to the extent they transact with each other or non-EEA equivalents and, in certain cases, if two non-EEA equivalents transact with each other). EMIR, Articles 4 and 4a. To date, certain interest rate and index credit derivative transactions have been declared subject to clearing and the requirements have now been phased in for all in-scope entities (*see* EMIR Clearing RTS). We note that there are various exceptions and derogations at a counterparty and transaction level. Article 5 of EMIR and the related draft technical standards set out		to mandatory clearing, counterparties may choose to voluntarily clear and select the clearing agency (to the extent that a clearing agency clears the relevant contract type and, if relevant, is authorized or recognized under EMIR). The EU rules do not provide that a counterparty has the sole right to select the clearing agency (either in a mandatory clearing or voluntary clearing context) and, consequently, there is no related notification requirement. However, as a practical matter, both parties will need to agree the clearing agency that they wish to use for a particular transaction. We note that although the SEC has the power to require mandatory clearing for certain types of securities, it has not

[50] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights			
1. To what extent does your jurisdiction mandate the clearing of relevant transactions? In the absence of mandatory clearing of all transactions of a particular type, does your jurisdiction permit counterparties to elect to require clearing? If so, does the counterparty have the right to select the clearing agency?			
agency (provided that the firm is authorized to clear through that clearing agency). Exchange Act rule 15Fh-3(d)(2) [17 CFR 240.15Fh-3(d)(2)].[51]	the detailed process regarding consideration of a class of OTC derivatives for the clearing obligation. If a class of OTC derivative contracts no longer has a CCP which is authorised or recognised to clear those contracts under EMIR, it must cease to be subject to the clearing obligation in Article 4 of EMIR and ESMA must publish a call for development of proposals for the clearing of the relevant class of derivatives. EMIR, Article 5(6). Authorisation of a CCP to clear can be withdrawn in certain circumstances (*see* EMIR, Article 20) but not simply at the request of ESMA or the EC. ESMA may request that the EC		exercised this power. The EU regulators have already designated certain credit and interest rate derivatives as subject to mandatory clearing and have therefore developed more detailed regulations relating to mandatory clearing under EMIR. *See* EMIR Clearing RTS.

[51] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights			
1. To what extent does your jurisdiction mandate the clearing of relevant transactions? In the absence of mandatory clearing of all transactions of a particular type, does your jurisdiction permit counterparties to elect to require clearing? If so, does the counterparty have the right to select the clearing agency?			
	temporarily suspend mandatory clearing for specific classes of OTC derivatives contracts or for a specific type of counterparty if certain conditions are met. EMIR, Article 6a. **<u>MiFIR</u>** All derivatives transactions concluded on a regulated market (i.e. all exchange-traded derivatives) must be cleared by a CCP. If a transaction is executed on a regulated market it will be an "exchange-traded derivative" for the purposes of MiFIR and will not be an "OTC derivative" for the purposes of EMIR (and thus will be outside the scope of EMIR clearing requirements). MiFIR, Article 29. The MiFIR RM Clearing Obligation RTS set out requirements that CCPs, trading venues and clearing		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights			
1. To what extent does your jurisdiction mandate the clearing of relevant transactions? In the absence of mandatory clearing of all transactions of a particular type, does your jurisdiction permit counterparties to elect to require clearing? If so, does the counterparty have the right to select the clearing agency?			
	members must comply with in respect of all cleared derivatives (both exchange-traded and OTC) relating to effective systems, procedures and arrangements to ensure that transactions are submitted and accepted for clearing as quickly as technologically practicable. **Voluntary clearing** In the absence of mandatory clearing of transactions of a particular type, counterparties may elect to clear such transactions and non-EU entities are not required to clear such transactions via a CCP authorized or recognized in accordance with EMIR (although EU entities must clear such transactions via a CCP authorized or recognized in accordance with EMIR). In such circumstances, the counterparties may select any CCP that clears the		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights			
1. To what extent does your jurisdiction mandate the clearing of relevant transactions? In the absence of mandatory clearing of all transactions of a particular type, does your jurisdiction permit counterparties to elect to require clearing? If so, does the counterparty have the right to select the clearing agency?			
	relevant contract type.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights			
2. To what extent does your jurisdiction require disclosure of applicable clearing rights?			
Firms must disclose certain clearing rights information to counterparties that are not also dealers. This information includes: (i) a list of clearing agencies that the dealer can use and will accept the swap; (ii) notice to the counterparty that it has the sole right to select which clearing agency from the list will be used, and for non-mandatory clearing; and (iii) notice to the counterparty that it may elect to require clearing. Exchange Act	A clearing member must keep separate records and accounts that enable it to distinguish both in accounts held with the CCP and in its own accounts its assets and positions from the assets and positions held for the account of its clients at the CCP. EMIR, Article 39(4). A clearing member must offer its clients, at least, the choice between omnibus client segregation and individual client segregation and inform them of		**<u>Comparability of outcomes</u>**: The EU's clearing rights disclosure requirements provide a comparable regulatory outcome to the SEC's clearing rights disclosure requirements. In particular, both regimes require the disclosure of certain clearing information and rights to clients to enable clients to understand which clearing agencies may be used for clearing. As discussed above, the EU rules do not

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights			
2. To what extent does your jurisdiction require disclosure of applicable clearing rights?			
rules 15Fh-3(d)(1) and (2) [17 CFR 240.15Fh-3(d)(1) and (2)].[52] Firms must make written records of non-written disclosures, and provide written versions of the disclosures "in a timely manner, but in any case no later than the delivery of the trade acknowledgement." Exchange Act rule 15Fh-3(d)(3) [17 CFR 240.15Fh-3(d)(3)].[53]	the costs and level of protection referred to in Article 39(7) of EMIR associated with each option. The client must confirm its choice in writing. EMIR, Article 39(5). CCPs and clearing members must publicly disclose the levels of protection and the costs associated with the different levels of segregation that they provide and must offer those services on reasonable commercial terms. Details of the different levels of segregation must include a description of the main legal implications of the respective levels of segregation offered including information on the insolvency law applicable in the relevant jurisdictions. EMIR, Article 39(7). We note that under changes made by EMIR Refit 2.1, with		provide that a counterparty has the sole right to select the clearing agency (either in a mandatory clearing or voluntary clearing context) and, consequently, there is no related notification requirement. However, as a practical matter, both parties will need to agree on the clearing agency that they wish to use for a particular transaction. The US regime stipulates the duties of firms to maintain records of clearing rights under Exchange Act rule 15Fh-3(d)(3). There is no such general requirement under EMIR. However, we note that the EU regime requires that clearing members offer their clients, at least, the choice between omnibus client segregation and individual client segregation, must inform their clients of and

[52] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[53] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights			
2. To what extent does your jurisdiction require disclosure of applicable clearing rights?			
	effect from June 18, 2021, without being obliged to contract, clearing members and clients which provide clearing services, whether directly or indirectly, must provide those services under fair, reasonable, non-discriminatory and transparent (**FRANDT**) commercial terms. EMIR Refit 2.1, introducing a new Article 4(3a). While the detail of the FRANDT rules is not yet final and may be subject to change, we note that the ESMA Consultation Paper on FRANDT indicates that, amongst other things, clearing service providers will be required to publicly disclose the general standard contract terms under which they provide clearing services, presented in clearly divided sections, including scope and definitions, information, relationships between clearing service provider and client, termination and default provisions.		must publicly disclose the costs and level of protection associated with each option and must offer those services on reasonable commercial terms (EMIR, Article 39(5) and (7)). The ESMA Q&A on EMIR provide that clearing members must comply with the requirements on segregation and portability under Article 39 of EMIR by the time that a relevant CCP is authorised under EMIR.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Spanish Law Provisions	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights			
2. To what extent does your jurisdiction require disclosure of applicable clearing rights?			
	The requirements on clearing members that are established in EMIR (e.g. those in Articles 38 and 39 of EMIR) apply to clearing members of all CCPs established in the EU. These obligations therefore come into force at and should be met by the time that the CCP is authorised under EMIR. ESMA Q&A on EMIR, CCP Question 8(c).		

Appendix C: Supervisory Compliance Program and Enforcement Authority and

Access to Books and Records and Onsite Inspection and Examination

Appendix C contains the CNMV´s responses to the SEC´s Questionnaire (Element 4) regarding information relevant to the SEC´s analysis of the CNMV´s and ECB's (with the participation of the BdE) supervisory compliance program and enforcement authority with respect to the European and Spanish Law requirements listed in Appendix A and B, as well as an overview Annex, "CRD-CRR Provisions referred to in the SEC Substituted Compliance Application and Significant Credit Institutions Supervision, " that describes the ECB´s supervisory role over significant institutions such as Covered Entities and for which the CNMV is not the competent supervisor.

CNMV Responses Element IV & V

Section I - Supervisory Framework

1. Please generally describe your jurisdiction's supervisory authority and related requirements or procedures to identify deficiencies and weaknesses in its Regulated Entities' relevant market activities. To the extent relevant, please consider the following:

The supervision and inspection of financial markets in Spain is divided up into three sectors: banks, insurance and securities markets.

For the securities markets, the basic regulation which governs them is the Royal Legislative Decree 4/2015, of October 23, which approves the recast text of the Securities Market Act 24/1988, of July 28 (hereinafter TRLMV – Please see the following links for the Spanish TRLMV and the translated legal text and relevant amendments):
Spanish: https://www.cnmv.es/Portal/legislacion/legislacion/tematico.aspx?id=1).
English: rld_4_en_rev.pdf (cnmv.es)

The purpose of this act was to introduce important reforms in the sector with the aim of achieving the competitive integration of Spain into the European capital market in 1992. One of the most important reforms was the creation of the National Securities Market Commission (hereinafter CNMV), pursuant to Article 16 of the Act, which was set up as a public body with its own legal personality and full public and private capacity, with responsibility for the supervision and inspection of the securities markets and of the activity of any natural or legal person trading on the securities markets, including the power to impose sanctions.

The CNMV is the body responsible for the supervision and inspection of Spanish securities markets and the activity of all those involved in them. The CNMV was created by Securities Market Law 24/1988, which represented a thorough reform of this segment of the Spanish financial system; and since then, its regime has been updated to adapt to the evolution of financial markets and to introduce new measures to protect investors.

The aim of the CNMV is to ensure the transparency of Spanish securities markets and the correct formation of prices, as well as the protection of investors. The CNMV, in the exercise of its powers, receives a large volume of information from and on market participants, much of which appears in its Official Registers and is public.

The CNMV's action is mainly focused on companies that issue or offer securities to be placed publicly on secondary securities markets and on companies providing investment services and collective investment schemes. On the latter, as well as on secondary securities markets, the CNMV exercises prudential supervision, which guarantees the security of its transactions and the solvency of the system. The CNMV is also responsible for the supervision of many of the requirements for derivatives market participants that were made as a result of the G20's call for greater regulation of those markets in the aftermath of the 2008 financial crisis.

The CNMV actively participates in international organizations, such as IOSCO (International Organization of Securities Commissions), or belongs to EU Authorities, such as ESMA (European Securities and Markets Authority) or FSB (Financial Stability Board). Likewise, it collaborates with the Ibero-American Institute of the Stock Market.

In addition, the CNMV advises the Government and the Ministry of Economy on matters related to the securities market.

In order to carry out its functions, the CNMV has the power to implement its own regulation in order to develop legal provisions from the Spanish Parliament and the Government regarding securities markets. It is also assigned the possibility to urge the disclosure of any information necessary to ensure its aims.

The CNMV's responsibilities, powers and authority are defined and transparently set out in Title II (Articles 16 to 32) of the TRLMV, which establishes the creation, organization and functions of the CNMV.

Finally, the CNMV's functions are governed by public and private law. Specifically, the exercise of its public functions are governed by Law 39/2015, of October 1, 2015, on the legal regime of public administrations and common administrative procedures, and additionally by Law 40/2015, of October 1, on the Legal Regimen of the Public Sector. Regarding the contracts made, these are regulated by Law 9/2017, of November 8, on Public Procurement. The General Budgetary Law (annual) and Law 53/1984, of December 26, on incompatibilities of public servants are also applicable. However, acquisitions of assets will be subject to private law.

The CNMV's governing body is its Board. The CNMV Board is made up of: a Chairman and Vice-Chairman, who are appointed by the Government following a proposal from the Ministry of Economy and Finance, from among persons of recognized competence in issues relating to the securities market; the Secretary-General of the Treasury and Financial Policy and the Deputy-Governor of the Bank of Spain, who are classified as ex-officio members, and three members appointed by the Ministry of Economy and Finance from among persons of recognized competence in issues relating to the securities market (Article 23 of the TRLMV).

In accordance with Additional Disposition 3 of Law 3/2015, March 30, on the regulation of Senior Officers in the Civil Service, the Government, prior to appointing the Chairman and Vice-Chairman of the CNMV, will inform the Congress of Deputies of the name of the person proposed for the office so that they can be asked to appear before the Congress' Economy and Finance Committee. The corresponding Committee will examine the proposed candidates. To this end, they will formulate questions or request the clarifications which they consider appropriate, after which the Committee will issue, after voting, a ruling which will establish whether any conflicts of interest exist.

The Chairman, Vice-Chairman and the three members appointed by the Ministry of Economy and Finance are appointed for a period of four years, which may only be extended for one further term (Article 27 of the TRLMV). The CNMV board members may only leave their office on expiration of the term of their mandate, due to their resignation accepted by the Government or their dismissal agreed by the Government for a serious breach of their obligations, permanent disability, sudden incompatibility or a conviction for a fraudulent offence (Article 28 of the TRLMV).

Before any further description on the means, procedures and tools for performing supervisory activities, it is important to describe the structure and organization of the CNMV. The following chart shows its first level organization structure:
CNMV - Organizational structure

a. the statutory, regulatory or other provisions under law that grant the relevant supervisory authority, or that otherwise describe or limit the scope of this supervisory authority;

The CNMV has been assigned with supervision, inspection and disciplinary powers for organized markets authorized in Spain and for entities and persons operating in the securities markets (Section VIII of the TRLMV – Articles 233 to 313 sexies):

- Article 233 specifically details the entities and persons under the supervisory, inspection and disciplinary regime of the CNMV.

- Additionally, article 234 enumerates the necessary tools and faculties to be used to develop its supervisory and inspection duties.

- Article 238 details all publicly accessed registries in the CNMV regarding securities markets (markets, listed companies, entities developing authorized activities, sanctions imposed on market participants, etcetera).

- Articles 242 to 255 cover collaboration with other regulators and authorities, at national, European and international level. In particular, article 247 regulates procedures of information exchange between de CNMV and third country authorities.

- Disciplinary powers are regulated under articles 271 to 313.sexies, including an exhaustive list of minor offenses or breaches and serious and very serious violations of the regulation and their corresponding sanctions.

- Article 276.bis regulates the whistleblowing communication channel to the CNMV

Additionally, the CNMV´s regulatory powers are laid out in Article 21 of the TRLMV. The CNMV can issue rules under the form of Circulars and Technical Guidelines whenever there is a Parliament Law, a Government Royal Decree or a Ministry Order which enables it to do so.

For Securities Market Act details, please refer to: rld_4_en_rev.pdf (cnmv.es)

(Spanish https://www.cnmv.es/Portal/legislacion/legislacion/tematico.aspx?id=1)

The authority to supervise, assigned to the CNMV in the above Act, also encompasses a number of directly applied European legislation (Regulations) with no need to transpose into national legislation.

With regards to professional secrecy, the CNMV has information limitations (Article 248 of the TRLMV). However, exceptions to the duty of secrecy in the aforementioned article include collaboration with other supervisors or other administrative authorities or competent judicial authorities, authorities responsible for the fight against money-laundering, with foreign supervisory authorities (specifically, this exception is included in letter j of the abovementioned article) or with the Ministry of Economy and Finance.

Finally, regarding any other limitations or political interference of the CNMV powers, the CNMV operates on a day-to-day basis with full independence from all political powers, which is required by law to respect its autonomy. Specifically, article 16.6 of the TRLMV alleges violations by any person.

Notwithstanding its autonomy, in accordance with the provisions in the TRLMV (Articles 16.2, 22 and 274, 275, 276 and 311 of the TRLMV) and Law 39/2015, of October 1, on the legal regime of public

administrations and common administrative procedures, the CNMV decisions may be subject to administrative appeals, with the guarantees provided by the Spanish Constitution and in the aforementioned laws, as well as before the Judges and Courts of the ordinary jurisdiction.

b. a description of how you supervise recordkeeping and retention requirements applied to Regulated Entities;

The recordkeeping requirements of the entities supervised by the CNMV are as follows:

Investment firms and banks providing investment services / market participants: Articles 194 of the TRLMV and 32 of Royal Decree 217/2008, of February 15, on the Legal Regime of Investment Firms and Other Entities which Provide Investment Services, regulate the holding of the registers which these entities must keep by law in order to allow the CNMV prompt access to them if required to comply with its supervisory functions, regarding any obligation in the TRLMV and specifically in Regulation (UE) 600/2014, of May 15, 2014, Directive 2014/57/UE, of April 16, 2014 and Regulation (UE) 596/2014, of April 16, 2014.

Article 32 referenced above, establishes that the entities which provide investment services – Banks among them – must keep for at least five years (seven years, if expressly required by the CNMV) all data included in the registers required by the TRLMV and by this Royal Decree. Without prejudice to the above, the contract register must be held during the life of the relationship with the client. When the investment firm's authorization is revoked before the end of the five-year period, the CNMV may require that the entity keeps the data until said period has terminated.

Specifically, entities have to maintain and make available for inspection by the CNMV a record of transactions containing information about (i) orders received from third parties pertaining to brokering, recording, and depositing activities in respect of contracts traded on the markets of which they are members, and (ii) another record of the transactions referred to those orders.

The registers must be kept on a medium which allows the information to be easily accessible for the CNMV, and the following conditions must be met at all times:

- The CNMV may easily access the registers and may reconstruct each one of the essential stages of processing each transaction.

- It must be possible to distinguish any correction or modification made to the content of the registers prior to each stage, without ever being possible to manipulate or alter the registers in any way.

- The registers must cover all communications that relate to reception, transmission and execution of client orders, as well as all telephone calls recordings and electronic communications that might result in a transaction.

Supervisory activities of regulated entities, and in particular of banks, regarding recordkeeping cover the following:

- Desk-based reviews (Reporting and periodic monitoring): banks must submit quarterly (some banks) and yearly (all) confidential statements regarding conduct of business rules. These comprise, among other information, transactions on behalf of clients extracted from their

registers. The information is detailed to an investment product level (ISIN code level or internal code for other products, like OTC derivatives) and gives aggregate data of the total number of transactions, volume in quantity and in euros, etcetera.

Different analyses are performed comparing data received with the previous period (quarter / annual) and between entities in order to pinpoint trends in the marketing of certain types of products (usually complex investment products). This information is used to (i) issue requirements to the supervised entities to review their registers and correct the reporting, (ii) select entities for further supervision under an on-site inspection / thematic review and (iii) as input of the risk map of the banking sector regarding conduct of business rules.

- On-site inspections / Off-site inspections / Thematic reviews: During the course of this type of supervisory activities, different electronic files are required. When needed for the supervisory activity, banks may be asked to provide files containing details of each transaction, and backup documents, in order to check if transactions are supported by documental evidence and comply with Regulation (UE) 2017/565 (Articles 72 to 76), as well as to check if they have been correctly registered.

EMIR further establishes recordkeeping and retention requirements for entities engaged in derivatives activities. According to Article 9 of EMIR, counterparties are required to keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract.

Counterparties are also required to ensure that the details of any derivative contract (whether OTC, ETD, cleared or non-cleared) that they have concluded and any modification or termination of the contract are reported to a trade repository. The details shall be reported no later than the working day following the conclusion, modification or termination of the contract.

For the supervision of these obligations, the CNMV carries out different off-desk activities in order to verify, among other things, whether:

- The entity has reported information on all contracts on its books. This may, for example, be done on the basis of periodic reconciliations between the information reported and its records. Also, the information reported by its counterparties is used to identify possible discrepancies between them that may suggest that the records have not been reported correctly or that an entity's records are not kept in order.

- The entity has reported for each contract information consistent with what is maintained in its records. This can be done for example by using a number of indicators of the quality of the information reported. On this basis, both shortcomings in the reports submitted by the entities or deficiencies in the entities' records on the basis of which the reports are made can be identified.

Based on the findings of these off-desk reviews, it may be decided to conduct on-site inspections to verify more closely the way in which derivatives activity is being recorded and how contracts are reported to TRs.

c. a description of the authority of the applicable regulator to access and inspect the records of Regulated Entities for domestic and cross-border activities, including activities in foreign offices or branches;

Article 234 of the TRLMV establishes that the CNMV holds all the powers of supervision and inspection necessary to perform its functions. These include the power to inspect the entity or person at any office or department (Article 234.2.c)). Furthermore, the aforementioned article establishes that the inspection and investigation may be carried out, at the choice of the CNMV, in any department of the inspected entity or person or their representative (on-site inspections), or at the offices of the CNMV or other administrative body (off-site inspections) – Article 234.4 TRLMV.

Therefore, articles 194 and 234 of the TRLMV grant access to records of regulated entities. In particular, article 234.2.a) grants access to (and to obtain a copy of) any document, whatever format it is displayed, or to any data considered relevant by the CNMV to exercise its supervisory functions (this includes the identification details of the clients of the entities under its supervision). Additionally, article 234.2.b) establishes the power to require that any person sends information in the period reasonably set by the CNMV and, if necessary, to summon someone and take their statement.

It is relevant that prior notice to the regulated entity is not necessary, given that the TRLMV grants the CNMV extensive powers of inspection and ample capacity to decide on the manner in which its supervisory actions can be carried out.

Additionally, the TRLMV grants the CNMV supervision and investigation powers without distinguishing whether they are used in response to a specific investigation or in a routine manner, irrespective of whether or not there is a suspicious misconduct.

The powers assigned to the CNMV are exercised on the entities included in article 233 of the TRLMV, which include market participants, in general, and the governing councils of official secondary markets, the governing entities of multilateral trading facilities (MTF) and the companies which manage securities registration, clearing and settlement systems (and hence, the authorized securities markets and regulated trading systems), excluding the Bank of Spain. This regime also covers the central securities depositories (Iberclear), central counterparties, the Sociedad de Bolsas and the companies which hold all the shares or a controlling interest, whether directly or indirectly, of the entities mentioned above. In practice, the CNMV has real-time access to the trading screen of the electronic market and carries out real-time monitoring of the market, as it has developed its own market monitoring system so as to detect possible irregularities or abnormal developments in trading in real-time.

In particular, in the case of banks (when they provide investment services), and regarding cross-border activities (foreign offices or branches) article 233 sets that the CNMV supervisory, inspection and disciplinary powers extend to the following entities:

- Spanish Credit institutions (banks), including branches outside the Spanish national territory (233.c)2º) in relation to all matters under the supervision of the CNMV.

- Non EU branches of banks operating in Spain (233.c)2º) under the same circumstances as described above.

- Branches of EU banks operating in Spain (including its agents established in Spain) under the same circumstances as described above.

Under MiFID II regulation, home-host principle operates in order to share supervisory responsibility. Under this principle, the conduct of business rules are supervised by the host national competent authority (NCA), while organizational requirements are supervised by the home NCA (country of origin where the entity is licensed).

d. a description of the authority of the applicable regulator to conduct on-site or off-site inspections of Regulated Entities, including the ability to inspect foreign offices or branches;

The CNMV may conduct on-site or off-site inspections under its supervisory and inspection ample powers set in article 234 of the TRLMV, as described in the Introduction and in letters b. and c. above.

Regarding cross border activities, the CNMV along with the foreign authorities (when a MoU is in force) can develop any supervisory activity or investigation, in particular the ability to inspect foreign offices or branches.

Specifically, articles 242 to 255 of the TRLMV regulate the CNMV's ability to cooperate with other foreign competent authorities, both European and non-European. This legislation basically establishes that the CNMV, when performing its supervision and inspection functions, may collaborate with the competent authorities of foreign states (and vice versa), and to this end, may sign collaboration agreements in order to exchange information.

It should be clarified that the CNMV's cooperation with other European bodies is mandatory and based on European Directives, while cooperation with non-EU countries will take place on the basis of a regulator to regulator relationship, considering the requirements established in Article 247 of the TRLMV (reciprocity and professional secrecy comparable with that established in Spanish law).

Additionally, it is also relevant, that in order for the CNMV to share information it is not a prerequisite that the investigated conduct constitutes a breach of the Spanish regulation. It is sufficient that the information is requested in order to perform the supervisory tasks of the requesting authorities (article 247.1 of the TRLMV).

e. a description of the authority of the applicable regulator to obtain information related to the customers, clients, or employees of Regulated Entities;

As stated in answer c. above, the CNMV is assigned with powers to obtain information, with no limitation, in order to comply with its supervisory and inspection functions (article 234 of the TRLMV). Information refers, when necessary, to client information regarding transactions in the securities markets, including any telephone conversation or any communication with the regulated entity in any form. The CNMV can also have access to employees' records and communications, as well as to information regarding their retribution or payments received from the entity, especially

regarding variable compensation based on their client transactions on securities (bonus or similar remuneration).

Moreover, any person or entity may be subject to supervisory activities from the CNMV, regarding their activity in the securities markets, under article 233.1.c) 5º of the TRLMV.

For details, please refer to the CNMV Internal Procedure to request information to Regulated Entities:

https://www.cnmv.es/DocPortal/Quees/Procedimientos/P02-Formulacion-de-requerimientos_en.pdf

f. a description of the ability of the applicable regulator to test or verify responses or other information obtained from the Regulated Entities during the course of supervisory efforts;

The CNMV has several supervisory tools in order to test or verify information obtained from the regulated entities or responses to its requirements.

Integrity analyses are performed whenever data is reported to the CNMV, using existing information in its data bases which are fed by other parties and by market participants.

Additionally, in the process of a supervisory activity, information can be challenged within the regulated entity by means of testing their written internal procedures against how the actual procedures and systems work (related to investment services provided, information given to clients, etcetera…). These tests are performed in the entities´ offices. Furthermore, these types of verifications can also include the use of dummy internet clients to test the functioning of the entity's website and information given and transactions made through the online transaction platform. Even, in some cases, data is tested requesting confirmation by **independent third parties,** including when considered appropriate, sending confirmation letters to clients, regarding position, services provided, etcetera.

In certain occasions, back testing analyses are done by means of requesting ad hoc reports to the entities internal auditors to confirm the supervisory results obtained by the supervision officers' analyses.

g. a description of how examination priorities are developed and the process for adjusting and updating such priorities, including what factors are used in developing priorities; and

The CNMV supervisory strategy is defined on an ongoing basis regarding market and financial instruments evolution. Additionally, the strategy is risk based oriented.

The Activity Plan containing the CNMV objectives (public – **https://www.cnmv.es/portal/Publicaciones/PlanActCNMV.aspx?lang=en) and a Supervision** Plan (non-public) are approved by the CNMV yearly.

The Activity Plan details the corresponding forecasted compliance timeframe for each of the activities contained and the general strategic guidelines to be followed in the actions carried out. Additionally, it includes information on the degree of compliance of the previous year objectives. The

publication of the activity plan allows supervised entities, markets and investors to be aware of the CNMV's priorities for that year and enables public control of the institution's activity.

Both can be changed or adapted in case of market events, any information received through the ordinary monitoring channels and registries, complaints filed within the Complaints Department or received via the Whistleblowing channel, findings in prior supervisory activities, etcetera.

2. Please describe the supervisory tools your jurisdiction uses in practice to identify risk and detect potential breaches of law. To the extent relevant, please consider the following:

The CNMV has a risk-based supervision approach with two Directorates Generals involved in the supervisory tasks. Therefore, detection and early investigation of failures of compliance with the legal requirements are under the responsibility of the DGM[1] (from a market integrity, transparency and price formation point of view) and the DGE[2] (from an investor protection perspective, in addition to the entities´ supervision regarding, among others, banks).

The DGE relies on the following sources of information:

(i) Internal Tools:

- Off-site supervision:
  - Periodic monitoring: Internal risk analysis/assessment performed on the periodical confidential statements reported by the regulated entities
  - Desk-based supervision: Thematic / limited reviews (either carried out on a number of firms / sector / market / activity / service)
- Specific information requirements sent to the regulated entities based on off-site supervision or any of the external tools below.
- Supervisory intelligence (including day-to-day supervisory contact with firms / trade associations / consumer bodies)
- On-site supervision: complete or limited scope

(ii) External Tools:

- Ad -hoc review by a third party (i.e.: Auditors acting on behalf of CNMV) or Internal Audit department of banks
- Mystery shopping (performed by specialized outsourced companies)
- Investor's complaints addressed to the CNMV (regular registration, analyses and classification of investor complaints)
- Whistleblowing channel (tips on entities' failures or non-compliance with the regulation, etcetera.).
- Information from traditional media and social media.
- Exchange of information with other national or international authorities

The DGM relies mainly on the following sources of information:

[1] CNMV Markets General Directorate
[2] CNMV Entities General Directorate

- Communications of suspicious operations made by any credit institution or investment firms.
- Daily communication of executed operations reported by credit institutions and investment firms.
- Communications of financial and non-financial information sent by issuers of securities.
- Analysts' reports.
- Information reported to the TRs.
- Complaints received from investors and issuers.
- Information from traditional media and social media.
- Secondary Markets' Advanced monitoring system (SAMMS): it consists of a set of rules applicable to some operations that take into account markets, instruments and holders. It includes 23 alarms, which work automatically.
- Accessible information on market infrastructures.
- Specific information requests sent to the regulated entities.
- Independent expert reports on specific issues, where appropriate.
- Periodic monitoring and desk-based supervision.

a. any form(s) of ongoing or ad hoc monitoring and surveillance by the regulator or another organization;

Regarding ongoing / ad hoc monitoring, the DGE performs desk-based supervisory activities on a periodic basis. As described earlier, they consist of different risk analyses and assessments performed using the information contained in periodic confidential statements reported by the regulated entities. In particular, the DGE carries out thorough analysis of the information that the regulated entities must periodically report to the CNMV. It is analyzed in order to detect failures of compliance (in the case of banks only regarding conduct of business rules when providing investment services).

Annual Banks' confidential statements comprise information on the following:

- Number and category of their clients
- Revenue obtained from services provided, with details regarding fees, commissions and inducements
- Aggregate volume of reception / execution of orders by product (at ISIN level). This information is reported also quarterly.
- Aggregate volume of investment advice (personal recommendations) by product and type of advice
- Portfolio management: number of portfolios and volume by product
- Custody ancillary service: volume by product deposited within the entity

- Other information: regarding transactions under market abuse investigation, services provided in EU through branches, types of complaints filed, distribution channels, etcetera.

The main analyses consist on:

- Quantitative / consistency analyses
- Data quality analysis
- Qualitative analyses:
    - Trends and year-on-year comparison (sector / type of entity / entity levels)
    - Risk map: indicators definition, business profiles in relation with the type of services and complexity of products distributed. Used as an important element to prepare the Annual Supervision Plan (please refer to answer to question 3.a below) and to classify banks in supervisory groups / tiers.
    - Alarms setting: bad distribution practices / breaches indicators

Ad hoc monitoring may consist of very specific desk-based supervisory activities on any topic deemed of interest or on thematic reviews if inappropriate distribution practices have been observed in several regulated entities or, if the risk approach supervisory strategy (due to concerns on a specific issue, topic of supervisory interest, implementation of new requirements through new regulation – so called “early reviews”, etcetera.), determines that, for a particular activity or type of firms, a review needs to be performed.

Therefore, sources of intelligence to perform these ad hoc reviews may be the confidential statements, new regulation, complaints, previous on-site visits, and etcetera. The selection of banks to be included in thematic reviews is determined on a risk approach basis (impact on clients – number and volume – and probability of breaches to occur).

As far as the DGM is concerned, the supervisory activities can be divided in the following way:

First, we review those activities that are part of the ongoing supervision of market developments, such as trading activities, the trading and market infrastructure requirements for their members and users, market abuse rules, issuers' obligations, short-selling requirements and the requirements applicable to derivatives activities. These tasks are essentially based on the analysis of available information, much of which is received daily by the CNMV, or on the daily monitoring of market activity. The aim is to be able to react to any event or circumstance that could lead to market malfunctioning or indicate the existence of threats to market participants. This is supported by various IT tools that facilitate the monitoring of activity and generate warnings or alarms when certain events occur in the market.

The DGM also undertakes periodic reviews to verify compliance with certain requirements by entities participating in securities and derivative markets. These activities can be distinguished into two types:

- Entity-level selection. Based on risk-based criteria, on the periodic rotation of entities over which some type of supervisory activity is carried out or due to circumstances of special interest, it is determined that a specific review will be made of one or more entities on how they comply with several different regulatory requirements.

- Transversal. This is done by assessing, on the basis of risk-based criteria or circumstances of special interest, how a large number of entities comply with a very small set of regulatory requirements.

Apart from the above, which are essentially programmed monitoring activities, ad-hoc investigations may be carried out depending on the nature of the cases.

The main analyses performed relates to the verification that entities have complied with applicable requirements as market participants regarding the reporting of transactions and derivative contracts, transparency, market abuse rules, shortselling rules, central clearing obligations, mandatory trading through trading platforms, exchange of collateral and other risk mitigation techniques such as timely confirmation of contracts, efficient dispute resolution, etc.

b. any process to receive tips or complaints about the activities of a Regulated Entity;

CNMV has an Investors' Department which deals with the queries and complaints of the users of financial services (art 239 TRLMV). The law also establishes the requirement for financial institutions to address and resolve complaints which their clients may present relating to their interests and rights.

Please see our answer 2c. of Section II for further detail.

Further, on the basis of the existing regulation, persons professionally arranging or executing transactions, market operators and investment firms operating a trading venue, as well as branches of investment firms or credit institutions, must establish effective arrangements, systems and procedures to prevent and detect insider dealing or market manipulation, as well as attempted insider dealing or market manipulation.

These transactions and orders detected, as well as any cancellations or amendments that could constitute market abuse must be submitted, without delay, to the CNMV.

c. the submission of periodic filings from Regulated Entities; and

Article 185.1 of the TRLMV establishes that regulated entities that provide investment services must have internal control mechanisms and effective techniques for measuring the firm's risks. Regarding banks, its own banking regulation sets their specific rules which are supervised by their prudential authority – BdE or ECB – nevertheless, certain Compliance functions and reports regarding the banks' activity in the securities markets are under the CNMV supervision.

Regulated entities must have a body which performs the independent internal auditing task, which must prepare and maintain an audit plan for examining and evaluating the suitability and

effectiveness of the internal control systems and mechanisms and provisions of the investment firms, formulating recommendations and verifying compliance with said recommendations.

Additionally, Articles 30 to 31.bis and 35.2 of the RD 217/2008 contain details on requirements of the implementation of the compliance function (conduct of business rules), establishing the obligation to prepare periodic reports, at least annually, and report them to the board. The report will detail the result of the work carried out, highlighting the non-compliances and associated risks, together with the proposed measures deemed appropriate. The main content is as follows:

- Identification of risk areas in the field of regulatory compliance control.
- Description of the application and effectiveness of the established control policies and procedures with a summary of the remote or on-site reviews carried out.
- Details of the main types of failures and breaches detected within the organization and in the application of the policies and procedures established during the course of the reviews.
- Details of the suggested measures to return to compliance and for the resolution of the failures detected.
- Substantial changes in the regulatory regulations and the agreed measures to adapt to the new legal requirements.
- Correspondence with the supervisory authorities.
- Any other important aspects that have not been reflected in previous reports.

In any case, this report must be available to the CNMV, which may review its content (either in on-site or desk based reviews). For example, a thematic review was performed in 2018.

Additionally, as described in letter a. above, part of the ongoing monitoring consists in analyzing the periodical confidential statements that regulated entities need to file within the CNMV.

Finally, all banks need to file the Report on Clients' Product Protection (known as IPAC) yearly (Article 47 RD 217/2008). This report is prepared by the regulated entities' auditors regarding the firms' obligation to have in place appropriate procedures and control systems regarding financial instruments custody pertaining to its clients. The DGE reviews the filed reports on a yearly basis.

As for EMIR Regulation, regulated entities are required to submit regular data reporting to the CNMV regarding their derivatives transactions. Article 9 of EMIR and related technical standards establish a reporting obligation under which counterparties shall ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported to a trade repository.

Reports must be made within one working day of the conclusion, modification or termination of the relevant contract.

-Reports must specify the parties and any beneficiaries / obligations and the main characteristics of the relevant contract (e.g. type, notional value, price and settlement date).

-The reporting obligation may be delegated.
-Records shall be kept for at least five years.
-Reporting shall not entail a breach of any restrictions on disclosure of information imposed by the relevant contract or by any applicable legislation/regulations.

d. the submission of reports from Regulated Entities based on any event or trigger.

Regulated entities must report to the CNMV, as soon as possible, all significant incidents that may occur. They must also report to the CNMV any suspicious orders or transactions which may involve a market manipulation as required by Article 16 of Market Abuse Regulation.

3. Please describe your jurisdiction's examination or inspection processes. In responding, please include:

a. a description of the examination cycle (e.g., routine periodic basis or risk-based). If the examination is periodic, please include the time frame;

The CNMV inspection process is both risk-based and on a routine periodic basis.

The DGE releases internally an annual Supervision Plan detailing the different supervisory activities to be performed during the financial year. Some of these activities (commonly, thematic reviews) may also be included (and made public, without identifying banks included in the review) in the CNMV's annual Activity Plan. The on-site inspection plan is not made public.

For details on the approval process of the Annual Supervision Plan, please refer to the CNMV Supervision and Inspection Internal Procedure:

https://www.cnmv.es/DocPortal/Quees/Procedimientos/P01-Supervision-e-inspeccion_en.pdf

In general, on-site inspections, as well as thematic reviews, will be risk-based; both based on systemic risks, types of services provided, types of products distributed, and etcetera – in the case of banks, only related to conduct of business rules. In addition, the time since the last on-site inspection will also be considered. Complaints filed by investors can also lead to inspections on the entities subject to the complaint, or on a wider set of entities, especially if the investigation refers to potential failures across the sector or to certain type of entities.

On the other hand, off-site inspections (desk-based reviews, etcetera) generally include periodical analyses performed on a quarterly or annual basis, mainly regarding data reported within the confidential statements – in the case of banks, only related to conduct of business rules. However, many ad-hoc supervisory activities that need to be performed after specific findings and failures observed in the routine reviews, are therefore risk-oriented.

All in all, the Supervision Plan is based on an analysis of the potential risks in the sector, coupled with routine and systematic analyses. Furthermore, unscheduled on-site inspections are carried out in those cases in which it is considered appropriate as a result of certain events occurring at the regulated entities, due to market circumstances or claims received from investors.

Working programs and schedules may be modified based on the weaknesses or strengths which the inspectors find during the field work.

Regarding derivative transactions, one of the objectives of EMIR is to reduce and identify systemic and counterparty risk, and help to prevent future financial system collapse by providing regulators with accurate information on risk from derivative positions by requiring all the derivatives to be reported to a TR. This objective is achieved when high quality data is reported by counterparties to the trade repositories.

In order to assess the data quality of the information reported, the DGM carries out different supervision activities:

- Routine periodic basis supervision: the DGM weekly/monthly monitors the number of rejected reports as % of all submitted reports and reconciliation statistics (non-paired outstanding trades and non-matched outstanding trades as % of outstanding trades) in order to contact counterparties if remedial actions are required. Additionally, the DGM also monitors other aspects related to data quality such as, missing data, collaterals or outliers.

- Annual and risk-based supervision: with the aim of improving the quality of data reported under EMIR, the CNMV, jointly with other EU authorities, established a Data Quality Action Plan (DQAP), that is carried out annually. The DAQP aims at improving quality and usability of data that is reported to the trade repositories through specific targeted objectives set for these authorities. It is a useful supervisory tool, which enables the authorities to compare the specific data quality indicators computed for their supervised entities with the ones of the counterparties based in other jurisdictions. Furthermore, it allows to identify cross-border issues.

The CNMV also carries out a number of supervisory activities related to compliance with central clearing obligations, the determination of the relevant activity thresholds above which entities participating in derivatives markets must be subject to central clearing obligations, the use of risk mitigation techniques and/or the exchange of collateral in uncleared contracts.

b. a description of the processes and factors considered when selecting Regulated Entities for examination (e.g. time since last examination, tip, complaint or referral, etc.);

Description of the process and main factors considered in the selection of the regulated entities for inspection has already been detailed above (please refer to answers to questions 2.a and 3.a).

c. a description of the processes, including factors considered, to determine the scope for examination or inspection and the process for amending the scope if warranted;

Description of the process and main factors considered to determine the scope for supervision activities has already been described above. Additionally, it is also relevant that thematic reviews and routine inspections have a determined and clear scope even prior to the launching of the activity, while other specific and ad hoc inspections will need to have a more adaptable scope, taking into account the risk involved, the issue that triggered the investigation and the entity's prior situation.

Amendments in these cases are much more common and vary alongside the findings which are revealed during the field work.

Nevertheless, if any circumstances lead to further requests of information on any related matter to the issue investigated, the scope would be extended accordingly. And in certain occasions, due to the planned schedule, a new supervisory activity would be launched separately to investigate the further findings encountered in order to conclude the first planned activity.

d. a description of the types of books and records typically reviewed during examinations;

Books and records reviewed will vary according to the type of inspection. Regarding conduct of business rules supervisory activities, the most relevant information requested to banks may include:

- Organizational chart
- Detailed structure of relevant areas involved in the provision of investment services to clients
- Annual (or Quarterly) Compliance Report
- Procedures related to appropriateness and suitability assessments: questionnaires, algorithms, etcetera
- Registers regarding appropriateness and suitability
- Investment services contracts in place to be signed by clients
- Procedures related to product governance: manufacturing and distribution of investment financial instruments, product categorization and cataloging
- Procedures related to the provision of portfolio management service / investment advice
- Procedures for conversations / electronic communications with clients recording and registering
- Procedures regarding commercial personnel: competences and variable remuneration
- If required for the type of analysis conducted: Internal documentation / documentation distributed to clients, order documents or forms, etc.
- Examples of files obtained, depending on the scope, may comprise, among others, the following:
    - Products and investment services (placement / reception / execution services / advice / portfolio management / custody – ISIN level), with detailed information on its' nature and characteristics, number and volume of buy and sell transactions, distribution channel, type of warnings issued to the client, position, etcetera
    - Complaints (ISIN level)
    - Inducements (ISIN level)

- Product campaign bonuses and variable remuneration file (ISIN level)
- Products affected by cross-selling practices (ISIN level)
- Products / Portfolios-Clients / Position per product, regarding portfolio management service
- Products / Recommendations / Clients regarding investment advice service
- Transactions during the period subject to investigation

Other documents, records and files may be requested regarding the specific topic that triggered an ad hoc inspection.

Regarding the supervision of derivative transactions, the DGM focuses on the files provided by different TRs. Information is also required to regulated entities to try to reconcile it with information obtained from the TRs.

e. whether you conduct interviews with employees of the Regulated Entities;

Apart from documentation and files requests, several meetings may be held with managers in charge of Compliance, the different investment services and business units, Human Resources, Information Technology, etcetera.

f. whether you test or verify responses given to you by the Regulated Entities;

As stated in answer to Q.1.f) the CNMV has several supervisory tools in order to test or verify information obtained from the regulated entities or responses to its requests of information. Integrity analyses are performed whenever data is reported or requested.

Additionally, firms' procedures and information are challenged against their IT system, third parties and clients.

g. how you communicate deficiencies or other areas of concern to Regulated Entities, whether such communications are public, and how such communications are documented;

Any deficiencies detected in on-site inspections or other desk based reviews conducted on banks, are communicated by means of written requests, either to cease, amend or introduce procedures to ensure a better compliance with the regulation.

Communications are not made public. As a general procedure, letter of findings (hereinafter LoF) addressed to banks are usually sent to the BdE so the prudential regulator is adequately informed, as part of the collaboration agreement between both supervisory authorities.

h. to whom you direct communications (e.g., compliance office, senior management); and

LoF are sent to the entities' Compliance Officer, who must inform the Board of Directors.

i. how Regulated Entities respond to identified issues.

Banks are required to give a formal response containing its observations, a formal compromise to comply and, additionally, confirmation, by means of a minute certificate, that the entity's Board of Directors or a Delegated Commission of the Board has been informed of the CNMV LoF and of the response given. Six months after the final communication the entity must provide a comprehensive Compliance Report regarding the previous compromises and their implementation.

4. Please describe the resources available for your supervisory efforts. In responding, please include:

a. the typical background and qualification of your supervisory staff;

CNMV staff involved in supervisory activities have an educational background diverse, with a predominance of studies related to Economics and Business Administration although there are complementary profiles of a more legal or more technical nature, such as engineers, physicists or mathematicians. Personnel possess a university bachelor degree, as it is a minimum mandatory prerequisite when participating in vacancy processes at the CNMV. A significant percentage also have master studies or more than one degree (commonly adding Law studies or scientific studies).

Additionally, before working for the CNMV, a large percentage of staff have a professional background related to securities and markets, either within banks or investment firms or auditing and law companies.

b. the use of experts, such as persons who can analyze models or perform data analytics;

The CNMV has experts in risk management and model validation who are qualified to analyze models or carry out quantitative or numerical work.

c. the use of analytical software and tools in conducting examinations and other supervisory work;

Analytical software and tools are used on a regular basis to perform supervisory activities regarding conduct of business rules of banks.

d. the use of SRO[3]s or exchanges to perform supervisory functions;

No SRO's are used for supervisory activities of banks.

e. training programs for supervisory staff; and

There is an Annual Training Plan, which covers topics, skills and areas of knowledge that need improvement. It is completed using the feedback provided by the different areas and units in the CNMV. Training events are tailored to the needs of specific units and can cover diverse topics.

[3] self-regulatory organizations do not exist in Spain

f. the resources/size of the supervisory group relative to the volume and complexity of Regulated Entities.

Total headcount at the CNMV is approximately 450 employees.

The Supervision department of IF & Banks has around 40 employees assigned to supervisory activities (desk-based and on-site inspections). The DGM has around 100 people engaged in different tasks related to the supervision of markets and market participants.

5. Please describe whether your jurisdiction has regulatory authority and related requirements or procedures to obtain the information necessary from Regulated Entities (or their offices or branches) to support your supervisory functions.

As per our previous answers, the CNMV is assigned with powers to obtain information, with no limitation, in order to comply with its supervisory and inspection functions (article 234 of the TRLMV). Additionally, under article 233.1.c)5º of the TRLMV, any person or entity may be subject to supervisory activities from the CNMV, regarding their activity in the securities markets.

This authority to obtain information from regulated entities supports adequate performance of its supervisory functions.

The internal procedure regarding information requests to regulated entities is published in the CNMV website:

https://www.cnmv.es/DocPortal/Quees/Procedimientos/P02-Formulacion-de-requerimientos_en.pdf

6. How do you communicate deficiencies or other areas of concern to Regulated Entities? For example, what remedies, or other corrective actions, are available to your supervisory program (e.g., deficiency letters, referrals to other regulators, enforcement actions, etc.)? Please include whether one type of action may be more prevalent than another and whether the actions are verbal or in writing. Please include recent statistics on how often each type of action is used.

Please refer to answer to Q.3.g),h) and i).

Depending on the severity of the misconduct detected, an enforcement procedure may be started and eventually it may result in a sanction. Sanctions are publicly announced in the State Official Bulletin (BOE) – please refer to Section II of this questionnaire for more details on the CNMV enforcement activities. Sanctions are also registered within the CNMV and can be accessed in its website:

English: CNMV - Public Registry of Disciplinary Penalties provided for in article 238.h) of the Securities Market Law

Spanish (**https://www.cnmv.es/Portal/Consultas/RegistroSanciones/IniRegSanciones.aspx)**

For example, in years 2016-2020, 29 on-site inspections have been performed on 21 banks (closing date in those 5 years). All of them required a LoF to be sent and 10 out of the 29 ended with a proposal to initiate a disciplinary procedure in order to sanction de entity.

7. Does your jurisdiction use risk monitoring and assessment or surveillance as part of your supervisory framework? If so, how do you use this information and what actions do you take if potential violations are identified?

As it has already been stated in the Introduction to Q.1 and in the answer to letter b) of Q.1 and letter a) of Q.2, the CNMV follows a risk approach strategy for its supervisory activities.

As previously stated, the monitoring of how banks / entities comply with the requirements under CNMV supervision is done, mainly, with the input of the different sources of information described in the previous points. Please refer to answer to question 2.a.

8. Please describe how your jurisdiction reviews and evaluates corrective action undertaken by Regulated Entities.

As previously described, after a conduct of business rules review is completed, banks must provide a compromise to implement the required modifications of its internal procedures in order to comply with the regulations. Generally, this commitment includes a certain detail of what will the entity achieve for each of the findings. Afterwards an ad hoc Compliance Report, is required in 6 months' time, in which the Compliance Officer describes how the firm has corrected the deviations observed in the inspection. These changes will be reviewed using any supervisory tool (routine desk-based activities or during the following routine on-site inspection). Finally, when a review is concluded, it also can be proposed a follow-up supervisory activity on a particular aspect of the shortcomings observed.

In other cases, for example, the review of corrective actions is performed on a case-by-case basis. Supervisory measures are usually combined with the obligation to submit regular progress reports by which the institution has to meet the supervisory requirements. In such cases, the CNMV reviews at the same time whether the practices that gave rise to the supervisory measures have been discontinued on the basis of the information available.

9. Please describe any regulatory consequences for non-compliance with corrective actions, including the form and frequency of referrals to enforcement or other judicial authorities.

In general, regulated entities address findings as explained in answer to Q.8. Nevertheless, in case corrective actions were not implemented by the firm, or the breaches observed were sufficiently relevant, an enforcement procedure may be started and eventually it may result in a sanction.

The CNMV's authority in terms of sanctions is recognized in Section VIII of the TRLMV and it is empowered to initiate and pursue disciplinary proceedings, within the framework of the principles and procedures that generally regulate Public Administrations' authority to impose penalties (Law 39/2015, of October 1, concerning the legal regime of Public Administrations). Chapter IV in Section VIII of the TRLMV sets forth the disciplinary regime and establishes different sanctions depending on whether the violations are very serious, serious or minor. If the violation relates to criminal offences, the procedure will then be reported to the Public Prosecutor. (See also answer to Q.6c. in Section II).

10. Please describe how your jurisdiction communicates with the industry and the public about best practices, common compliance issues or other areas of misconduct risk, including how Regulated Entities are informed about the consequences of misconduct or noncompliance.

CNMV uses various means and channels of communication with the industry and the public.

The Securities Market Law created the Consultative Committee whereby members of the securities market industry are represented. The CNMV Vice-Chair leads periodic meetings of the Consultative Committee as a way to inform the industry about relevant issues such as regulation, CNMV activities, enforcement and misconduct cases, etc.

The CNMV uses press releases, interviews, publications on its website (referred to as circulars, privileged and significant information, as well as many references to publications from ESMA, IOSCO, etc.).

Additionally, the CNMV through its Chair, Vice-Chair and high level representatives participate in round tables, workshops, meetings and conferences with associations and industry representatives, where if needed, relevant enforcement or misconduct cases, are discussed.

Usually, the CNMV website is used to communicate warnings and relevant information to the investors and the public in general.

Currently, the CNMV uses social networks to inform the investor about relevant matters, activities, and issues warnings to the investors and general public.

11. Please describe your jurisdiction's participation in international organizations of securities and other regulators, such as the IMF and IOSCO.

Spain´s three financial sector authorities, including: (1) the Central Bank of Spain, Banco de España; (2) the Insurance and Pension Funds General Directorate of the Ministry of Finance and Digitalization, Dirección General de Seguros y Fondos de Pensiones del Ministerio de Economía y Transformación Digital; and (3) the National Securities Markets Commission, Comisión Nacional del Mercado de Valores, participate in several International organizations, such as the IMF and IOSCO.

In addition, the aforementioned Spanish Authorities are the National Competent Authorities (NCAs) of the European Regulators of the Banking, Insurance and Pension Funds, and Securities Markets sectors, such as the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities Markets Authority (ESMA).

Moreover, the Spanish Authorities represent Spain worldwide, including at the International Organization of Securities Commissions (IOSCO), where the CNMV is a member of the Board and participates in all the standing committees and task forces. The IOSCO Headquarters is conveniently based in Madrid (Spain). Furthermore, the Bank of Spain is a member of the Basel Committee on Banking Supervision (BCBS), and currently holds the chairmanship. The Bank of Spain participates in most of the BCBS´ working groups. In addition, the Insurance and Pension Funds General Directorate of the Ministry of Finance and Digital Transformation is a member of the International Association of Insurance Supervisors (IAIS) and participates in most of its working groups.

Additionally, Spain is a member of the Financial Stability Board (FSB) and participates in the FSB´s working groups represented by the Secretary General of the Spanish Treasury and Financial Policy Ministry of Economy and Digitalization, the Governor of the Central Bank of Spain and the President of the CNMV. Spain also participates in the IMF (at worldwide level).

12. Please provide a copy of Principles 10 and 12 from your most recent self-assessment for the FSAP.

The most recent self-assessment of the CNMV for the IOSCO Principles 10 to 12 (as well as for the complete 38 IOSCO Principles) under the IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION, DETAILED ASSESSMENT, was made in October 2011 for the 2011/2012 Financial Sector Assessment Program (FSAP).

The summary of the grading presented that 36 Principles were Fully Implemented (FI) and 2 (Principles 9 and 38) were not applicable.

The publication of the IMF Country Report No. 12/143 on the IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION, DETAILED ASSESSMENT IMPLEMENTATION, in the IMF website, was made in June 2012.

Please note that the legal provisions cited in the below excerpt from the aforementioned self-assessment refer to the legislation in force at the time of the self-assessment. Since 2011, the Securities Market Law (SML) has been amended many times, even after 2015 when the SML was consolidated in the Royal Decree 4/2015, on 23 October. Since then, significant changes have been implemented, i.e. MIFID II, Market Abuse Regulation (MAR), strengthening the SML. The amendments in the SML do not affect the content of the self-assessment.

EXCERPT FROM THE 2011 CNMV SELF-ASSESSMENT ON THE IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION, DETAILED ASSESSMENT

QUOTED

Principle 10 The Regulator should have comprehensive inspection, investigation and surveillance powers.

Key Questions

1. Does the regulator have the power to inspect a regulated entity's business operations, including its books and records:

(a) Without giving prior notice?

Yes. Article 85 of the Securities Market Act (hereafter LMV) establishes that the CNMV holds all the powers of supervision and inspection necessary to perform its functions. These powers include the power to inspect the entity in person at any office or department (Article 85.2.c)). Furthermore, the aforementioned Article establishes that the inspection and investigation may be carried out, at the choice of the CNMV, in any department of the

inspected entity or person or their representative, or at the offices of the CNMV or other administrative body (Article 85.3).
Consequently, the aforementioned Article does not expressly mention the need (or not) to give prior notice to the inspected person or entity of the inspection that the CNMV intends to perform. Prior notice is not necessary given that the LMV grants the CNMV extensive powers of inspection and ample capacity to decide on the manner in which said actions will be carried out.
In practice, the CNMV has often performed inspection visits to supervised entities without giving prior notice, without this having caused any action by the inspected party against the CNMV's actions and without this method of proceeding, or the CNMV's right to act in this manner, having been questioned. In addition, it makes sense that the inspections may be carried out without prior notice when the circumstances so require in order to prevent the inspected party taking any type of measure aimed at hindering the CNMV's inspection.

(b) On-site?

Yes. See answer to 1.(a).

2. Does the regulator have the power to obtain books and records and request data or information from regulated entities without judicial action, even in the absence of suspected misconduct:

(a) In response to a particular inquiry?

Yes. Article 85 of the LMV establishes that the CNMV shall have all the powers of supervision and inspection necessary to perform its functions. These powers include the power to access any document in any format and to receive a copy of said document (Article 85.2.a); the power to require that any person sends information in the period reasonably set by the CNMV and, if necessary, to summon someone and take their statement (Article 85.2.b). Furthermore, Article 85.3 establishes that the natural and legal persons listed in Article 84 (all subject to the supervision, inspection and sanction regime) are required to make available to the CNMV any books, registers and documents, on whatever medium, that the CNMV considers necessary, including computer programs and magnetic, optical or any other files, including commercial telephone conversations which have been recorded with the prior consent of the client or investor.
The LMV grants the CNMV supervision and investigation powers without distinguishing whether said powers may or must be used in response to a specific investigation or in a routine manner and so the CNMV may, and indeed does, use its powers when it needs to use them in order to perform its functions, irrespective of whether it does this in specific or routine actions and whether or not there is suspected misconduct.
Article 85.1 establishes that the CNMV may exercise its functions directly, in collaboration with other authorities or by means of a request to the competent judicial authorities. However, the LMV only requires that this is done through judicial authorities in the case of a request for a seizure or freezing of assets; the other powers may be exercised directly. Only in the exceptional circumstances in which exercising the CNMV's powers involves infringing

an individual right (inviolability of the home or communications, access to private home, etc.) would the intervention of the judicial authorities be necessary.

(b) On a routine basis?

Yes. See answer to 2.(a).

3. Does the regulator have the power to conduct or supervise surveillance of trading activity on its authorized exchanges and regulated trading platforms?

Yes. Article 84 of the LMV defines the persons subject to the Act's supervision, inspection and sanction regime, which is carried out by the CNMV.
These persons include the governing councils of official secondary markets, the governing entities of multilateral trading facilities (MTF) and the companies which manage securities registration, clearing and settlement systems (and hence, the authorised securities markets and regulated trading systems), excluding the Bank of Spain (Article 84.1.a)).
This supervision, inspection and sanction regime also covers the Sociedad de Sistemas (Iberclear), central counterparties, the Sociedad de Bolsas and the companies which hold all the shares or a controlling interest, whether directly or indirectly, of the entities mentioned in the previous paragraph (Article 84.1.b)).
In practice, the CNMV has real-time access to the trading screen of the electronic market and carries out real-time monitoring of the market, as it has developed its own market monitoring system so as to detect possible irregularities or abnormal developments in trading in real-time.

4. Does the regulatory system have record-keeping and record retention requirements for regulated entities?

Yes. The record-keeping requirements of the entities supervised by the CNMV are as follows:

a) Organised markets:

The governing councils and, as appropriate, the Sociedad de Bolsas, in accordance with the provisions of the Ministerial Order of 5 December 1999, on Special Stock Market Transactions and Circular 3/1991, of 18 December, which implements the aforementioned ministerial order, must keep a register of special transactions. All these data and records must be kept for a period of six years, which is the timeline generally set by Spanish legislation for traders to keep records and books (Article 30 of the Code of Commerce).

b) Investment firms:

Article 32 of Law 217/2008, of 15 February, on the Legal Regime of Investment Firms and Other Entities which Provide Investment Services, regulates the holding of the monetary registers which investment firms must keep by law. This Article establishes that the entities which provide investment services must keep for at least five years the data included in all the registers required by Titles V and VII, Chapter I of Law 24/1988, of 28 July, and by this royal decree. Without prejudice to the above, the contract register indicated in Article 79(3) of the aforementioned Law must be held during the life of the relationship with the client.
When the investment firm's authorisation is revoked before the end of the five-year period, the CNMV may require that the entity keeps the data until said period has terminated.

At any event, where necessary for performing its supervision functions, the CNMV may under exceptional circumstances require that all or some of the registers indicated in the above paragraph are kept for a period as long as justified by the nature of the instrument or transaction

c) Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores.

This company keeps the accounting register corresponding to securities represented by book entries, those admitted to trading on Stock Markets or in the Book-Entry Public Debt Market, as well as securities admitted to trading on other secondary markets, when requested by the governing bodies. This register, as well as any other books, supporting evidence and documents must be kept for 6 years in accordance with Article 30 of the Code of Commerce.

5. Are regulated entities required:

(a) To maintain records concerning client identity?

Law 10/2010, of 28 April, on the Prevention of Money-Laundering and Terrorist Financing, is applicable to the entities under the supervision of the CNMV.
Consequently, these entities must comply with the client identity requirements imposed by Articles 3 and 4 of the aforementioned Law.

(b) To maintain records that permit tracing of funds and securities in and out of brokerage and bank accounts related to securities transactions?

Yes. Article 33 of Royal Decree 217/2008, of 15 February, on the Legal Regime of Investment Firms and Other Entities which Provide Investment Services, regulates the mandatory records of orders and transactions which must be kept by investment firms. In accordance with said Article, the data to be included in the client order registers are established in Commission Regulation 1287/2006, of 10 August 2006, implementing Directive 2004/39/EC, of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive.
Consequently, the information which appears in the registers of orders and transactions of investment firms together with the transaction registers held by the Governing Councils of the markets and the registers of the clearing and settlement systems make it possible to carry out a thorough monitoring of the securities registered in the clients' accounts and related to stock market transactions.
The Bank of Spain is competent with regard to the bank registers which make it possible to monitor the movements of funds in clients' cash accounts in said entities.

6. Does the regulator have the authority to determine or have access to the identity of all clients of regulated entities?

Yes. As indicated above, Article 85 of the LMV enables the CNMV to require any entity or person to provide any information or document which the CNMV considers necessary. This includes the identification details of the clients of the entities under its supervision.

7. Where a regulator out-sources or otherwise grants inspection or other regulatory enforcement authority to a third party, including a SRO:

(a) Does the regulator supervise the outsourced functions of the third party?

Not applicable.
The supervision, inspection and sanction functions are granted by law to the CNMV, which may not delegate them to an SRO or any other third party. It is true that the Governing Councils of organised markets or the MTF and the Sociedad de Sistemas have been entrusted with supervision functions, but this does not involve a delegation of the CNMV's functions, but a requirement to those entities so that they ensure the good functioning of their businesses and support the CNMV in its supervision tasks. However, inspection and sanction functions are only granted to the CNMV.

(b) Does the regulator have full access to information maintained or obtained by the third party?

Not applicable. See answer to 7.(a).

(c) Can the regulator cause changes/improvements to be made in the third parties´ processes?

Not applicable. See answer to 7.(a).

(d) (d) Is the third party subject to disclosure and confidentiality requirements that are no less stringent than those applicable to the regulator?

Not applicable. See answer to 7.(a).

Principle 11 The Regulator should have comprehensive enforcement powers.

Key Questions

1. Does the regulator or other competent authority within the jurisdiction have the investigative and enforcement power to enforce compliance with the laws and regulations relating to securities activities?

Yes. As indicated in the previous principle, Article 85 of the Securities Market Act (hereafter LMV) grants the CNMV the powers to supervise, inspect and sanction securities markets and those natural or legal persons whom operate on said markets, as detailed in the following questions.

2. Does the regulator or other competent authority within the jurisdiction have the following powers:

(a) Power to seek court or judicial orders, to refer matters for civil proceedings or to take other action to ensure compliance with regulatory, administrative, and investigative powers?

Yes. The CNMV has ample powers to ensure compliance with legislation relating to securities markets, as indicated in the principles relating to the regulator.
Specifically, the CNMV has the power to require modification of the information and documents which must be included in its public registries if these do not meet all the legal requirements (prospectuses, audits, periodic public disclosures, communications of significant shareholdings, etc.).
With regard to issues and public share offerings, the CNMV may refuse the registration of the documentation when it notices that the issue agreements contain very serious breaches of the law which may endanger the interests of investors or involve discrimination between certain investors. Similarly, the CNMV may include warnings and observations in the prospectuses which facilitate their analysis and understanding. The CNMV has the power to suspend or even exclude from trading those securities subject to the circumstances provided by law (Articles 33 and 34 of the LMV).

The CNMV has the power to take preventative measures with regard to the entities under its supervision when required by the conditions in which they operate (securities markets, investment firms, collective investment schemes and management companies of collective investment schemes, etc.). These measures include intervention in the liquidation of these companies and any of their activities.
The CNMV may also impose coercive fines to require entities to cease using reserved names or to stop the activities of those entities or persons which provide investment services without proper authorisation or those which have been required to stop operating. The CNMV may also make public warnings with regard to these conducts.
The CNMV may agree on the total or partial suspension of the effects of the authorisation granted to an investment company in the circumstances laid down in Article 75 of the LMV.
Article 85.5 of the LMV empowers the CNMV to require any person or entity subject to its supervision, inspection and sanction regime to make public the information which the CNMV considers pertinent about its activities relating to the securities market or which may have an influence on said market. The CNMV may disclose this information itself if the requested parties do not do so.

Furthermore, Article 89 of the LMV empowers the CNMV to order the issuers of securities and any other entity related with the securities market to inform the public of significant events or information which may affect trading of the securities and may disclose information itself if the requested parties fail to do so.

Furthermore, the supervision, inspection and sanction powers granted to the CNMV in Article 85.2 include:

1) requiring cessation of all practices which do not comply with the provisions established in this Act and its implementing rules;
2) requesting the seizure or freezing of assets;
3) demanding a temporary ban from professional activity;
4) collecting from the auditors of investment firms and the entities included in Article 84.1.a) and b) any information which they have obtained in performing their functions;
5) adopting any type of measure to ensure that the persons and entities subject to supervision comply with applicable rules and provisions, or with the requirements issued for rectification or correction, with the ability to require from said persons and entities for this purpose that they provide reports from independent experts, auditors or their internal control or compliance bodies;
6) agreeing the suspension or limitation of the type or volume of transactions or activities which the natural or legal persons may carry out in securities markets;
7) agreeing the suspension or exclusion from trading of the financial instrument, whether on an official secondary market or a multilateral trading facility;
8) referring matters for criminal proceedings;
9) authorising auditors or experts to carry out verifications or investigations in accordance with the provisions of letter c) of point 4 of Article 91;
10) in verifying the periodic information referred to in Article 35.4 of this Act, the CNMV may:
a) Collect from account auditors of issuers whose securities are admitted to trading on an official secondary market or another regulated market domiciled in the European Union, by means of a written requirement, any information or documents which are necessary in accordance with Law 19/1988, of 11 July, on Account Auditing.
The disclosure by the account auditors of the information required by the CNMV in accordance with the provisions of this Article will not constitute a breach of the duty of secrecy.
b) Require from the issuers of securities admitted to trading on an official secondary market or another regulated market domiciled in European Union the disclosure of additional information, reconciliations, corrections or, as the case may be, reformulations of periodic information.
The measures referred to 1), 3), 5), 6) and 7) may be adopted as a preventive measure during disciplinary proceedings or a measure applied outside the CNMV's sanctioning power providing it is necessary for effective investor protection or correct functioning of the markets and that it will be maintained while the cause leading to it remains.
The CNMV may publish any measure adopted as a consequence of a failure of compliance with applicable rules unless its disclosure may place securities markets at serious risk or cause disproportionate damages to the affected persons.
As the LMV Act is an administrative and public order act, failure to comply with it will be resolved through the administrative route and not the civil route. Consequently, the CNMV may not initiate civil proceedings so as to ensure compliance with securities legislation.

(b) Power to impose effective, proportionate and dissuasive administrative sanctions?

Yes. As indicated above, the LMV is an administrative law and consequently failure to comply with it will lead to administrative liability, which may be sanctioned in accordance with Chapter II of Title VIII of the aforementioned Act.

Article 97 of the LMV establishes that the authority to bring and investigate disciplinary proceedings relating to securities markets corresponds to the CNMV. The imposition of sanctions for minor and serious breaches will also correspond to the CNMV, while the imposition of sanctions for very serious breaches will correspond to the Ministry of Economy, following a proposal from the CNMV, except the revocation of authorisation, which will be imposed by the Council of Ministers.

(c) Power to initiate criminal proceedings or to refer matters for criminal prosecution?

Yes. In general terms, Article 262 of the Criminal Justice Act and Article 408 of the Criminal Code require that citizens, and therefore any public official, inform the Public Prosecutor's Office of events which might constitute an offence. Otherwise, said persons may themselves incur in an offence.
More specifically, Article 88 of the LMV requires the CNMV to provide any collaboration required by the Judicial Authorities or by the Public Prosecutor's Office in order to clarify events relating to the securities market which may be criminal.
Article 85.l) grants the CNMV the power to refer matters for criminal prosecution.
In summary, when the CNMV detects that a criminal offence may have been committed during its actions, it is obliged to refer all the information in its power regarding the detected case to the Public Prosecutor's Office and to provide any collaboration requested of it.
However, the exercising of the sanctioning powers referred to in the LMV be independent of the concurrence of criminal offences. Nevertheless, Article 96 of the LMV establishes that when there is concurrence between administrative proceedings and criminal proceedings with regard to the same events or to others which cannot reasonably be separated from those which may be sanctioned in accordance with this Act, the proceedings shall be suspended with regard to the events until a firm ruling is passed by the judicial authorities. When the proceedings are resumed, as the case may be, the ruling passed must respect the appreciation of the events contained in the judicial ruling.

(d) Power to order the suspension of trading in securities or to take other appropriate actions?

Yes. Articles 33 of the LMV empowers the CNMV to suspend the trading of a security upon the existence of special circumstances which may distort the normal performance of transactions on the securities or when said measure is recommendable in order to protect investors. The suspension may be agreed de officio, at the request of the issuer or the governing body of the corresponding market (see Article 12 of Royal Decree 726/1989, of 23 June, on Governing Councils and Members of Stock Markets, Sociedad De Bolsas and Collective Guarantee).

Similarly, Article 85.k) of the LMV grants the CNMV the power to agree the suspension or exclusion from trading of the financial instrument, whether on an official secondary market or on a multilateral trading facility.

Article 34 of the LMV also empowers the CNMV to exclude a security from trading when it does not meet trading and disclosure conditions.

3. Does the regulator or other competent authority have the investigative and enforcement power to require and to obtain from any person, including third party entities and individuals (whether regulated or unregulated), that are either involved in relevant conduct or who may have information relevant to a regulatory or enforcement inquiry/investigation:

(a) Contemporaneous records sufficient to reconstruct all securities and derivatives transactions, including records of all funds and assets transferred into and out of bank and brokerage accounts relating to those transactions?

Yes. Article 85 of the LMV grants the CNMV the power to require any information or document from any person, including third party entities and individuals, whether regulated or not. Therefore, the CNMV is empowered to require the specific information referred to in this question.

(b) Records for securities and derivatives transactions that identify:

(i) The client:

(1) Name of the account holder?

Yes. Granted by Article 85 of the LMV. See answer to 3.(a).

(2) Person authorized to transact business?

Yes. Granted by Article 85 of the LMV. See answer to 3.(a).

(ii) The amount purchased or sold?

Yes. Granted by Article 85 of the LMV. See answer to 3.(a).

(iii) The time of the transaction?

Yes. Granted by Article 85 of the LMV. See answer to 3.(a).

(iv) The price of the transaction?

Yes. Granted by Article 85 of the LMV. See answer to 3.(a).

(v) The individual and the bank or broker and brokerage house that handled the transaction?

Yes. Granted by Article 85 of the LMV. See answer to 3.(a).

(c) Information located in its jurisdiction identifying persons who beneficially own or control non-natural persons organized in its jurisdiction?

The CNMV may access to this information either through the data which appears in the Companies Registry or the data which appears in its own registries of significant shareholdings of listed companies or authorised entities. In any case, the CNMV can use the powers granted under Article 85.2 of requiring information from any person to require information from the legal person itself.

(d) Statements or testimony?

As indicated above, Article 85.2.b) enables the CNMV to summon and take a statement from any person in order to obtain information.

(e) Any other information including documents and bank records?

As indicated above, Article 85.2 letters a) and b) empower the CNMV to access any document in any form and to require information from any person. Based on these powers, it may request any information which is relevant for performing its functions, including documents and bank records.

4. Can private persons seek their own remedies for misconduct relating to the securities laws?

Yes. Article 24 of the Spanish Constitution establishes that all persons have the right to obtain effective support from judges and courts in exercising their legitimate rights and interests and there may not be a lack of proper defence under any circumstances.

5. Where an authority other than the regulator must take enforcement or other corrective action, can the regulator share information obtained through its regulatory or investigation activities with that authority?

Yes. Article 88 of the LMV establishes that in all cases where there is an overlap of supervision and inspection authority between the CNMV and the Bank of Spain, the two institutions will coordinate their actions under the principle that the protection of the functioning of securities markets, including the issues of internal organization indicated in point 1 of the aforementioned Article 70 *ter*, correspond to the CNMV, and the protection of solvency, as well as other internal organisation issues, lies with the institution which keeps the corresponding registry. In order to coordinate the respective supervision and inspection authority, the CNMV and the Bank of Spain must sign agreements in which they specify the corresponding authority.

Article 90 of the LMV establishes that the confidential information or data which the CNMV or other competent bodies have received on performing their functions will be subject to professional secrecy. However, this duty of secrecy is not applicable to the information which the CNMV has to facilitate to other institutions in order to guarantee the normal functioning of financial markets or the clearing and settlement systems, in order to prevent money-laundering, so that said institutions may perform their functions, or for prudential supervision or sanction of the entities or persons subject to the LMV when the imposition of the sanction corresponds to the Ministry of Economy or the Autonomous Regions with authority in this matter. These institutions include the Autonomous Regions with authority over Stock Markets, the Bank of Spain, the Directorate-General of Insurance, the Governing Councils of markets, the investor guarantee funds, administrators or receivers of investment firms, SEPBLAC (Prevention of Money-Laundering and Terrorism Financing Commission), the Tax Agency (in exceptional circumstances and with prior authorisation from the Ministry of Economy).

6. Where the regulator is unable to obtain information in its jurisdiction necessary to an investigation is there another authority that can obtain the information?

Yes. As is logical, all the points mentioned in the above question are reciprocal and, therefore, the CNMV can obtain from said institutions any information which it requires in order to perform its functions.

7. If yes: Are there respective arrangements between the regulator and the other domestic authority as regards the respective exchange of information in place?

The CNMV has signed cooperation agreements with other bodies with which there is greater need to coordinate actions, such as the Bank of Spain, the Directorate General of Insurance and SEPBLAC. Furthermore, it has also signed agreements with those other institutions which keep registries with information which may be important for the CNMV, such as the Companies Registry, Property Registry and the General Council of Notaries.

Principle. 12 The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.

Key Questions

Detecting Breaches

1. Is there an effective system of inspection in place whereby the regulator carries out inspections:

(a) On a routine periodic basis?

Yes. The CNMV has established both a distance inspection system, through analyzing periodic disclosures (public and reserved) which the entities subject to supervision must file with the CNMV, as well as an in situ supervision system for said entities. Every year, the CNMV approves an in situ supervision plan mainly based on the information available on each one of the entities under the CNMV's supervision (systemic and financial risk, complaints received, etc.) and the time that has passed since the last visit. This plan is based on an analysis of the potential risks in the sector. Furthermore, unscheduled inspection visits are carried out in those cases in which it is considered appropriate as a result of the events that have taken place in the entities, market circumstances or claims received from investors.

The visit schedule includes, inter alia, verification of the entity's financial and asset position, compliance with mandatory ratios (investment and liquidity) and compliance with both the rules of conduct which are legally mandatory and those established by the entity in its internal regulation. As is logical, the work schedule may be modified based on the weaknesses or strengths which the inspectors find during the inspection. The complaints filed by investors also lead to inspections on the entities subject to the complaint, or on a wider set of entities, especially if investigation refers to potentially fraudulent practices.

(c) Based upon a risk assessment?

Yes. See answer to 1.(a).

(d) On a non-periodic basis in response to intelligence received (e.g. investor complaints and tips and complaints from other sources)?

Yes. See answer to 1.(a).

2. Is there an automated system which identifies unusual transactions on authorized exchanges and regulated trading systems?

Yes. The CNMV has developed a real-time surveillance system for trading on regulated markets which detects unusual price changes or trading volumes in the instruments admitted to trading on said markets.

3. Can the regulator demonstrate adequate mechanisms and procedures to detect and investigate:

(a) Market and/or price manipulation?

Yes. Both the alarms generated by the system described in the previous question, and the communication of significant events made by the issuers or a daily review of the news which appears in the media or other information received, make it possible firstly to detect situations which might potentially constitute market manipulation, use of inside information or disclosure of false or misleading information. In these cases, the information is passed on to the Market Monitoring Unit (which is part of the Directorate-General of Markets), which

is the Unit specialised in investigating these cases and which has adequate technical and human resources to carry out these investigations.

(b) Insider trading?

Yes. See the answer to 3.(a).

(c) Misrepresentations of material information or other fraudulent or manipulative practices relating to securities and derivatives?

Yes. See the answer to 3.(a).

(d) Failure of compliance with other regulatory requirements, for example: conduct of business, capital adequacy, disclosure or segregation of client assets?

Yes. Detection and early investigation of failures of compliance with the legal requirements are under the responsibility of the supervisory Departments, which carry out a thorough analysis of the information that the supervised entities must periodically (monthly or quarterly) send to the CNMV. An important part of the information analysed in order to detect failures of compliance is included in the nonpublic forms that investment firms, Collective Investment Schemes (CIS) and CIS' management must file with the CNMV, but the Departments also rely on other sources of information (specific CNMV requirements to the firms, on-site supervision, investor's complaints, tips, etc.). In some cases, in particular regarding prudential requirements, the periodic information provided by the supervised entities makes it possible for the supervisory departments to design programmes that easily detect failures of compliance (e.g. capital ratios or unusual situations which may suggest that there is a problem within an entity).

4. Does the regulator have an adequate system to receive and respond to the intelligence that it receives?

Yes. The CNMV manages a Claims Service which is responsible for processing the complaints and claims from investors relating to the services provided by the entities subject to the CNMV's supervision or any other event which may take place with regard to their participation in securities markets.
The Claims Service carries out a preliminary analysis of the claim received and on the actions to be carried out. If the claim reveals an event which should be known or considered by one of the operational Departments, the Claims Service refers the matter to the corresponding Department, which will decide whether it is necessary or appropriate to take additional measures, including carrying out an inspection of the entity against which the claim is being made or the entity which may be involved in some way in the events which led to the claim or complaint by the investor.
At any event, the Claims Service is responsible for responding to the claimant and making available or informing her of the information which it considers appropriate in order to resolve the claim or complaint that has been made.

The CNMV also actively participates in sharing intelligence information on unauthorized firms both within Europe (through ESMA) and through IOSCO.

Compliance System

5. Does the regulator require regulated entities to have in place supervisory and compliance procedures reasonably designed to prevent securities laws violations?

Yes. In accordance with Spanish securities market legislation (Securities Market Act; hereafter LMV), all entities which need the authorisation and registration with the CNMV in order to carry on their activities (stock markets or other trading systems and their governing councils, securities clearing and settlement systems, investment firms and collective investment schemes) must include in their application to be included in the CNMV's registries a programme of activities which they aim to carry on, or an operational regulation, and the resources which they have in order to provide the services. This operational regulation or programme of activities, as well as any modification which they intend to carry out, must be previously approved or informed by the CNMV.

For an entity subject to the CNMV's supervision to obtain the pertinent authorization to operate, it must show in its application that, inter alia, it has a good administrative and accounting organisation, as well as adequate human and technical resources with regard to its programme of activities; and that it has an internal conduct regulation, which is in line with the law, as well as IT control and security mechanisms and adequate internal control procedures.

Effective functioning of these control systems is verified both in the distance supervision carried out on these entities, and in the inspection visits.

The failure to have these control systems or inadequate functioning of said systems may lead to the imposition of the sanctions provided in the LMV, including revocation of the authorisation.

An example of this is that the entities which provide investment services are required to establish in their internal conduct regulation separate areas between different departments so as to prevent the flow of inside information. Furthermore, the internal conduct regulations of issuers must include that when issuers prepare an operation which involves inside information, they must draw up a list of people who access said information, indicating the date of access. These people must be warned that they are dealing with inside information and reminded of the legal principles which must be respected with regard to said information.

6. Does the regulator monitor how compliance procedures are executed and communicated to employees of such entities?

Yes. As indicated above, these points are verified during the inspection visits which the CNMV makes to supervised entities.

7. Can the regulator take measures against or discipline or sanction regulated entities for failure to supervise reasonably subordinate personnel whose activities violate the securities laws?

Yes. In accordance with the Spanish legal system, companies are vicariously liable for the damage caused by the actions of their employees. Consequently, if an entity subject to prudential supervision by the CNMV does not adequately control the actions of its employees which may breach securities laws, said entity may be sanctioned for deficiencies in its internal control system in accordance with letter e (2) of Article 99 for very serious breaches or with letter c (2) of Article 100 for serious breaches.

8. Does the regulator require market surveillance mechanisms that permit an audit of the execution and trading of all transactions on authorized exchanges and regulated trading systems?

Yes, as indicated above, stock markets and other authorized trading systems have certain functions for supervising markets and investment firms and management companies and depositories of collective investment schemes are required to keep registers of orders and of the executions of said order.
These registers make it possible to audit the execution and trading of all transactions on securities markets.
In addition, the CNMV's real-time surveillance systems also allow it to audit the transactions performed in the markets.

Effectiveness

9. Based on articulated criteria, does the regulator or other competent authority have an effective enforcement program in place in order to enforce securities laws?

Yes. The CNMV is the authority responsible for supervising and inspecting securities markets and the activity of those natural or legal persons that operate therein. It is also responsible for ensuring transparency in securities markets, correct price information and investor protection. As has been indicated throughout the previous questions, the CNMV has established supervision and inspection programmes aimed at verifying, detecting, preventing and sanctioning the misconduct of participants in the market, as well as a plan of activities which is prepared annually and which defines the CNMV's priority areas of action for the following year

We refer to the previous answers to explain the CNMV's actions in each one of its areas of authority.

Section II - Enforcement Framework

1. Please describe your jurisdiction's ability to investigate and bring administrative or judicial actions against domestic and foreign parties to enforce your regulatory framework. In responding, please address:

a. your jurisdiction's authority (statutory, regulatory or otherwise) to take enforcement action both domestically and in connection with cross-border activity, describing both judicial and non-judicial forms of action where applicable; and

According to article 233 TRLMV[4], members of official secondary markets, members of the clearing and settlement systems and any other person carrying out transactions subject to EMIR are subject to the rules of supervision, inspection and sanction contained in the TRLMV, CNMV is the competent authority for the purposes of applying these rules set in LMV, which include *inter alia* the provisions established in EMIR[5] and MAR[6].

Natural and legal persons to which TRLMV applies and those persons holding directorships or executive positions in such legal persons that breach the regulations of TRLMV shall be held liable under administrative law and may be sanctioned pursuant to TRLMV.

It is also possible for the CNMV to refer matters for criminal prosecution (art 234 TRLMV). Administrative sanctions referred to in TRLMV shall be independent of any possible concurring liability for criminal offences. When criminal proceedings are underway for the same events or for other events which cannot rationally be separated from the events sanctionable by CNMV, the proceedings relating to such events shall be suspended pending the court's ruling. If the proceedings are resumed later, any resolution must respect the court's findings.

CNMV is vested with the power to commence and investigate disciplinary proceedings as well as the power of imposition of sanctions for very serious, serious and minor infringements. When the entity in breach is a credit institution, a report from Banco de España is a pre-requisite for imposing sanctions for serious or very serious infringements. Resolutions imposing sanctions are enforceable once administrative appeals are decided.

TRLMV sets a wide range of range of infringements, including the infringements of the obligations established in EMIR and MAR.

Apart from administrative sanctions, the inspection powers of CNMV include also the ability to adopt other provisional measures in the course of disciplinary proceedings, in order to ensure the enforceability of the administrative resolution that may be issued, or just as a supervisory measure to protect investors or the proper functioning of the securities market (art 234 TRLMV). Those measures include the ability to request the attachment or freezing of assets, to ban the practice of a professional activity, to suspend or limit the type or volume of transactions or activities carried out in

[4] Royal Legislative Decree 4/2015, of October 23, approving the recast version of the Securities Market Act.
[5] Regulation (EU) No 648/2012 of the European Parliament and of the Council of July 4, 2012 on OTC derivatives, central counterparties and trade repositories.
[6] Regulation (EU) No 596/2014 of the European Parliament and of the Council of April 16, 2014 on market abuse (market abuse regulation).

the securities market, to publish notices, to request any person to take measures to reduce the size of a position or exposure or to request a natural person to be separated from the management body of the investment firm, bank or market operator.

All rules of supervision inspection and sanction might be applied by CNMV directly or in collaboration with other authorities, national or foreign (art 234.1.b) TRLMV).

b. the impact of any privacy laws or other related provisions that may impede your ability to conduct thorough investigations.

Access, processing and transfer of personal data collected by the CNMV in the exercise of its functions of inspection and supervision is covered by the regulations on the protection of personal data, when carried out to meet the public interest and in the exercise of public powers conferred by the law (arti 234.12 TRLMV).

The rights of interested parties regulated in the personal data protection regulations shall be limited, in accordance with the provisions of the aforementioned regulations, for as long as the CNMV deems it necessary to safeguard the purpose of its inspection and supervisory actions (234.12 TRLMV).

With respect to disciplinary proceedings, CNMV has an official register, which is open to the public, of the sanctions passed in the previous five years on natural and legal persons for serious and very serious infringements (art 238 h TRLMV). Exceptionally, when the CNMV considers that the publication of the identity of the sanctioned natural or legal person is disproportionate, it may not publish the sanction in any way, delay the publication or publish the sanction in an anonymous form (art 313 ter TRLMV).

CNMV may also make public the resolutions to initiate disciplinary proceedings once they have been notified to the interested parties after resolving, as the case may be, the confidential aspects of their content and after disassociating the personal data, except with regard to the names of the offender. Publication shall be decided on the basis of a sufficiently reasoned weighting between the public interest, taking into account its overall favorable effects on the improved transparency and functioning of securities markets and the protection of investors, and the harm it causes to offenders (art 313 quinquies TRLMV).

2. Please describe the tools your jurisdiction can utilize to conduct investigations, including the ability to obtain detailed records to reconstruct transactions and identify parties to a transaction. For example, please address the ability to:

Article 234 TRLMV establishes that the CNMV holds all the powers of supervision and inspection necessary to perform its functions with respect to the natural and legal persons subject to the supervision, inspection and sanction regime. These powers include the power to inspect the entity in person at any office or department (Article 234.2.c). Furthermore, the aforementioned article establishes that the inspection and investigation may be carried out, at the choice of the CNMV, in any department of the inspected entity or person or their representative, or at the offices of CNMV or other administrative body (article 234.4 TRLMV). It does not expressly mention the need to give prior notice to the inspected person or entity of the inspection that the CNMV intends to perform. Prior notice is not necessary given that the TRLMV grants the CNMV extensive powers of inspection

and ample capacity to decide on the manner in which said actions will be carried out. In practice, CNMV has often performed inspection visits to supervised entities without giving prior notice, without this having caused any action by the inspected party against the CNMV's actions and without this method of proceeding, or the CNMV's right to act in this manner, having been questioned. In addition, it makes sense that the inspections may be carried out without prior notice when the circumstances so require in order to prevent the inspected party taking any type of measure aimed at hindering the CNMV's inspection.

Additionally, these powers include the power to access any document in any format and to receive a copy of it (article 234.2.a TRLMV), as well as the power to require that any person sends information in the period reasonably set by CNMV.

TRLMV grants the CNMV supervision and investigation powers without distinguishing whether said powers may or must be used in response to a specific investigation or in a routine manner and so the CNMV may, and indeed does, use its powers when it needs to use them in order to perform its functions, irrespective of whether it does this in specific or routine actions and whether or not there is suspected misconduct.

Article 234.1 TRLMV also establishes that the CNMV may exercise its functions directly, in collaboration with other authorities or by means of a request to the competent judicial authorities. However, TRLMV only requires that this is done through judicial authorities in the case of a request for a seizure or freezing of assets (e.g., article 193.6 TRLMV); the other powers may be exercised directly. Only in the exceptional circumstances in which exercising the CNMV's powers involves infringing an individual right (inviolability of the home or communications, access to private home, etc.) would the intervention of the judicial authorities be necessary.

CNMV may sanction parties who do not comply with such requests, as well as those requests referred to below in this question.

a. obtain electronic communication and other records from internet service providers or other third-parties;

The CNMV may request that persons subject to its supervisión make telephone records and internet records available. CNMV may also collect from operators providing electronic communications services the data in their possession related to market participants, although in this case, the CNMV must request the appropriate court authorization. The judicial authority shall resolve the petition within a maximum period of forty-eight hours. It is usually requested to the Court not to notify the proceeding to the investigated person in order to avoid jeopardizing the proceedings. Judicial authorisations normally agree to that petition.

b. compel statements and information from witnesses; and

TRLMV grants CNMV the ability to summon someone, if necessary, and take their statement (Article 234.2.b).

c. receive tips, complaints and referrals from corporate insiders (such as whistleblowers) and the public.

(We hereby answer as well Question 2b, section 1).

CNMV has an Investors' Department which deals with the queries and complaints of the users of financial services (art 239 TRLMV). Every year a report on their performance is published[7]. The complaints filed by investors might also lead to inspections of the entities subject to the complaint, or on a wider set of entities, especially if investigation refers to potentially fraudulent practices.

The law[8] also establishes the requirement for financial institutions to address and resolve complaints which their clients may present relating to their interests and rights. For this purpose, credit institutions and investment firms must have a customer service department. Furthermore, they can designate a client ombudsman who will address and resolve the types of complaints determined in each case by its operational regulation and which must be an independent entity or expert. Investment firms must inform the CNMV of the details of the head of the customer service department, as well as their postal and e-mail address. This data will be available to the public on the CNMV's website

Articles 276 bis, 276 ter, 276 quater and 276 quinquies establish a whistleblowing mechanism that enables insiders and the public to report an infringement of TRLMV or other major pieces of European legislation. Anonymity is guaranteed for whistleblowers, as well as some protection at employment and contractual level.

3. Please describe the investigative capacities your jurisdiction has under relevant law, including methods and technology used for market surveillance. Please also describe the role of experts, self-regulatory organizations and exchanges in assisting or performing enforcement functions.

CNMV has real-time access to the trading screen of the electronic markets and carries out real-time monitoring of them, as it has developed its own market monitoring system so as to detect possible irregularities or abnormal developments in trading in real-time.

Additionally, article 26 of MIFIR[9] establishes transaction reporting requirements for financial entities that perform transactions with financial instruments. Under MIFIR, reportable transactions are those executed:

a) on financial instruments which are admitted to trading, are traded on a trading venue or whose admission to it has been requested,
b) financial instruments whose underlying instrument is a financial instrument, or a basket or index composed of financial instruments, traded on a trading venue.

The reporting requirement shall apply to transactions in financial instruments referred to in points (a) and (b) irrespective of whether or not such transactions are carried out on the trading venue. We

[7] CNMV - Report on Complaints and Enquires received by the CNMV
[8] Law 44/2002, of November 22, 2002, on financial system reform measures.(Ley 44/2002, de 22 de noviembre, de medidas de reforma del sistema financiero)
[9] Regulation (EU) 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.

would also like to clarify that trading venue means a regulated market, an MTF (multilateral trading facility) or an OTF (organised trading facility), all of them authorised in accordance with MIFID2[10].

For CNMV, this transaction reporting constitutes a common tool with which to monitor the activities of investment firms, thus helping to promote the integrity of the market.

This entire system rests on another reporting obligation relating to data on instruments carried out by Spanish markets in order to consolidate, on a daily basis, the European instrument database published by ESMA – FIRDS, the Financial Instrument Reference Data System. The CNMV ensures that the instrument reference data (FIRDS) and the data required for transparency calculations (FITRS) are correctly submitted to ESMA on a daily basis.

Market surveillance also relies on suspicious transaction and order reports, which constitutes another basic supervisory instrument for the CNMV, established in article 16 of MAR. In this regard, financial entities and trading venues have a significant role, as they provide data and information about issues which come to their attention.

Finally, we should mention the obligation established in article 19.1 of MAR, requiring persons discharging managerial responsibilities within an issuer and those closely associated with them to report to CNMV, among others, any transactions carried out on their own account relating to securities of that issuer or financial instruments linked to securities of that issuer.

4. Please describe the legal proceedings, remedies, and sanctions available in your jurisdiction to support your enforcement mechanism, including, for example, available tribunals, types of penalties or other monetary sanctions, and the ability to seek prospective relief, temporary restraining orders, asset freezes or make criminal referrals.

CNMV is vested with the power to commence and investigate proceedings. Additionally, CNMV may adopt any of the appropriate precautionary measures and sanctions which they deem appropriate to stop the infringement and prevent its reoccurrence.

However, CNMV has no criminal powers to prosecute criminal offences. In the event that investigations lead to the conclusion that a criminal offence has occurred (i.e has de suspicion that the facts are construed to be a criminal offence), it will be referred to the public prosecutor.

Persons subject to the CNMV powers are listed in article Art. 233. In general terms, those natural and legal persons to which the provisions of the TRLMV apply, and those persons holding directorships or executive positions in such legal persons, who breach the regulations for the organisation or control of the securities markets shall be held liable under administrative law and may be punished pursuant to.

In this regard, the CNMV is empowered to (included but not limited to):

- Require the seizure and/or freezing of assets.
- Require a temporary prohibition from exercising professional activity.

[10]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.

- Require the auditors of investment firms and entities under Article 233 to provide any information obtained in the performance of their duties.
- Require or request any person to provide information, including all relevant documentation, about the size and purpose of a position or exposure contracted through a commodity derivative as well as the assets and liabilities of the underlying market.
- Adopt any type of measure to ensure that the persons and entities subject to its supervision comply with the applicable rules and regulations, or with the requisitions for correction or rectification, and may require such persons and entities, alone or collectively and for this purpose, to provide reports by independent experts, auditors or their internal control or regulatory compliance bodies.
- Agree to the suspension or limitation on the type or volume of transactions or activities that natural or legal persons may carry out in the securities market.
- Agree to suspend or exclude a financial instrument from trading, whether on a regulated market or another trading system.
- Request any person to take measures to reduce the size of a position or exposure.
- Refer matters for criminal prosecution.
- (…)

The aim of the CNMV at this point is to provide with a clear picture of the suite of enforcement measures and sanctions available to support enforcement action, which include but are not limited to:

- Pecuniary sanctions up to 30M € (or even higher when the amount is based on other figures of the infringer)
- Suspension or restriction of the type or volume of transactions which the infringer may carry out in the securities markets.
- Suspension of membership of an official secondary market or multilateral trading facility.
- Exclusion of a financial instrument from trading on an official secondary market or multilateral trading facility.
- Withdrawal of authorisation in the case of investment firms, public debt market registered dealers and other firms registered at the Spanish Securities Market Commission. In the case of investment firms authorised by another EU Member State, the penalty involving withdrawal shall be replaced by a prohibition from commencing new operations in Spanish territory.
- Suspension of an infringer from the directorship or executive post at a financial institution.
- Removal from office and disqualification from holding directorships or executive posts at the same entity.
- Separation from the directorial or managerial position held by the infringer in any financial entity, with disqualification from holding director or manager positions in any other entity.
- Disgorgement of profits made or losses avoided by the commission of the infringement.
- Suspension for no more than ten years of the authorisation of an investment firm or of other institutions registered in the registers of the Spanish Securities Market Authority.
- Prohibition on trading for own account for a period not exceeding ten years by any person with directorial or managerial responsibilities in an investment firm or any other natural person held liable for the infringement.

- Disqualification from holding directorial or managerial positions in investment firms for a period not exceeding ten years or permanently in the event of repeat infringements.
- Public reprimand in the "Official Journal of Spain", indicating the person responsible and the nature of the infringement, in accordance with the provisions of Article 313 ter.
- (…)

5. Please describe how your jurisdiction publishes information about enforcement initiatives, including disclosure of enforcement matters and violations and public disclosure of enforcement objectives.

Information of sanctions and other publications in the CNMV enforcement matters in accordance with the TRLMV

I. Non-mandatory ex-ante publication regime according to the TRLMV

1. Agreements to initiate disciplinary proceedings

Law 5/2015 introduces the power for the CNMV to agree to the publication of the initiation of a sanctioning file. *"The National Securities Market Commission, may make public the initiation of disciplinary proceedings, once notified to the interested parties, after resolving, where appropriate, on the confidential aspects of their content and prior dissociation of the personal data to those referred to in article 3.a) of Organic Law 15/1999, of December 13, on the Protection of Personal Data, except for the name of the offenders. The publication will be decided after weighing, sufficiently reasoned, between the public interest, taking into account the favorable effects that, as a whole, generate on the better transparency and functioning of the securities markets and the protection of investors, and the damage that it causes to offenders."*

2. Publicity of "any measure adopted"

Royal Decree-Law 14/2018, of September 28, which modifies the revised text of the Securities Market Law, approved by Legislative Royal Decree 4/2015, of October 23, which introduces two new chapters in title X relating to the communication of infringements and their publicity, incorporating the new features derived from the transposed European regulations.

The CNMV may make public any measure adopted as a result of non-compliance with the applicable regulations, unless its disclosure could seriously jeopardize the securities markets or cause disproportionate damage to affected people.

II. Ex-ante:publications on the CNMV website

The CNMV publishes, after a case-by-case study, the initiation agreements in the form of a public statement. This may involve several agreements that are published jointly against several natural / legal persons.

Nowadays ex-ante public publications refer only to initiation of enforcement procedure agreements. These communications are translated and published on the web in English.

The CNMV had already made use of the powers of publication ex-ante without disclosing the identity of the persons subject to investigation. In this sense, the CNMV has already issued various notices informing the market, among other matters, of the following:

- the opening of disciplinary proceedings
- the opening of investigation
- a requirement under reprimand of the criminal system

Such tool has not been used lately.

III. Publicity of sanctions in accordance with the TRLMV. Mandatory.

The CNMV shall publish on its official website any decision imposing a sanction, with prior notification to the persons sanctioned. In addition, the sanctions of suspension, expulsion and expulsion with disqualification, once they are enforceable, shall be recorded, where appropriate, in the Companies Register.

Said publication must include, at least, information on the type and nature of the infringement and the identity of the persons responsible for it.

IV. TRLMV Sanctions Register

In this regard, the CNMV shall feed maintain and a free access register of the sanctions imposed in the last five years on natural and legal persons subject to the supervision, inspection and sanctions provided for in this for serious and very serious infringements.

V. Registration of sanctions on the web

In addition to the type and nature of the offense and the identity of the persons, the CNMV's Register of sanctions publishes a reference to note whether or not the sanctions has become definitive, i.e. the sanctions are final for all purposes.

V. ESMAs Sanction Register

Any measures or sanctions imposed under EU regulation generally have to be notified to ESMA. ESMA would publish within its Sanction Register such measures. (i.e. Legal texts: MiFID, MAR, UCITS, SFT R on MiFID/UCITS entities, EMIR R, CSD in MiFID services CSD R, Securitisation R and SS R.

VI. Ex-post publications

CNMV Annual Reports include aggregated information on sanctions imposed during the year.

Additionally, and until 2011, the CNMV's Annual Reports included some criteria on the newer, more frequent or more relevant sanctions.Nowadays, we have a smooth communication with persons subject to the CNMVs powers.

6. Please provide information regarding your jurisdiction's track record of enforcement activity for the last three years and the use of civil or criminal enforcement authority against individuals and entities, including

a. information about the number of actions taken;

b. the types of violations subject to action, including in connection with requirements for which substituted compliance is sought (e.g., capital and margin, business conduct, etc.);

We hereby answer to 6a. and 6 b.

In 2018, the CNMV Executive Committee initiated 21 new disciplinary proceedings, investigating a total of 39 possible breaches. Disciplinary proceedings were opened in relation to: 1 breach for a failure to report significant holdings in listed companies, 3 for breaches relating to the reporting obligations of listed companies, 3 for breaching rules on short selling, 14 for market abuse (market manipulation and use of insider information), 8 for breaches by public interest entities of the obligation to have an audit committee, 3 for breaching rules of conduct on client/investor relations and the rest for breaches of general regulations by investment firms, CIS and crowdfunding platforms.

In 2019, the CNMV Executive Committee initiated 18 new disciplinary proceedings, investigating a total of 26 possible infringements. Disciplinary proceedings were opened in relation to: six infringements for the incorrect communication of significant holdings in listed companies, one for non-compliance with reporting obligations by issuing companies, five for market abuse (market manipulation), two for operating without authorisation, five for breach of rules of conduct in relations with clients or investors, one for resisting the CNMV's inspection and the rest for violations of the general regulations on investment firms, CIS and crowdfunding platforms.

In 2020, the CNMV Executive Committee initiated 7 new disciplinary proceedings, investigating a total of 8 possible infringements. Disciplinary proceedings were opened in relation to: 1 infringement for the incorrect communication of significant holdings in listed companies, 1 for non-compliance with reporting obligations by issuing companies, 2 for market abuse (market manipulation), 1 for non-compliance with registration, 2 for breaching rules of conduct on client/investor relations, and 1 breaches of general regulations by investment firms.

The decrease in the number of files initiated in 2020 compared to the previous year has its direct cause in the health crisis situation caused by COVID-19 which meant the practical paralysis of the administrative activity related to the initiation of new disciplinary proceedings from March 14 to June 1, 2020.

c. the outcomes of such actions, including whether money was returned to harmed investors. In responding, please provide information about the types of penalties assessed and length of time from initiation of an investigation to the date of charge or closure.

In 2019, the initial agreements for these proceedings included proposed fines for a total amount of €9.390.000.

In 2020, the initial agreements for these proceedings included proposed fines for a total amount of €2.840.000.

CNMV has the power to impose an administrative measure such as disgorgement but this should be understood as the deprivation of assets aimed at restoring the financial status quo ante of the infringer. We do not have a power to establish and recognize individualized harm such as implies redress or compensation. However, some infringers compensate on a voluntary basis to demonstrate the "*repair of damage caused*".

The length of time from the initiation of an investigation to the charge or termination depends on the complexity of the case. There is a range between one and five years. Most are closured within the first three years.

7. Please describe whether the enforcement authorities in your jurisdiction have readily accessible mechanisms to obtain documents and other forms of assistance from a foreign enforcement authority. In responding, please address:

a. whether your jurisdiction has ratified international conventions, treaties and agreements relevant to cooperation in enforcement matters,

The CNMV has signed bilateral Memoranda of Understanding (MoU) on information exchange with securities markets authorities from the European Union (EU), including ESMA Multilateral Memorandum of Understanding on Cooperation Arrangements and Exchange of Information, and non EU authorities. All these MoUs provide for information sharing with regard enforcement and supervisory matters.

Regarding the Authorities of United States, CNMV has signed bilateral sharing agreements with:

i) The Securities and Exchange Commission of the United States (SEC USA), Concerning Consultation and Cooperation in the Administration and Enforcement of Securities Laws, dated July 8, 1992.

ii) The Securities and Exchange Commission of the United States (SEC USA), with a Protocol to facilitate implementation of the CESR- SEC Work Plan (CESR is currently ESMA), dated February 5, 2012.

iii) The Securities and Exchange Commission of the United States (SEC USA) regarding mutual assistance in the supervision and oversight of managers of alternative investment funds, its delegates and depositaries, dated July 22, 2013.

iv) The Commodity Futures Trading Commission of the United States (CFTC USA), regarding Mutual Assistance and Exchange of Information, dated 26 October 1992.

v) The Financial Industry Regulatory Authority, Inc. (FINRA), Regarding Assistance and Mutual Cooperation, dated December 4, 2013.

CNMV has also signed consultation and technical assistance agreements with most Latin-American authorities.

b. whether the relevant authorities in your jurisdiction have signed the IOSCO MMoU or IOSCO EMMoU, and

CNMV became a signatory to the IOSCO Multilateral Memorandum of Understanding (IOSCO MMoU) on March 24, 2003. For the time being, CNMV is not a signatory to the IOSCO EMMoU.

c. whether your jurisdiction has any legal requirements to preserve records obtained in the course of investigative matters such that those records would be available upon request from another enforcement authority.

Pursuant to Article 194 TRLMV, retention periods vary from 5 years up to 7 years.

Informal translation of Article 194 of TRLMV:

"Art. 194. Records.

1. Investment firms shall keep a record of all the services, activities and operations they provide or perform. That record must be sufficient to enable the CNMV to carry out its supervisory functions and apply the appropriate executive measures and, in particular, to enable it to determine whether the investment firm has fulfilled all its obligations, including those relating to its clients or potential clients and to market integrity.

2. The register referred to in paragraph 1 shall include recordings of telephone conversations or electronic communications related to the activity of the investment firm. The obligation provided for in this article shall be implemented by regulation and shall include, at least, the following aspects:

(a) the types of telephone conversations or electronic communications with clients to be recorded,

(b) the obligation to notify their clients that communications or telephone conversations will be recorded,

(c) the prohibition to provide investment services or perform investment activities over the telephone to clients who have not been notified in advance of the recording in relation to certain services,

(d) the possibility for clients to communicate their orders through other channels provided that such communications can be made on a durable medium; and

(e) to take reasonable steps to avoid communications that cannot be recorded or copied.

3. The records kept pursuant to this Article shall be made available to clients on request and shall be kept for a period of five years and, when requested by the CNMV, for a period of up to seven years."

Section III – Supervisory and Enforcement Cooperation

1. **Please describe your jurisdiction's ability to share, and the process for sharing, non-public information with (or obtain it for) authorities such as the SEC. In responding, please address any limitations for sharing (a) information from Regulated Entities and (b) internal work product. Please address whether any blocking statutes, privacy or secrecy laws, or other legal or regulatory requirements impede sharing information, including customer or employee information, by authorities or firms located in your jurisdiction.**

Under Article 247 of TRLMV, CNMV may conclude cooperation agreements providing for the exchange of information with the competent authorities of non-EU Member States only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under Article 248 of this Law and there is reciprocity. The confidentiality regime established in the IOSCO MMoU has been considered equivalent to the above mentioned professional secrecy.

Pursuant to paragraph 4 of Article 247 of TRLMV, when the information to be shared by CNMV comes from another EU Member State, it may not be disclosed without the express agreement of the competent authorities which have transmitted it and, where appropriate, solely for the purposes for which those authorities gave their agreement. The same provision applies to information provided by the competent authorities of non-EU Member States.

Therefore, CNMV can provide assistance within the scope of the specific relevant MoU on a bilateral basis as well as under the basis of the IOSCO Multilateral Memorandum of Understanding on Consultation, Cooperation and Exchange of Information.

In principle, CNMV may refuse to act with a request for cooperation in an investigation, on-site verification or supervision or to exchange information only if:

(a) Legal proceedings have been initiated for the same acts and against the same persons;

(b) A final court ruling has already been handed down in respect of the same persons and the same facts.

In the event of a refusal, the CNMV shall duly notify the requesting competent authority providing as much information as possible on the matter. Up to date a request for assistance has not been refused on these grounds ever.

Persons employed by CNMV are subject to a confidentiality regime under Article 248.3 of the TRLMV, which provides that "All persons which carry out or have carried out business for the CNMV and who have had knowledge of classified information are obliged to keep this information as confidential. Any breach of this obligation shall entail criminal liabilities and any other liabilities provided by law. Such persons may not give evidence or testify and may not publish, disclose or display classified information or documents, even after they have left the office, without the express consent of the competent body of the CNMV. If such consent is not given, the person concerned shall maintain secrecy and shall be exempt from any responsibility arising from such secrecy". However, exceptions apply to the exchange of information to foreign regulatory authorities, such as the SEC (art. 248.4.r) of TRLMV).

The transfer of personal data to authorities outside the EU is set up in Chapter V (Art. 45 to 50) of the EU General Data Protection Regulation (GDPR) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

CNMV may transfer personal data to the SEC under the basis of the Administrative Arrangement for the transfer of personal data, to which both US SEC and CNMV are signatories, subject to its applicability to the exchange of information related to the Supervision and Oversight of Certain Cross-Border Over-the-Counter Derivatives Entities in connection with the use of the Substituted Compliance by Such Entities.

2. Under your jurisdiction's relevant laws, regulations, and policies, would the SEC, (a) have prompt access to the books and records of a Regulated Entity located in your jurisdiction, and (b) be able to conduct onsite inspections or examinations of a Regulated Entity located in your jurisdiction? Please describe any applicable limitations or conditions on such access.

In Spain no explicit blocking laws exist which would prevent access to books and records and on-site inspection of entities under the supervision of the CNMV by foreign regulatory authorities, providing that those authorities will observe the sovereignty, legal framework, and statutory obligations of Spain in conducting them.

In any case, since the entities subject to the on-site inspection are, in accordance with the Securities Markets Law under the supervision remit of the CNMV, the onsite inspection, and the access to books and records require to be agreed up front, between both authorities, the US SEC and CNMV.

In addition to the above personal data obtained from the books and records shall be treated accordingly with the Administrative Arrangement.

CRD-CRR PROVISIONS REFERRED TO IN THE SEC SUBSTITUTED COMPLIANCE APPLICATION AND SIGNIFICANT CREDIT INSTITUTIONS SUPERVISION[11]

CRD-CRR PROVISIONS REFERRED TO IN THE SEC SUBSTITUTED COMPLIANCE APPLICATION

The tables below include those EU and Spanish provisions that are considered as comparable to the Exchange Act provisions and rules for which Spanish Significant Credit Institutions ("**SCIs**") will request the SEC the substituted compliance for foreign security-based swap dealers and for which the CNMV is not the competent supervisor.

These tables have been drafted on the basis of the EU provisions that have to be complied with by the relevant covered entities in accordance with the French and UK Proposed Order issued by the SEC.

LEY 10/2014	CRD	MATTER
Art. 24.1	Art. 99.1.8	Suitability requirements
Art. 29.1	Art. 74.1, 88	Governance arrangements-conflicts of interest
Art. 29.2	Art. 88	Governance-remuneration
Art. 29.1, 37.2.b, 38	Art. 74, 76	Risk management
Art. 32, 33,	Art. 92.2	Remuneration
Art.. 50	Art. 65	Information gathering and investigatory powers
116, 119, 121 and 122	Art. 71	Reporting of breaches[12]

RD 84/2015	CRD	MATTER
Art. 30 y 31	Art. 91(1)	Knowledge, skills and experience requirements: members of the management body
Art. 42	Art. 76.3	Risk Committee

[11] The content of this part of the Element IV regarding CRD-CRR provisions referred to in the SEC Substituted Compliance application and significant credit institutions supervision have been prepared by Banco de Santander and its legal counsels from the law firms: Cleary Gottlieb Steen & Hamilton LLP (in the United States) and Uría Menéndez Abogados, S.L.P. (in Spain), respectively.

[12] See also article of UE Regulation 1024/2013: "*The ECB shall ensure that effective mechanisms are put in place for reporting of breaches by credit institutions, financial holding companies or mixed financial holding companies or competent authorities in the participating Member States of the legal acts referred to in Article 4(3), including specific procedures for the receipt of reports of breaches and their follow-up. Such procedures shall be consistent with relevant Union legislation and shall ensure that the following principles are applied: appropriate protection for persons who report breaches, protection of personal data, and appropriate protection for the accused person".*

RD 84/2015	CRD	MATTER
Art. 46.c	Art. 79.b	Credit and counterparty risk: internal methodologies
Art. 46-54 (Circular 2/2016 46-51)	Art. 79-87	Risks: Credit, counterparty, residual, concentration, securitisation, market, interest, operational, liquidity and leverage

CRR	MATTER
Art. 103	Management of the trading book
Art. 104	Inclusion in the Trading Book: policies and procedures
286	Management of CCR – Policies, processes and systems
287	Organization structures for CCR management
288	Review of CCR management system
293	Requirements for the risk management system
99, 394, 430, Part. Six: Title II and III	Reporting

ECB SUPERVISION

Since November 2014 the ECB has been responsible for the direct supervision of SCI, as envisaged by Article 4 of the Council Regulation 1024/2013, of 15 October 2013, conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of SCIs ("**SSM Regulation**") and Articles 43 to 69 of ECB Regulation No 468/2014 of 16 April 2014, establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities ("**SSM Framework Regulation**").

ECB Competence Scope

The SSM Regulation set out the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions, and in particular provides for that the ECB be exclusively competent to carry out the following tasks in relation to SCI:

(a) to authorize SCIs and to withdraw authorizations of SCI;

(b) for SCI which wish to establish a branch or provide cross- border services in a non participating Member State, to carry out the tasks which the competent authority of the home Member State shall have under the relevant Union law;

(c) to assess notifications of the acquisition and disposal of qualifying holdings in SCI , except in the case of a bank resolution;

(d) to ensure compliance with the acts which impose prudential requirements on SCI in the areas of own funds requirements, securitisation, large exposure limits, liquidity, leverage, and reporting and public disclosure of information on those matters;

(e) to ensure compliance with the acts which impose requirements on SCIs to have in place robust governance arrangements, including the fit and proper requirements for the persons responsible for the management of credit institutions, risk management processes, internal control mechanisms, remuneration policies and practices and effective internal capital adequacy assessment processes, including Internal Ratings Based models;

(f) to carry out supervisory reviews, including where appropriate in coordination with EBA, stress tests and their possible publication, in order to determine whether the arrangements, strategies, processes and mechanisms put in place by SCIs and the own funds held by these institutions ensure a sound management and coverage of their risks, and on the basis of that supervisory review to impose on SCIs specific additional own funds requirements, specific publication requirements, specific liquidity requirements and other measures, where specifically made available to competent authorities by relevant Union law;

(g) to carry out supervision on a consolidated basis over credit institutions' parents established in one of the participating Member States, including over financial holding companies and mixed financial holding companies, and to participate in supervision on a consolidated basis, including in colleges of supervisors without prejudice to the participation of national competent authorities in those colleges as observers, in relation to parents not established in one of the participating Member State;

(h) to participate in supplementary supervision of a financial conglomerate in relation to the credit institutions included in it and to assume the tasks of a coordinator where the ECB is appointed as the coordinator for a financial conglomerate in accordance with the criteria set out in relevant Union law;

(i) to carry out supervisory tasks in relation to recovery plans, and early intervention where a credit institution or group in relation to which the ECB is the consolidating supervisor, does not meet or is likely to breach the applicable prudential requirements, and, only in the cases explicitly stipulated by relevant Union law for competent authorities, structural changes required from credit institutions to prevent financial stress or failure, excluding any resolution powers.

However, it must also be noted that article 6(4) of the SSM Regulation establishes a distribution of responsibilities among the ECB and the NCAs based on the significance criteria of the credit institution. In this regard, for less significant credit institutions, save for the tasks provided under article 4(a) and 4(c) of the SSM Regulation (for which the ECB remains exclusively competent for all credit institutions), the ECB has the responsibilities listed under article 6(5) of the SSM Regulation and NCAs have the responsibilities set out under article 6(6) of the SSM Regulation. This is without prejudice of the ECB's right under article 6(5)(b) of the SSM Regulation to take up the supervision of a less-significant credit institution when necessary to ensure consistent application of high supervisory standards.

On the basis of the above, it can be concluded that the matters to which the abovementioned CRD and CRR provisions are referred to fall within the scope of the ECB's exclusive competence and, particularly, as regards their application in relation to significant credit institutions pursuant to article 6(4) in conjunction with article 6(5) of the SSM Regulation.

Note that in accordance with article 4(3) of the SSM Regulation, for the purpose of carrying out the above tasks and with the objective of ensuring high standards of supervision, the ECB shall apply all relevant Union law, and where this Union law is composed of Directives, the national legislation transposing those Directives. Moreover, where the relevant Union law is composed of regulations and where currently those regulations explicitly grant options for Member States, the ECB shall apply also the national legislation exercising those options.

ECB Supervision Powers

According to the Chapter III of the SSM Regulation, the ECB has the following supervisory and investigatory powers in order to carry out the tasks set out in 2.1. above.

Request for information

ECB may require the SCIs, persons belonging to SCIs and third parties to whom the SCIs have outsourced functions or activities to provide all information that is necessary, including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes.

They shall supply the information requested. Professional secrecy provisions do not exempt those persons from the duty to supply that information.

General investigations

The ECB may conduct all necessary investigations of the SCIs, persons belonging to SCIs and third parties to whom the SCIs have outsourced functions or activities.

To that end, the ECB shall have the right to:

(a) require the submission of documents;

(b) examine the books and records of the persons belonging to SCIs and third parties to whom the SCIs have outsourced functions or activities and take copies or extracts from such books and records;

(c) obtain written or oral explanations from any persons belonging to SCIs and third parties to whom the SCIs have outsourced functions or activities or their representatives or staff;

(d) interview any other person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

When a person obstructs the conduct of the investigation, the national competent authority shall afford, the necessary assistance.

On-site inspections

The ECB may subject to obtain an authorisation by a judicial authority, if applicable, and prior notification to the national competent authority concerned conduct all necessary on-site inspections at the business premises of the SCIs and any other undertaking included in supervision on a consolidated basis where the ECB is the consolidating supervisor.

Where the proper conduct and efficiency of the inspection so require, the ECB may carry out the on-site inspection without prior announcement to those legal persons.

Where the officials of and other accompanying persons authorized or appointed by the ECB find that a person opposes an inspection ordered, the national competent authority shall afford them the necessary assistance in accordance with national law.

Supervisory powers

1.- The ECB has the powers set out in 2 below to require any SCIs to take the necessary measures at an early stage to address relevant problems in any of the following circumstances:

(a) the credit institution does not meet the requirements of the applicable legislation;

(b) the ECB has evidence that the credit institution is likely to breach the requirements of the acts referred to in 2.2 above within the next 12 months;

(c) based on a determination, in the framework of a supervisory review, that the arrangements, strategies, processes and mechanisms implemented by the SCIs and the own funds and liquidity held by it do not ensure a sound management and coverage of its risks.

2. For the purposes of 1 above, the ECB have, in particular, the following powers:

(a) to require institutions to hold own funds in excess of the capital requirements laid down in applicable legislation related to elements of risks and risks not covered by the relevant Union acts;

(b) to require the reinforcement of the arrangements, processes, mechanisms and strategies;

(c) to require institutions to present a plan to restore compliance with supervisory requirements and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;

(d) to require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;

(e) to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;

(f) to require the reduction of the risk inherent in the activities, products and systems of institutions;

(g) to require institutions to limit variable remuneration as a percentage of net revenues when it is inconsistent with the maintenance of a sound capital base;

(h) to require institutions to use net profits to strengthen own funds;

(i) to restrict or prohibit distributions by the institution to shareholders, members or holders of Additional Tier 1 instruments where the prohibition does not constitute an event of default of the institution;

(j) to impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions;

(k) to impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;

(l) to require additional disclosures;

(m) to remove at any time members from the management body of credit institutions who do not fulfil the suitability requirements.

ECB Supervisory Role

The ECB directly supervises SCIs through the Joint Supervisory Teams ("**JST**") which are responsible for the day-to-day supervision of SCIs[13] working in Directorate General Specialised Institutions and LSIs; Directorate General Systemic & International Banks; and Directorate General Universal & Diversified Institutions.

JST Composition

In accordance with the SSM Framework Regulation, the ECB is in charge of the establishment and the composition of each JST which shall be composed of staff members from the ECB and from the national competent authorities ("**NCAs**") of the countries in which the credit institution, subsidiaries, or the significant cross border branches of a given banking group are established (e.g. if a SCI has a subsidiary in Germany, another one in France and a significant branch in Italy, the JST will include members from Spain, Germany, France and Italy), and working under the coordination of a designated ECB staff member ('**JST coordinator**'[14]) and one or more NCA sub-coordinator.

The NCAs shall appoint one or more persons from their staff as a member or members of a joint supervisory team. An NCA staff member may be appointed as a member of more than one joint supervisory team. The ECB may require the NCAs to modify the appointments they have made if appropriate for the purpose of the composition of a joint supervisory team.

The JST coordinator, assisted by NCA sub-coordinators shall ensure the coordination of the work within the joint supervisory team. Members appointed by NCAs or National Central Banks ("**NCBs**") to the JSTs remain servants / employees of the relevant NCA or NCB. However, when they act in their capacity as JST members, the must follow the JST coordinator's instructions as regards their work within the JST. In fact, all activities carried out by JST members, including members which are formally NCA or NCB employees, are attributed to the ECB. Therefore, the ECB is ultimately

[13] Guide to banking supervision (europa.eu), pg. 11
[14] Who is generally from the country where SCI is established.

responsible —and liable— for such activities, as long as such activity is carried out in connection with the ECB's tasks.

Each NCA that appoints more than one staff member to the JST shall designate one of them as sub-coordinator (hereinafter an '**NCA sub-coordinator'**[15]). NCA sub-coordinators shall assist the JST coordinator as regards the organization and coordination of the tasks in the joint supervisory team, in particular as regards the staff members that were appointed by the same NCA as the relevant NCA sub-coordinator. The NCA sub-coordinator may give instructions to the members of the JST appointed by the same NCA, provided that these do not conflict with the instructions given by the JST coordinator.

JST Tasks

JSTs conduct the day-to-day supervision of significant credit institutions. They are also involved in the common proceedings, although in that case the main responsibility lies with the relevant horizontal division. Moreover, JSTs trigger the review of whether enforcement or sanctioning proceedings should be initiated by reporting to the Enforcement and Sanctions (ESA) division. As to their legal tasks, article 3 of the SSM Framework Regulation lays down the tasks of a JST. These include, but are not limited to, the following:

(a) performing the supervisory review and evaluation process (SREP) referred to in Article 97 of Directive 2013/36/EU for the significant supervised entity or significant supervised group that it supervises;

(b) taking into account the SREP, participating in the preparation of a supervisory examination programme to be proposed to the Supervisory Board, including an on-site inspection plan, as laid down in Article 99 of Directive 2013/36/EC, for such a significant supervised entity or significant supervised group;

(c) implementing the supervisory examination programme approved by the ECB and any ECB supervisory decisions with respect to the significant supervised entity or significant supervised group that it supervises;

(d) ensuring coordination with the on-site inspection team referred to in Part XI as regards the implementation of the on- site inspection plan;

(e) liaising with NCAs where relevant.

SCIs Supervision Conduct[16]

The planning of supervisory activities is decided through a two-step process: strategic planning and operational planning.

Strategic planning used to be coordinated by the ECB's Planning and Coordination of Supervisory Examination Programmes Division, which was part of Directorate General Micro-Prudential

[15] NCA sub-coordinators of the JSTs are responsible for clearly defined thematic or geographic areas of supervision; they support the JST coordinator in the day-to-day supervision of SCIs, also reflecting the views of the relevant NCAs

[16] For more details see SSM Supervisory Manual (europa.eu), pg. 61-105.

Supervision IV. However, the organizational set-up of ECB banking supervision has recently been reorganized. It is therefore likely that the responsibilities formerly attributed to the ECB's Planning and Coordination of Supervisory Examination Programmes Division have been transferred and distributed among the new Directorate General On-site & Internal Model Inspections, which is responsible for all functions relating to the planning and performance of on-site supervisory activities (such as on-site inspections, internal model investigations, asset quality reviews and the project management office of comprehensive assessments) and to the Directorate General Supervisory Strategy and Risk, which comprises the functions of a supervisory risk office and further supports strategic planning and priority-setting for banking supervision[17].

The process for planning supervisory activities encompasses the definition of the strategic priorities and the focus of supervisory work for the following 12 to 18 months. More specifically, it takes into account factors such as the assessment of risks and vulnerabilities in the financial sector, as well as guidance and recommendations issued by other European authorities, in particular the ESRB and the EBA, findings of the JSTs through the SREP[18] and priorities highlighted by the relevant NCAs. The strategic plan frames the nature, depth and frequency of activities to be included in the individual Supervisory Examination Programmes (SEPs), which are defined for each SCI.

Operational planning is conducted by the JSTs under the coordination of the relevant ECB that defines the contents of the supervisory evaluation programmes ("**SEP**"). JSTs produce individual SEPs, which set out the main tasks and activities for the following 12 months, their rough schedules and objectives, the need for on-site inspections, and internal model investigations. The ECB's main division responsible for designing the SEP, along with the relevant horizontal functions and NCAs, coordinates the allocation of SSM resources and expertise to ensure that each JST has the capacity to carry out the annual supervisory tasks and activities. Although the main items of individual SEPs are discussed with the SCI beforehand, JSTs are always able to perform ad hoc tasks and activities that are not part of the supervisory plan, especially to address rapidly changing risks at individual institutions or at the broader system level.

In their day-to-day supervision, the JSTs analyze the supervisory reporting, financial statements and internal documentation of supervised institutions; hold regular and ad hoc meetings with the supervised credit institutions at various levels of staff seniority; conduct ongoing risk analyses and ongoing analysis of approved risk models; and analyze and assess credit institutions' recovery plans.

Internal models

Internal models of SCI are approved by Supervisory Board and the Governing Council on the basis of the proposal decision of approval prepared by the JST.

The ongoing supervision of the internal model compliance requirements is conducted by the JST, where necessary with the support of the relevant division within Directorate General On-Site & Internal Model Inspections.

[17] ECB Annual report on supervisory activities 2020, section 5.1.
[18] Supervisory Review and Evaluation Process.

Suitability of members of the management body

Changes to the composition of the management body of a SCI are declared to the relevant NCA, which then informs the relevant JST and the ECB's Authorisation Division within Directorate General SSM Governance & Operations, which, together with the staff of the NCA, collects the necessary documentation (which may include an interview with the nominated candidate).

With the assistance of the NCA, the JST and the Authorisation Division jointly carry out the assessment and then present a detailed proposal to the Supervisory Board and Governing Council for a decision.

On-site inspections

The need for an on-site inspection is determined by the JST in the context of the SEP and scheduled in close cooperation with the relevant division within the ECB responsible for the overall design of the SEP. The scope and frequency of on-site inspections are proposed by the JST.

In addition to these planned inspections, ad hoc inspections may be conducted in response to an event or incident which has emerged at a credit institution and which warrants immediate supervisory action.

Different types of inspections can be carried out by the ECB. Whereas full-scope inspections cover a broad spectrum of risk and activities of the credit institution concerned in order to provide a holistic view of the credit institution, targeted inspections focus on a particular part of the credit institution's business, or on a specific issue or risk. Thematic inspections focus on one issue (e.g. business area, types of transactions) across a group of peer credit institutions.

The staffing of inspection teams is looked after by the ECB in close cooperation with the NCAs. The head of the inspection team (head of mission) and inspectors are appointed by the ECB in consultation with the NCAs. Members of the JST may participate in inspections as inspectors, but not as heads of mission, to ensure that on-site inspections are conducted in an independent manner. Where necessary and appropriate, the ECB can call on external experts. The outcome of on-site inspections is reflected in a written report on the inspected areas and findings. The report is signed by the head of mission and sent to the JST and the NCAs concerned. Based on the report, the JST is responsible for preparing recommendations. The JST then sends the report and recommendations to the credit institution and, in general, calls for a closing meeting with the institution.

Enforcements and Sanctions

If regulatory requirements have been breached, the supervisor may impose sanctions on credit institutions and/or their management. The ECB may impose administrative pecuniary penalties on credit institutions of up to twice the amount of the profits gained or losses avoided because of the

breach where those can be determined, or up to 10% of the total annual turnover in the preceding business year[19].

In addition, in the case of a breach of a supervisory decision or regulation of the ECB, the ECB may impose a periodic penalty payment with a view to compelling the persons concerned to comply with the prior supervisory decision or regulation of the ECB. The periodic penalty payment will be calculated on a daily basis until the persons concerned comply with the supervisory decision or regulation of the ECB, provided that the periodic penalty is imposed for a period of no longer than six months[20].

The ECB's Enforcement and Sanctions Division investigates – in the spirit of transparent investigation and decision-making – alleged breaches by credit institutions of directly applicable EU law, national law transposing EU directives or ECB regulations and decisions, observed by a JST during the day-to-day supervision. In this case, the JST will establish the facts and refer the case to the Enforcement and Sanctions Division for follow-up. The Enforcement and Sanctions Division acts independently from the Supervisory Board to ensure the impartiality of the Supervisory Board members when they adopt a sanctioning decision.

[19] Article 18 of SSM Regulation.
[20] Article 120-122 of SSM Framework Regulation.

Questions to CNMV: Follow-up to Substituted Compliance Questionnaire/Application

Information to be included in Application

Questions for CNMV Regarding its Enforcement Program (12 July 2021)

All questions are in the context of areas for which substituted compliance is being requested.

1. Which Directorates/ Departments at the CNMV have enforcement-related functions?

According to Article 30 of the Internal Regulation of the CNMV (Resolución de 19 de diciembre de 2019, del Consejo de la Comisión Nacional del Mercado de Valores, por la que se aprueba el Reglamento de Régimen Interior de la Comisión -Just in Spanish-) the Legal Affairs –Directorate General, in particular, the Enforcement and Litigation Unit.

2. Is insider trading a violation that is prosecuted exclusively in the criminal forum?

No, only in the event there is a suspicion that the facts construed to be a criminal offence under the circumstances foreseen in the Spanish Criminal Code, article 285 [i.e. when: a) benefit is over 500.000 EUR; b) the value of the financial instruments used to commit the crime is over 2 Million EUR; or c) there is significant impact on market integrity], the case will forward to the public prosecutor.

- Does the CNMV have any jurisdiction over insider trading violations? For example, where there is a criminal finding against an individual for insider trading, does the CNMV typically pursue disciplinary action against the same individual?

The CNMV is the competent authority for the application of the MAR Regulation and its enforcement. However, criminal prosecution it is reserved exclusively to the criminal jurisdiction.

For the same action, due to the *non bis in idem* principle our regulation would never allow the coexistence of a criminal and administrative sanction. If the sanctioning procedure has been initiated when a criminal procedure is initiated over the same acts, the CNMV will suspend the procedure. Thus, the time limit of the procedure is also suspended. Once there is a final judgement from the courts, the case can be re-opened.

3. How often does the CNMV refer matters to criminal authorities? What are examples of misconduct, in addition to insider trading, that may lead to a criminal referral?

In compliance with the general principle to provide collaboration to legal authorities, CNMV provides support to judges and courts of all types in the exercise of their functions. As of 2019, the number of requests for collaboration received (216) increased with regard to the total processed in the previous year (135). Although there was noteworthy collaboration with criminal courts – mainly relating to fraud or embezzlement –, most of the requests (175) were from the civil courts.

- What kind of information does the CNMV typically share with the Public Prosecutor's office?

The supervisory reports (mainly the so called statement of findings).

- Does that office rely on the information provided by the CNMV or does it conduct an independent investigation?

They usually rely on the information provided, especially in market abuse proceedings. Please note that it is the CNMV the one to have the technical and human resources to investigate such violations.

4. Do other Spanish governmental authorities have the authority to pursue an enforcement action for securities law violations?

No, except from the internal organizational requirements that must be held by credit institutions that provide investment services and perform investment activities. Such credit institutions must respect the organizational requirements with the specifications determined by regulation, and the Bank of Spain has the powers to supervise, inspect and sanction these requirements (Art. 193.4 LMV).

However, in all cases where the powers of supervision and inspection of the Spanish Securities Market Commission and the Bank of Spain overlap, both institutions shall coordinate their actions under the principle that it is the duty of the Spanish Securities Market Commission to ensure the orderly working of the securities markets, whereas the duty to oversee issues of solvency and other matters of internal organization lie with the body that maintains the corresponding register (Art 233.5 LMV). Please refer to the European Central Bank when applicable.

- In addition, please explain the sanctioning powers of other relevant Spanish governmental authorities, such as the Spanish Central Bank and the Insurance and Pension Funds General Directorate, for violations of relevant securities laws.

Not applicable.

5. The CNMV may impose sanctions for "minor and serious breaches". Please provide examples for such breaches.

As LMV covers all areas of Securities Law, we are referring only to infringements that might be applicable to SBSDS. In that regard, LMV establishes a wide range of serious and very serious infringements in the following areas:

- ✓ Market abuse (see art. 282 LMV and 295 LMV).
- ✓ Breach of the rules governing secondary markets, including their own regulations, and infringements related to the failure to deliver documents evidencing market transactions (see articles 279.4, 279.5 and 292.2 LMV).

- ✓ Deficiencies in the administrative and accounting organisation and internal control procedures (see articles 283.2, 296.2.LMV).
- ✓ Breach of the obligation to inform and protect the investor (see article 284 LMV).
- ✓ Breach of EMIR provisions for derivative contracts related to the clearing obligation, reporting obligations, and risk mitigation techniques (see article 287 and 298.2 LMV)

- What are examples of serious breaches for which the Ministry of Economy may impose sanctions?

Securities Law sanctions are imposed by CNMV, not by the Ministry of Economy (Ministry of Economic Affairs and Digital Transformation, hereinafter Ministry of Economic Affairs). CNMV is also vested with the power to commence and investigate proceedings. Nevertheless, Banco de España is the competent authority to impose some securities law sanctions when the offender is a credit entity (see article 193.4 LMV and answer to question number 4).

Sanctions for very serious infringements are reported to the Ministry of Economic Affairs (see article 273 to 275 LMV). All sanctions might also be appealed before the Ministry of Economic Affairs (see article 22 LMV).

- What kind of breach might result in the revocation of authorization and what authority has the power to impose such sanction?

The revocation of authorization is established as a possible sanction for a very serious infringement (see article 302.5 LMV). It is usually imposed only when the offender is deemed unable to continue its normal activity duly complying with the regulation, due to the seriousness of the infringement and its impact.

The revocation of authorization might be also agreed by CNMV out of the scope of a disciplinary proceeding (see articles 160 and 161 LMV).

6. Please provide an overview of the enforcement administrative process, including for example:

- The typical steps taken by enforcement from receipt of information about a possible violation of securities law through the ordering of sanctions, if any.

According to article 274, as regards disciplinary proceedings, Act 39/2015, of 1 October and Act 40/2015, of 1 October and their implementing regulations shall apply.

Information about a possible violation is included in a Supervisory Report – Statement of Findings that include all the facts that may be deemed to be one or more infringements. The executive committee, in the event there is sound evidence of a possible violation would, under the light of such report, require the legal assessment.

On a second step, a legal assessment on the supervisory report would be performed by the enforcement unit. The result, together with the supervisory report is submitted to the Executive Committee. In the event Executive Committee decides to initiate the sanctioning

procedure, two instructors will be appointed to monitor the case. The Board may decide to make public the initiation of the procedure.

Such initiation is duly notified to the offender and a period for submissions is granted.

Instructors carry out ex officio whatever actions are needed to determine the existence of liabilities that may be sanctioned.

The resolution draft is notified. New period for submissions is granted. The final decision is adopted by the Board with the new resolution proposal that include submissions. In the event the offender is a credit institution: mandatory report by Bank.

For the sake of clarity, please find at the end of the document a scheme of the sanctioning procedure.

- Who decides whether to investigate a possible violation of securities law?

Once a year, it is approved by the board of CNMV an activity plan which establishes the main objectives of CNMV for the year regarding the supervision of all market participants. This public plan which does not identify the actual companies that are going to be effectively supervised.

There is also a supervision plan, which is merely internal and confidential, which designs the kind of onsite or offsite inspections that are going to be carried out during the year. This supervision plan identifies the entities that are going to be inspected. Heads of Supervision Department and heads of Markets Department might carry out inspections to other entities with flexibility if needed.

- Who decides whether to commence an enforcement action?

The Executive Committee of CNMV on behalf of the Board by virtue of general delegation of such power.

- Are matters that are referred to enforcement settled/ resolved prior to the formal initiation of an enforcement action? If so, are such settlements made public (even if no sanctions are imposed)?

We have no settlement powers. However, (art. 85 of Act 39/2015, of 1 October, on the Common Administrative procedure of Public Administrations) we do have an expedite mean to terminate the proceeding. Upon notification, it is granted a 40% discount provided the offender undertakes early payment, recognizes liabilities and waives the right to appeal within the administrative bodies. In the event the procedure continues, only a 20% discount upon early payment (and the waive of the right to appeal the decision before the administrative body) is granted by regulation at any time prior to the adoption of final decision.

All serious or very serious infringements are made public without undue delay provided it does not affect financial stability and that it is proportionated. The expedite way of terminating the procedure does not affect to the publication.

- Is there a hearing process – litigation—in an enforcement action? If so, who hears the case?

The instructors that monitor the case, normally grant two submissions periods of 20 labor days upon notification of the initiation of the proceeding and previous step prior to the adoption of the resolution by the board. In addition, if the Instructors need further evidence it may be opened a specific trial period (between 10 – 30 days). The result of such trial period is notified to the offender, which is again entitled with the right to present submissions.

Such submissions are taken into account in following steps and in the final decision.

It should be noted that the Spanish Constitutional Court states that all the principles of the criminal law must apply, with certain nuances, to the administrative sanctioning procedures. Consequently any submission, even if it is not presented in the due period, are studied and refuted or accepted.

- To what authority are the results of administrative enforcement actions appealed? How long does the appeals process typically take?

The Ministry of Economic Affairs and Digital Transformation. The Ministry of Economic Affairs has three months (Art 122 Law 39/2015), after such period, if there is no decision the offender is entitled to challenge the sanction before the courts.

7. Does the CNMV have the power to pursue an enforcement action against an individual who is not a director or executive of financial institution? If so, does the CNMV have the power to sanction that individual?

Yes. LMV provides that all natural and legal persons, to the extent that they are affected by the provisions of LMV and its implementing regulations, are subject to the powers of supervision inspection and sanction of CNMV (see article 233.1.c.5º and Art 274 LMV).

8. Information about possible violations of securities law stem from many sources. What is the most common source of information that has led to the initiation of enforcement proceedings?

The most common source of information is the supervisory activity of the Supervision Department and the Secondary Markets Department.

These supervisory activities include onsite and offsite inspections, periodic confidential reports sent by entities and market participants to CNMV according to different regulations, client information regarding transactions, confirmation letters by clients or third parties regarding positions or services provided, answers to specific information requirements sent to the entities. Mystery shopping practice is also a useful tool, by which CNMV outsource some

experts and their employees, who may act anonymously in order to supervise the real practices of trading and placement of financial instruments to retail investors.

In addition, whistleblowing channel is also a useful source of information that may lead to the initiation of enforcement proceedings.

Information to be included in the Application (Element 4)

Questions for CNMV Regarding its Supervisory Program (July, 28, 2021)

1. If any of the regulations for which substituted compliance is requested do not apply to certain cross-border transactions, please explain (e.g., transactions with counterparties located outside of Spain).

   With regards to conduct of business rules, cross-border transactions stand as follows:

   - Transactions in the EU: European common regulatory framework applies (MiFID).
   - Transactions with non EU counterparties:
   -
     - Any Spanish entity needs an authorization in Spain prior to perform any activity under the banking or securities markets remit in a non EU country. Depending on the third country and the corresponding cooperation agreement (bilateral or Multilateral MoU) signed, the supervision powers may vary, though generally supervision of conduct of business rules will lay on the host authority (third country) depending on the activity and type of entity

     - Non EU entities providing services through branches or under the freedom to provide services in Spain will need a prior authorization from the Spanish authority/regulator, and the supervision of conduct of business rules of their activities in Spain will lay under the CNMV.

   With regards to EMIR regulation, it should be mentioned that EMIR provides with different exemptions for intragroup transactions. According to the definition of Article 3 of EMIR, an intragroup transaction in relation to a non-financial or a financial counterparty would be only considered as it if the counterparty is located in the Union or, if it is established in a third country, if the Commission has adopted an implementing act under Article 13(2) in respect of that third country. Therefore, intragroup exemptions would stand as follows:

   - Article 4 of EMIR (Clearing obligation): OTC derivative contracts that are intragroup transactions as described in Article 3 shall not be subject to the clearing obligation, provide that the rest of conditions are fulfilled.

   - Article 9 of EMIR (Reporting obligation): Notwithstanding Article 3, the reporting obligation shall not apply to derivative contracts within the same group where at least one of the counterparties is a non-financial counterparty or would be

qualified as a nonfinancial counterparty if it were established in the Union, provided that the rest of conditions are fulfilled.

- Article 11 of EMIR (Risk mitigation techniques obligation): Financial counterparties shall have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts that are entered into, and also non- financial counterparties if the clearing threshold is exceeded.

    - This requirement shall not apply to an intragroup transaction between counterparties which are established in the same Member State, provided that the rest of conditions are fulfilled.

    - In the case of financial counterparties, if the intragroup transaction is between counterparties established in different Member States, they shall be exempt totally or partially from the requirement on the basis of a positive decision of both the relevant competent authorities. In the case that one counterparty is established in the Union and the other in a third-country jurisdiction, they shall be exempt on the basis of a positive decision of the relevant competent authority which is established in the Union.

    - In the case of non-financial counterparties, if the intragroup transaction is between counterparties which are established in different Member States or between a counterparty established in the Union and the other in a third-country jurisdiction, they shall notify their intention to apply the exemption to the competent authorities referred to in Article 10(5). The exemption shall be valid unless either of the notified competent authorities does not agree upon fulfilment of the conditions within three months of the date of the notification.

    - An intragroup transaction that is entered into by a non-financial counterparty and a financial counterparty which are established in different Member States shall be exempt totally or partially from the requirement on the basis of a positive decision of the relevant competent authority responsible for supervision of the financial counterparty, provided that the rest of conditions are fulfilled.

Further, EMIR contains a mechanism to avoid duplicative or conflicting rules on the basis of which if the European Commission has declared the regime of a third country to be equivalent, some or all of the clearing obligations, reporting of contracts to TRs, use of risk mitigation techniques or exchange of collateral requirements may be deemed to be fulfilled on the basis of the applicable regulation of that third country.

2. If any part of the supervisory process described by CNMV in the responses to the SEC Staff Questionnaire is not applicable to a branch or subsidiary located in Spain, please explain any differences.

   Regarding conduct of business rules the following applies:

   (i) Subsidiaries of foreign banks are incorporated into the official registers as Spanish entities, so there are no differences in the supervisory process for them.
   (ii) Non EU branch: this entities will have the same treatment as a Spanish firm, though there will be communication with the country of origin Competent Authority under the corresponding MoU;
   (iii) EU branch (specific MiFID regime applies): article 86 MiFID – article 170 TRLMV (SSMA):
   (a) Regarding powers conferred to the host member state authority (conduct of business rules and record keeping of transactions undertaken by the branch) the supervisory process is the same though CNMV shall inform the home member state Authority of the measures adopted.

   (b) Regarding powers that are not conferred to the host member state authority (organizational requirements): if the CNMV has grounds for believing that a firm infringes these rules it shall refer those findings to the home member state authority.

3. List the primary supervisor for the security-based swap business in the areas of law where substituted compliance has been requested. (You can attach the list sent to the SEC on 9 July 2021.)

AREA	PRIMARY SUPERVISOR
RISK CONTROL	
Risk Management Systems	CNMV and ECB
Trade Acknowledgment and Verification	CNMV
Portfolio Reconciliation, Portfolio Compression and Trading Relationship Documentation	CNMV
SUPERVISION AND CHIEF COMPLIANCE OFFICER	
Diligent Supervision (of the firm's business)	CNMV and ECB
Chief Compliance Officers	CNMV and ECB
Conflicts of Interest	CNMV and ECB

AREA	PRIMARY SUPERVISOR
Antitrust Considerations	CNMC[21]
COUNTERPARTY PROTECTION	
Fair and Balanced Communication	CNMV
Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest	CNMV
Disclosure of Daily Marks	CNMV
Know Your Counterparty	CNMV, ECB (for counterparty risk management) and SEPBLAC[22] (for anti-money laundering purposes)
Suitability	CNMV
Disclosure of Clearing Rights	CNMV
RECORDKEEPING AND REPORTING	
Record Creation	CNMV and ECB
Reports	CNMV and ECB (for financial reporting)
Notifications	CNMV and ECB (for capital adequacy and deficiencies purposes)
Record Maintenance	CNMV and ECB

Your responses to all the remaining questions should relate to those institutions that will be registering as security-based swap entities in the U.S. and should be tailored to the securities-based swap business in areas where substituted compliance has been requested.

[Answer refer exclusively to significant banks, which are the only entities subject to the substituted compliance registration / application procedure within the SEC]

1. Explain how the CNMV supervises banks and investment firms. Your response should describe the reports (such as the report on the conduct of business) that supervisors analyze and what the supervisor does if red flags are spotted (for example, conduct a limited review, send a formal requirement, etc.). Your response should also describe the typical interactions (phone calls, emails, meetings) between the supervisors and a firm, including how often they interact.

[21] Comisión Nacional de los Mercados y la Competencia
[22] Servicio ejecutivo de la comisión de prevención del blanqueo de capitales e infracciones monetarias

The supervision of banks, under the conduct of business rules perspective, is performed using different tools:

- Off-site supervision activities:
  - Periodic monitoring on a routine basis (analyses performed on conduct of business rules confidential statements and annual IPAC report (Report on safeguarding of clients assets)
  - Thematic reviews (commonly planned)
  - Limited reviews (commonly not planned)

- On-site inspections (commonly planned)

Regarding the sources used to perform supervision and achieve its objectives, it is relevant to state that they are diverse. The Banks Supervision Unit uses the confidential statements information, historical data, forward-looking factors, as well as information from investor complaints and inquiries, whistleblower channels, media information, etcetera.

If red flags are spotted, different actions can be taken:

- Informal communications to clarify data included in the statements / reports / information previously requested, whether via phone calls or e-mail with the bank's compliance department. Data can be confirmed or otherwise modified if reporting errors have occurred.
- Carry out a limited review in case it is deemed that a potential breach or misconduct could have taken place. Formal requests for further information will be sent to the bank and if it was the case, a formal requirement regarding the misconduct observed and asking for remediation will be issued.
- The information can be used as input to decide if the bank will be under a planned on-site inspection.
- If the red flag is spotted in several banks, a thematic review could be launched to those entities.

Regarding the Compliance Report (which has to be reported at least annually to the Board of the entities which provide investment services – Article 25 EU Regulation 565/2017) it will be thoroughly analyzed whenever an on-site inspection is performed to a bank or whenever it is deemed necessary (the report has to be provided to the CNMV whenever it is requested).

Finally, communication tools will range from informal phone calls and e-mails (these sort of communications can happen on a day-by-day basis) to formal meetings (either virtual or at the CNMV offices or the bank's premises) or formal requests of information and letter of findings (LoF – please refer to answer to Question 3 below).

2. Provide information on the risk-based analysis done to classify banks into different groups. Explain that the highest grouping with the most risk (Group A) is where the CNMV focuses their supervisory efforts.

Every year, once the confidential statements have been analyzed, different supervisory groups of banks are determined, using different risk parameters.

These will commonly be, among others: size (by number of offices and clients), services provided, volume and complexity of products distributed to retail clients, previous supervisory experience with the bank, etc. The largest banks providing investment services will be included at the top group. Risk approach strategy will pose special supervisory efforts on this group, followed by medium-sized banks and small ones active in the distribution of complex products to retail clients.

3. Describe the process for offsite inspections, onsite inspections, and limited reviews. Explain that onsite inspections (and many offsite inspections) result in a Letter of Findings that is send to the CCO or Board of Directors. Explain that banks must respond to the Letter of Finding describing the changes that were made.

[Please, also refer to answer to question 1]

On-site inspections are normally included in the Annual Supervision Plan along with Thematic Reviews, whilst off-site supervision activities are not normally planned, except for the routine revision of annual and quarterly confidential statements.

Off-site activities may start due to specific information (internal or external) received in the Banks Supervision Unit on a very specific area of concern: a particular service, the marketing of a product, activity in a specific office or branch, etc. Examples of sources can be:

- Internal information (CNMV):
  - Info from Confidential Statements reported by banks
  - Investors complaints / whistleblowing channel
  - Market info
  - New products registration
- External:
  - Media
  - Market / product innovation
  - Other competent authorities

Elements that determine the performance of on-site inspections can also be common to the ones that can spark an off-site supervisory activity adding the following:

- Other internal info in the IF & Banks Supervision Dept.:
  - Previous supervisory activities that deemed necessary to perform a broader supervision of the banks activity in the securities markets, or its procedures or services. Or even an in-depth analysis of a specific service.
  - Risk map: internal classification of entities.

- Time frame or period since the last on-site inspection performed on the bank's provision of investment services. Relevant banks are always prioritized.

When the field work ends a report is issued and a formal Letter of Findings (LoF) is communicated to the bank. It is normally addressed to the Compliance Officer, and depending on the importance of the findings is requested to be reported to the Board of Directors at the bank.

A copy of the LoF is sent to the Bank of Spain.

The bank's response to the LoF will include any remarks or observations to any of the findings observed by the CNMV and the compromise to adapt procedures or take further measures to solve the deficiencies observed. These have to be confirmed, depending on the supervisory activity, 6 months later when Compliance issues a report to the CNMV stating that deficiencies have been solved and that all measures are in place. If follow-up measures are deemed necessary a supervisory activity will be launched in order to assess the new procedures in place at the bank.

4. Describe the cooperation between the CNMV and the Bank of Spain for the supervision of credit institutions, including the fact that the CNMV shares its inspection schedule and Letter of Findings with the Bank of Spain and the fact that the supervisors are in frequent contact.

There are various ways for cooperation between both institutions. At the CNMV Board sits the Vice-Governor of the Bank of Spain and the Vice-Chair of the CNMV sits at the Bank of Spain Board. This allows for top level coordination.

The CNMV communicates its Annual Supervision Plan to the Bank of Spain and the initiation of on-site inspections.

As stated above, upon conclusion of a supervisory activity, a copy of the LoF is sent to the Bank of Spain (ECB in case of significant banks) for information purposes. Likewise, the initiation of a sanctioning procedure is also communicated to the Bank of Spain.

In addition, according to Article 243 of the LMV, the CNMV must require a prior report to the Bank of Spain (ECB in case of significant banks) for the adoption of any of the following decisions in relation to counterparties subject to its prudential supervision:

- Decisions regarding the existence of risk management procedures and the level of capital of the financial counterparties according to Article 11.3 and 4 of EMIR.

- The application of intragroup exemptions referred to in Articles 4.2 and 11.5 of EMIR.

- The CNMV may request the Bank of Spain all the necessary information for the exercise of the powers of supervision, inspection and sanctions related to the application of the EMIR.

5. Explain the Bank of Spain's role in the supervision of significant institutions, including the approximate number of Bank of Spain supervisors assigned to the JST for a Spanish firm, and the Bank of Spain's role in conducting onsite inspections and the supervisory review and evaluation process ("SREP").

This reply has been made by CNMV taking public information from the website.

The role of JST (Joint Supervisory Teams) is explained at https://www.bankingsupervision.europa.eu/banking/approach/jst/html/index.en.html

As the ECB explains in that page, "the size, overall composition and organization of a JST is tailored to the size, business model and risk profile of the bank it supervises" so there is no hard rule on this. On average, Santander tends to encounter teams of around 6-10 Bank of Spain supervisors in each of the JST inspection exercises, and overall around 60 Bank of Spain supervisors participating in JST engagements.

6. Explain how the ECB develops priorities and describe how it conducts thematic reviews.

This reply has been made by CNMV taking public information from the website.

The ECB supervisory priorities are announced every year and vary somewhat from year to year.

The 2021 supervisory priorities are described in the following link https://www.bankingsupervision.europa.eu/banking/priorities/priorities/html/index.en.html

As described there, "in 2021 ECB Banking Supervision will primarily focus its supervisory efforts on four priority areas materially affected by the coronavirus (COVID-19) pandemic: credit risk management, capital strength, business model sustainability and governance."

Further details on ECB supervisory priorities for previous years can be found in the same page.

The ECB risk assessment is described in

https://www.bankingsupervision.europa.eu/banking/priorities/risk_assessment/html/index.en.html.

In that page, the ECB presents the way in which they set up their Risk Map (a graphic way to show "the key risk drivers that are expected to affect supervised institutions in a particular year") and their Table of Vulnerabilities (banks' internal and external weaknesses which "are the channels vis which the risks might affect the banking sector".

The principles and procedures guiding the Thematic Reviews –as well as other elements of the supervisory approach- are described in the SSM Supervisory Manual: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.supervisorymanual201803.en.pdf

7. Explain how the CNMV and the Bank of Spain work together with the ECB to supervise significant institutions, including the fact that the supervisors are in frequent contact.

As it has been described along the questionnaire on the Element IV the CNMV has not any role in working jointly with Bank of Spain as well as the Bank of Spain on supervision matters under the ECB remit.

Additional Enforcement Questions (28 July 2021)

1. Please describe the Bank of Spain's enforcement responsibilities with respect to security-based swap activities of credit institutions. Please incorporate in the description the scope of and legal authority for its responsibilities. It would be helpful to include, for example: a description of typical sources of information of possible violations; who determines whether to initiate an investigation; an overview of the investigative process; who determines whether to sanction the violator; the spectrum of sanctions available; relevant statistics about the Bank of Spain's enforcement program; the number of and qualifications of persons responsible for conducting enforcement investigations and procedures; and an overview of steps typically taken by enforcement from receipt of information of a possible violation to resolution of the matter. Finally, it would be helpful to receive an example of a relevant violation that could elicit an enforcement action and how it might be resolved.

   This question has been replied by the CNMV.

   Under the applicable law, the Bank of Spain lacks enforcement responsibilities with respect to security-based swap activities from significant credit institutions such as Banco Santander, since they fall under the ECB enforcement responsibilities.

2. In the securities-based swap context, please describe enforcement-related cooperation or coordination between the Bank of Spain and other authorities in Spain such as the CNMV, ECB and public prosecutors.

   This question has been replied by the CNMV.

   In the event the offender is a credit institution, the CNMV is the enforcement relevant authority. During the enforcement proceedings, the CNMV requires a mandatory report on the prudential assessment of a proposed sanction to be issued either by the Bank of Spain or the ECB. If such credit institution is under the scope of supervision of the ECB according to the solvency European regulation (significant credit institutions), the report is done and signed by the ECB and the role to be performed by the Bank of Spain is that of a purely formal point of entry. This is due to the fact that on our internal regulation the Bank of Spain is appointed as the single point of contact in the cases related to credit institutions under the ECB supervision. Please find attached an anonymized example.

   
   Informe solvencia BdE ECB.pdf

3. Please describe the number of persons in the Enforcement program at the CNMV who conduct the informal and formal enforcement processes. In addition, please describe the typical qualifications of persons who conduct such processes, including the Instructors.

As per the formal process and referred to the Litigation Unit, it is a very qualified team one Director, a deputy Director, two deputy managers and six lawyers with an average of 15 years of experience. Additional personnel with no main functions are also assigned to the Enforcement Division (secretary and a trainee).

The formal enforcement process is monitored by the Instructors appointed by the Executive Committee of the CNMV among the six lawyers assigned to the Unit. Instructors are always appointed in the number of two of the lawyers of the Enforcement Department in every single proceeding. To become a member of the Enforcement Department it is compulsory to be a lawyer. Candidates have to go through an open selection process with four rigorous written exams and an interview. Previous professional experience and additional studies are also considered. Since these positions are highly qualified and well-recognized within the CNMV, the stability of the Unit is high and very few positions are opened for such department through time. When a new position is open, candidates are many.

Please let us know If the Banco de España (BdE) receives information on the supervision of a significant Spanish banking institution by the ECB in any of the different phases.

Banco de España participates in the Single Supervisory Mechanism (SSM) led by the European Central Bank (ECB), together with the other national prudential supervisors of the Eurozone. Such participation means in practice, among others:

- that staff from Banco de España works together with staff from the ECB as members of the teams in charge of the ongoing supervision of Spanish significant institutions (so called, Joint Supervisory Teams);

- experts from BdE participate in different expert groups which deal with horizontal supervisory matters, together with experts from other national supervisors and from the ECB;

- experts from BdE participate in on-site inspections of significant institutions in the Eurozone (Spanish and others) planned by the ECB, together with experts from other national supervisors and from the ECB;

- our deputy governor is a member of the Supervisory Board of the SSM, together with high level representatives of other national supervisors and of the ECB. The Supervisory Board makes decisions, among others, regarding all significant institutions under the direct supervision of the ECB, including Spanish and others.

Therefore, staff and senior management of the BdE participate in the supervision and in the decision making process regarding all significant institutions in the Eurozone, including Spanish significant credit institutions and others. The ECB is the owner of all the information made available to the staff and senior management of BdE in the SSM framework, and therefore it is within the ECB's remit to decide whether and how, if deemed appropriate, to share such confidential information with supervisors outside the SSM. In this respect, the ECB is in the process of signing bilateral MoUs with different authorities outside the SSM in other to stablish direct communication and collaboration channels with such authorities, regarding the entities under the ECB direct supervision (significant entities).

In addition, could you confirm that the CNMV supervisory and enforcement information you have provided in your application also applies to the supervision and enforcement of investment firms? We want to ensure that the information contained in the application is relevant for investment firms as well.

CNMV confirms that supervisory and enforcement information applies to Investment firms which fully under the CNMV´s remit.

SEC/CNMV - Substituted Compliance Element 4 Follow-Up Questions

Follow-up Questions to BdE / CNMV Regarding AML (5-10 August 2021)

- Please describe how Spain supervises and enforces for the anti-money laundering rules where substituted compliance has been requested (SMLA articles 3, 4, 5, 6, 7, 8, and 26). Your answer should include the relevant authorities responsible for each action. For supervision your answer should include: a description of how examinations and other supervisory work are conducted, a description of how findings are relayed to the firm, and how you ensure corrective action is taken. For enforcement your answer should include: a description of the investigative and

sanctioning process, the powers available to compel and gather documents and testimony, any limitation on investigative powers, and the sanctions that may be imposed for failure to comply with anti-money laundering rules relevant to the application.

The Commission for the Prevention of Money Laundering and Monetary Offences (**COPBLAC**) is a collegiate body under Secretariat of State for Economy that **leads and coordinates the fight against ML/TF in Spain**. Among other functions, the COPBLAC (acting either in plenary or through its Standing Committee) approves the annual AML/CFT inspection plan and decides on formal requests to obliged entities regarding AML/CFT compliance. The opening of a disciplinary proceeding for breaches of SMLA obligations is also decided by the COPBLAC. For further detail on its composition, committees and functions, please access here.

The executive service of the COPBLAC (the **SEPBLAC**) is one of the COPBLAC´s supporting bodies, acting as both the **Spanish AML/CFT supervisory authority** and the FIU. In its supervisory functions, the SEPBLAC has full powers to oversee the compliance with all AML/CFT obligations foreseen in the SMLA with a comprehensive scope, covering all the Spanish obliged entities. For further information, please access https://www.sepblac.es/en/

According to the SMLA, the COPBLAC might enter into cooperation agreements with the financial supervisors (BdE, CNMV and the national supervisor of the insurance sector), enabling them to, in coordination with the SEPBLAC and without prejudice to its full-scope powers, supervise the compliance of financial entities under their prudential supervision with the AML/CFT obligations relating to customer due diligence, internal control and reporting obligations (chapters II, III and IV of SMLA).

The latest **cooperation agreement between the COPBLAC and the BdE** was signed in March 2021, establishing coordination and cooperation provisions among the BdE, the COPBLAC and the SEPBLAC for the performance of the AML/CFT supervision regarding credit institutions and other financial institutions under the scope of the supervision of the BdE. In the framework of this agreement, **BdE cooperates with the SEPBLAC in the supervision of**, exclusively, the aforementioned **AML/CFT obligations** by the financial institutions under its remit, **with a limited approach** that mainly focuses on the review of the adequacy of policies, procedures and governance arrangements.

When conducting the AML/CFT supervision, the Banco de España follows a risk based approach performing any kind of supervisory activities. With regards the on-going supervision, the main supervisory activity is the determination of the AML/CFT risk profile of the credit institutions which is key to set supervisory priorities and planning. The BdE also conducts other off-site activities such as the monitoring of remedial action plans.

Relating to on-site inspections, the SEPBLAC and the BdE elaborate an annual **joint supervisory plan** on the basis of the ML/TF risk and supervisory priorities, which is **approved by the COPBLAC**.

Following an inspection, BdE shares with the obliged entity a **summary of conclusions together, where appropriate, with a set of recommendations** that should be addressed with a remediation plan to be communicated to the BdE.

In addition, the full detailed inspection report is shared with **the COPBLAC**, who **will ultimately decide on any binding supervisory measure or sanction following the inspection**. Together with the inspection report, BdE might submit to the COPBLAC a proposal of supervisory measures, namely to address requirements to obliged entity to implement remedial actions and/or the initiation of a sanctioning procedure. BdE will **follow up** such requirements and regularly update the **COPBLAC** for **decision** on **subsequent actions**.

Any **potential breach** of the national AML/CFT framework identified by the BdE in the performance of its functions should also be **referred to the COPBLAC for decision** on consequences. Likewise, the BdE should refer to the SEPBLAC any fact or matter encountered during inspections that could constitute a suspicious of or be related to ML/TF.

The sanctions that can be imposed for failure to comply with AML/CFT obligations are established in chapter VIII of the SMLA (articles 56, 57 and 58). In case you need any further details on the sanctioning process, we could refer your questions to the COPBLAC.

In conclusion, the **role of the BdE in the AML/CFT supervision** of significant credit institutions **is limited in both areas of competence and scope**. The BdE acts only as a cooperator of the main AML/CFT supervisor (the SEPBLAC) and **does not have any decision making power** with regard to the **enforcement** of SMLA.

- Is the process outlined by the BdE above for AML regulation the same for the CNMV? (For instance, if we replaced the BdE with CNMV in the summary, will it still be accurate?) If not, we will need a similar write up from the CNMV.

Responding your former question about the process outlined by the BdE on AML, CNMV would like to add that In general terms, the process described by the BdE above, is very similar to the CNMV due to the fact that entities under the CNMV´s supervision, such as investment firms, are also entities under the supervisory authority of the COPBLAC and SEPBLAC for AML and FT purposes.

- Please discuss SEPLAC's power to conduct investigations of Covered Entities and associated individuals, including investigative tools available to it, authority to compel documents and witness testimony, authority to investigate on premises, and ability to obtain third party records (such as internet service provider or telephone records). In the response, please discuss any limitations on that authority.

BdE explanations required regarding the authority of SEPBLAC

According to Law 10/2010, of 28 April, on prevention of money laundering and terrorism financing (hereinafter, Law 10/2010), article 45.4, the Sepblac is empowered with the dual role of being the AMLCFT supervisor, as well as the financial intelligence unit.

As far as its role as supervisor is concerned, and without prejudice to the powers conferred on the law enforcement agents and other public authorities, the Sepblac shall perform, among others, the following functions:

e) Execute the orders of and follow the guidelines given by the Commission for the Prevention of Money Laundering and Monetary Offences or its Standing Committee, and submit to the latter any reports that it requests.

f) Monitor and inspect fulfilment of the obligations under this law by obliged persons, in accordance with article 47.

As established in Law 10/2010, article 47, the Sepblac may conduct, in respect of institutions and persons covered by this law, the necessary inspections to verify compliance with the obligations relating to the functions assigned to it. In this regard, the obliged persons and their employees, directors and agents shall cooperate to the fullest extent possible with the staff of the Sepblac, providing unrestricted access to as much information or documentation as is required, including books, accounts, records, software, magnetic files, internal reports, minutes, official statements and any other related matters subject to inspection

In its role as FIU as per article 46 of Law 10/2010, the Sepblac shall analyze the information received from obliged persons or other sources, referring, if it detects indications or certainty of money laundering or terrorist financing, the relevant financial intelligence report to the Public Prosecutor's Office or competent judicial, police or administrative authorities. The information and documents available to the Sepblac and the financial intelligence reports shall be confidential and any authority or official who accesses its content must keep the latter secret. (…) Financial intelligence reports shall not have probative value and may not be incorporated directly into judicial or administrative proceedings. Moreover, the information provided by the Executive Service of the Commission to the institutions and persons covered by this law shall be confidential and must be kept secret by its recipients.

Furthermore, Royal Decree 304/2014 of 5 May, on the adoption of Regulation of Law 10/2010 of 28 April, on the prevention of money laundering and terrorist financing (hereinafter RD 304/2014), in its article 67, requires that the information received, processed, maintained or disseminated by the Sepblac shall be suitably protected. In particular, policies that ensure the security and confidentiality of this information, including proper procedures for its handling, filing, dissemination, protection and access are established.

Finally, Law 10/2010 does not provide the SEPBLAC with the competence to accede to obtain third party records (such as internet service providers or telephone records). Apart from the statistics on capital flows and foreign economic transactions reported to Banco de España, the only option to accede to external data considered by the law, is the potential request from the SEPBLAC to either the managing bodies or the Treasury General of Social Security to transfer the personal data and information they may have obtained in the exercise of their functions, to the Commission for the Prevention of Money Laundering and Monetary Offences (article 48.5 of Law 10/2010).

Glossary of terms applicable to the substituted compliance analysis.

Defined term	Meaning
AP	Associated person
BCBS	Basel Committee on Banking Supervision
BdE	Bank of Spain (*Banco de España*)
BOE	Spain's State Official Bulletin (*Boletín Oficial del Estado*)
Books and Records Adopting Release	SEC final rule: Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers, published in the Federal Register on December 16, 2019. It can be accessed here: https://www.govinfo.gov/content/pkg/FR-2019-12-16/pdf/2019-20678.pdf
Business Conduct Adopting Release	SEC final rule: Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, published in the Federal Register on May 13, 2016. It can be accessed here: https://www.govinfo.gov/content/pkg/FR-2016-05-13/pdf/2016-10918.pdf
CCO	Chief compliance officer
CCP	Central counterparty. Under Article 2(1) EMIR, it is a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer.
CCR	Counterparty credit risk
CFTC	Commodity Futures Trading Commission
CFTC Entity-Level Guidance	CFTC Comparability Determination for the European Union: Certain Entity-Level Requirements published in the Federal Register on December 27, 2013. It can be accessed here: 2013-30980a.pdf (cftc.gov)
CFTC Substituted Compliance Decision on Entity-Level Requirements	CFTC Comparability Determination for the European Union: Certain Entity-Level Requirements published in the Federal Register on December 27, 2013. It can be accessed here: 2013-30980a.pdf (cftc.gov)
CFTC Substituted Compliance Decision on Transaction-Level Requirements	CFTC Comparability Determination for the European Union: Certain Transaction-Level Requirements published in the Federal Register on December 27, 2013. They can be accessed here: 2013-30981a.pdf (cftc.gov)
Circular 3/1991	CNMV Circular 3/1991, of 18 December, which implements the Ministerial Order of 5 December 1999
Circular 2/2016	BoS Circular 2/2016 Circular 2/2016, of February 2, 2016, of the Bank of Spain, to credit institutions, on supervision and solvency, which completes the adaptation of the Spanish legal system to Directive 2013/36/EU and Regulation (EU) No. 575/2013. Please find attached the translated version of the relevant articles:  20210806 Circular BdE 2-2016_EN v1.dc .
CIS	Collective Investment Scheme
CNMV	Spanish National Securities Market Commission (*Comisión Nacional del Mercado de Valores*)

Commented [A1]: Doc. 1

Glossary of terms applicable to the substituted compliance analysis.

CNMV Technical Guide 4/2017	CNMV Technical Guide 4/2017 for the assessment of the knowledge and competence of staff providing information and advice. See attached translation of the most recent version.  GuiaTecnica CNM 4_2017(2020 version
CRD IV	Directive 2013/36/EU of the European Parliament and of the Council of June 26, 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC. The current version can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0036&from=EN
CRR	Regulation (EU) No 575/2013 of the European Parliament and of the Council of June 26, 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012. The current version can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0575&from=EN
CRR Reporting ITS	Commission Implementing Regulation (EU) No 680/2014 of April 16, 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council. The current version can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0680&from=EN
Code of Commerce	Royal Decree of 22 August 1885, which publishes the Code of Commerce. A translated version can be accessed here: CÓDIGO DE COMERCIO TRADUCIDO AL INGLÉS (mjusticia.gob.es)
Credit institution	As defined in Article 4(1)(1) CRR: an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account
Criminal Code	Organic Act 10/1995, of November 23, that approves the Criminal Code
Criminal Justice Act	Royal Decree of 14 December 1882, that approves the Criminal Procedure Act. A translated version can be accessed here: Criminal Procedure Act 2016.pdf (mjusticia.gob.es)
CSMAD	Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive). The current version can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0057&from=EN
DGE	CNMV's Entities General Directorate
DGM	CNMV's Markets General Directorate
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act, approved on January 5, 2010. It can be accessed here: C:\Users\skelley\AppData\Roaming\SoftQuad\XMetaL\5.5\gen\c\H4173_~1.XML (cftc.gov)
DQAP	Data Quality Action Plan
EBA	European Banking Authority

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EBA Guidelines on Outsourcing	EBA Guidelines on outsourcing requirements (EBA/GL/2012/02) of 25 February 2019. They can be accessed here: EBA BS 2019 xxx (EBA Draft Guidelines on outsourcing arrangements).docx (europa.eu)
EBA/ESMA Guidelines on Management Suitability	Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU (EBA/GL/2017/12) of March 21, 2018. They can be accessed here: EBA BS 2017 XXX (Final GL on the assessment of suitability of MB members and KFH).docx (europa.eu)
ECB	European Central Bank
ECP	Eligible counterparty. Per Article 30(1) MiFID, this category of client is only applicable to the conduct of certain investment services (being dealing on own account, executing orders on behalf of clients and receiving & transmitting orders). Per Article 30(2) MiFID, these include EU investment firms, credit institutions, insurance companies, UCITS and their management companies, pension funds and their management companies, other financial institutions authorised or regulated under Union law or under the national law of a Member State, national governments and their corresponding offices including public bodies that deal with public debt at national level, and central banks. Other entities, including in third countries, can be included at the discretion of each Member State.
EIOPA	European Insurance and Occupational Pensions Authority
EMIR	Regulation (EU) No 648/2012 of the European Parliament and of the Council of July 4, 2012 on OTC derivatives, central counterparties and trade repositories. The current version can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02012R0648-20200101&from=EN
EMIR Clearing RTS	Commission Delegated Regulation (EU) 2015/2205, Commission Delegated Regulation (EU) 2016/592 and Commission Delegated Regulation (EU) 2016/1178. The current versions can be accessed here: CL2015R2205EN0040010.0001.3bi_cp 1..1 (europa.eu) CL2016R0592EN0030010.0001.3bi_cp 1..1 (europa.eu) CL2016R1178EN0040010.0001.3bi_cp 1..1 (europa.eu)
IR Margin RTS	Commission Delegated Regulation (EU) 2016/2251 of October 4, 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty. The current version can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02016R2251-20170104&from=EN
EMIR Refit 2.1	Regulation (EU) 2019/834 of the European Parliament and of the Council of May 20, 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories. It can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0834&from=EN
ESA	Enforcement and Sanctions
ESMA	European Securities and Markets Authority
ESMA Consultation Paper on FRANDT	ESMA'S Consultation Paper on the draft technical advice on commercial terms for providing services under EMIR (FRANDT). It can be accessed here:

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	https://www.esma.europa.eu/press-news/consultations/consultation-draft-technical-advice-commercial-terms-providing-clearing
ESMA Q&A on EMIR	Questions and Answers on the implementation of the Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR). They can be accessed here: https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf
.ESMA Q&A on MiFID investor protection	ESMA Q&As on MiFID and MiFIR Investor Protection and Intermediaries, dated 4 December 2019. It can be accessed here: https://www.esma.europa.eu/document/qas-mifid-ii-and-mifir-investor-protection-topics
ESRB	European Systemic Risk Board
ETD	Exchange-traded derivative
EU	European Union
Exchange Act	Securities Exchange Act of 1934. It can be accessed here: https://www.nyse.com/publicdocs/nyse/regulation/nyse/sea34.pdf
FC	Financial Counterparty. As defined in Article 2(8) of EMIR, FCs include: (i) certain investment firms within the meaning given in Article 2(1A) of MiFIR; (ii) credit institutions which are CRR Firms (within the meaning given in Article 4(1)(2A) of the CRR; (iii) insurance undertakings or reinsurance undertakings; (iv) UCITS; (v) occupational pension schemes; (vi) alternative investment funds; and (vii) central securities depositories
FINRA	Financial Industry Regulatory Authority, Inc.
FIRDS	Financial Instrument Reference Data System
FITRS	Financial Instruments Transparency System
FOCUS reports	Financial and Operational Combined Uniform Single reports
FRANDT	Fair, reasonable, non-discriminatory and transparent
FSAP	Financial Sector Assessment Program
FSB	Financial Stability Board
GDPR	Regulation (EU) 2016/679 of the European Parliament and of the Council of 17 April 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). The current version can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=ES
IAIS	International Association of Insurance Supervisors
IMF	International Monetary Fund
Institutional counterparty	ECPs, except for those that are non-financial corporations, benefit plans, government entities and individuals, as well as other persons with at least $50 million in total assets
Investment Firm	As defined in Article 4(1)(2) CRR and 4(1)(1) MiFID: legal person, other than a credit institution, whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis.
IOSCO	International Organization of Securities Comissions

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IPAC	Report on Clients' Product Protection (*Informe sobre Protección de Activos de Clientes*).
ISIN	International Securities Identification Numbering
JST	Joint Supervisory Teams
JST coordinator	According to the SSM Framework regulation, it is a designated ECB staff member under whose coordination the different JSTs for a credit institution, its subsidiaries or the significant cross-border branches of a given banking group will work
Law 53/1984	Law 53/1984, of December 26, on incompatibilities of public servants
Law 44/2002	Law 44/2002, of November 22, on financial system reform measures
Law 3/2015	Law 3/2015, of March 30, on the regulation of Senior Officers in the Civil Service
Law 5/2015	Law 5/2015, of April 27, on measures to foster corporate financing
Law 39/2015	Law 39/2015, of October 1, 2015, on the legal regime of public administrations and common administrative procedures
Law 40/2015	Law 40/2015, of October 1, on the Legal Regimen of the Public Sector
Law 9/2017	Law 9/2017, of November 8, on Public Procurement
LoF	Letter of findings
LOSSEC	Law 10/2014 of June 26, on the regulation, supervision and solvency of Credit Institutions. A translated version can be accessed here: Microsoft Word - Ley 10 2014.docx (bde.es) See, also attached, amended provisions of LOSSEC (those which are relevant for substituted compliance application purposes) as a result of the subsequent amendments to the December 22, 2018 version  Amendments to LOSSEC (2).DOCX
LMV	Securities Market Act 24/1988, of July 28. See "SSMA"
LSI	Less significant institution
Margin RTS	Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty. The consolidated text can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02016R2251-20210218&from=EN
MAR (Regulation 596/2014)	Regulation (EU) No 596/2014 of the European Parliament and of the Council of April 16, 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC. The current version can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0596&from=EN

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MAR Investment Recommendations Regulation	Commission Delegated Regulation (EU) 2016/958 of March 9, 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest. The consolidated version can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02016R0958-20160617&from=EN
MiFID	Directive 2014/65/EU of the European Parliament and of the Council of May 15, 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast). The current version can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0065&from=EN
MiFID Delegated Directive	Commission Delegated Directive (EU) 2017/593 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. The current version can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L0593&from=EN
MiFID Org Reg (Regulation 2017/565)	Commission Delegated Regulation (EU) 2017/565 of April 25, 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive. The current version can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0565&from=EN
MiFID2	See "MiFID"
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council of May 15, 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012. The current version can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0600&from=ES
MiFIR RM Clearing Obligation RTS	Commission Delegated Regulation (EU) 2017/582. The current version can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0582&from=EN
Ministerial Order of 5 December 1999	Ministerial Order of December 5, 1999, on Special Stock Market Transactions
MLD4	Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC. The current consolidated version can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02015L0849-20180709&from=EN
MLD5	Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU. The current version can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L0843&from=EN
MMoU	Multilateral Memorandum of Understanding
MoU	Memorandum (Memoranda) of Understanding

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MTF	Multilateral trading facilities
NCA	National competent authority
NCA sub-coordinator	In accordance with the SSM Framework regulation, it is a staff member of a NCA appointed to a given JST that shall assist the JST coordinator as regards the organization and coordination of the tasks in the joint supervisory team, in particular as regards the staff members that were appointed by the same NCA as the relevant NCA sub-coordinator. The NCA sub-coordinator may give instructions to the members of the JST appointed by the same NCA, provided that these do not conflict with the instructions given by the JST coordinator.
NCB	National Central Bank
NFC	Non-financial counterparty. As defined in Article 2(9) of EMIR: undertakings established in the UK which are not Financial Counterparties or central counterparties (CCPs)
NFC+	Non-financial counterparty above the "clearing threshold" set out in Article 10 EMIR
NFC-	Non-financial counterparty below the "clearing threshold" set out in Article 10 EMIR
Official Journal of Spain	See "BOE"
OTC	Over-the-counter
OTF	Organised credit facility
Proposed Cross-Border Swap Requirements	Exchange Act Release No. 85823 (May 10, 2019), 84 FR 24206, 24242-44, 24294 (May 24, 2019). It can be accessed here: https://www.sec.gov/rules/proposed/2019/34-85823.pdf
RD 726/1989	Royal Decree 726/1989, of June 23, on Governing Councils and Members of Stock Markets, *Sociedad de Bolsas* and Collective Guarantee
RD 217/2008	Royal Decree 217/2008, of February 15, on the legal regime of Investment firms and other entities providing investment services and partially amending the Regulations of Law 35/2003, of November 4, 2003, on Collective Investment Undertakings, approved by Royal Decree 1309/2005, of November 4, 2005. Please find attached to this document a translated version of the relevant articles:  20210819 RDL 217_2008 EXTRACTO
RD 304/2014	Royal Decree 304/2014 of May 5 on the adoption of Regulation of Law 10/2010 of April 28, on the prevention of money laundering and terrorist financing. It can be accessed here: https://www.sepblac.es/wp-content/uploads/2018/03/royal_decree_304_2014.pdf
RD 84/2015	Royal Decree 84/2015 of February 13, implementing Law 10/2014 of June 26, on the regulation, supervision and solvency of Credit Institutions. A translated version can be accessed here: Microsoft Word - RD.84.2015.docx (bde.es)
RDL 14/2018	Royal Decree-Law 14/2018, of September 28, which modifies the revised text of the Securities Market Law, approved by Legislative Royal Decree 4/2015, of October 23 (incorporated into the English version of the SSMA: https://www.cnmv.es/docportal/Legislacion/realdecre/rld_4_en_rev.pdf

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Regulation 1287/2006	Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive. The current version can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R1287&from=GA
Regulation SBSR	SEC Release No. 34-74244, that adopts Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information. It can be accessed here: https://www.sec.gov/rules/final/2015/34-74244.pdf
Risk Mitigation Adopting Release	SEC final rule: Risk Mitigation Techniques for Uncleared Security-Based Swaps, published in the Federal Register on February 4, 2020. It can be accessed here: https://www.govinfo.gov/content/pkg/FR-2020-02-04/pdf/2019-27762.pdf
RTS 148/2013	Commission Delegated Regulation (EU) No 148/2013 of December 19, 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories. The current version can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0148-20171101&from=EN
RTS 149/2013	Commission Delegated Regulation (EU) No 149/2013 of December 19, 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivative contracts not cleared by a CCP. The current version can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0149-20180103&from=EN
SAMMS	Secondary Markets' advanced monitoring system
SBS Entity	Security-based swap dealers or major security-based swap participants
SCI	Spanish Significant Credit Institution
SEC	Securities and Exchange Commission
SEC Guidance	SEC Staff Guidance – Information Regarding Foreign Regulatory Requirements for Substituted Compliance Determinations dated December 23, 2019. The current version can be accessed here: https://www.sec.gov/files/staff-guidance-substituted-compliance-applications.pdf
SEP	Supervisory Evaluation Programme
SEPBLAC	Executive Service for the Commission for the Prevention of Money Laundering and Monetary Offences (*Servicio Ejecutivo de la Comisión para la Prevención del Blanqueo de Capitales e Infracciones Monetarias*)
SFTR	Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012. The current version can be accessed here: Regulation (EU) 2015/ of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (europa.eu)
SML	Securities Market Law. See "SSMA"

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SMLA	Law 10/2010, of April 28, on the Prevention of Money-Laundering and Terrorist Financing. Attached document including the translation of all the relevant provisions of SMLA provisions for substituted compliance application purposes (updated version)  SMLA (Law 10_2010) English Translation (2
Spanish Constitution	Spanish Constitution, sanctioned on December 27, 1978. A translated version can be accessed here: https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf
SREP	Supervisory review and evaluation process
SRO	Self-regulatory organization
SSMA	Royal Legislative Decree 4/2015, of October 23, which approves the recast text of the Securities Market Act 24/1988, of July 28. The current translated version of this act can be accessed here: https://www.cnmv.es/docportal/Legislacion/realdecre/rld_4_en_rev.pdf The subsequent amendments to the December 18, 2018 version have not any impact in the relevant provisions for substituted compliance application purposes.
SSM Framework Regulation	ECB Regulation No 468/2014 of 16 April 2014, establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities. It can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0468&from=en
SSM Regulation	Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions. It can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1024&from=EN
SSR	Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps. The current version can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02012R0236-20140917&from=EN
Tax Agency	Spanish State Tax Administration Agency (*Agencia Estatal de Administración Tributaria*)
TR	Trade Repository
Transaction Reporting RTS	See "RTS 148/2013"
TRLMV	See "SSMA"
UCITS	Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS). The consolidated text can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02009L0065-20140917&from=EN

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