



CONSOLIDATED LEGISLATION

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.

Ministry of Economy and Finance
BOE no. 41, 16 February 2008 Reference: BOE-A-
2008-2824

Article 3. *Conditions applicable to the provision of information.*

Where, pursuant to the provisions of Commission Delegated Regulation 565/2017/EU of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 as regards organisational requirements and operating conditions for investment firms, and defined terms for the purposes of that Directive, investment services firms are required to provide information to their clients in a durable medium, entities may provide such information in a medium other than paper, where the conditions set out in article 3 of that Delegated Regulation are met.

Article 14. *General requirements for authorization.*

1. Pursuant to the provisions of article 152 of the recast text of the Securities Market Law, entities must comply with the following requirements to obtain and maintain authorization as an investment services firm:

f) The members of the governing body and of the senior management of investment firms and the controlling entities mentioned in letter e) must comply with the suitability requirements set forth in articles 184.1 and 184 bis of the recast text of the Securities Market Law.

Likewise, those performing key functions and other key positions that, in accordance with a risk-based approach, have been considered as such for the daily performance of the activity of investment firms other than those referred to in Article 4.1.2.c) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 and, where applicable, of the dominant entities referred to in letter e), must comply with the suitability requirements set forth in letters a) and b) of Article 184 bis.1 of the recast text of the Securities Market Law.

Article 20. *Requirements of honourability, honesty and integrity.*

1. The honourability, honesty and integrity requirements of Article 184 bis of the recast text of the Securities Market Law shall be met by those who have shown personal, business and professional conduct that does not cast doubt on their ability to carry out the sound and prudent management of the investment services firm.

2. In assessing the existence of such honourability, honesty and integrity, all available information should be considered, including:

a) The trajectory of the position in question in their relationship with the regulatory and supervisory authorities; the reasons for any dismissal from previous positions or positions; their personal creditworthiness history and compliance with their obligations; their professional performance, if they had held positions of responsibility in investment firms that have been subjected to an early action or resolution process; or if they had been disqualified

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according to Insolvency Law 22/2003, of July 9, while the disqualification period defined in the judgment rating the insolvency and non-rehabilitated bankrupt and insolvent persons in insolvency proceedings prior to entry has expired upon the entry into force of the aforementioned law.

b) The conviction for the commission of crimes and the penalty for the commission of administrative infractions, taking into account:

1. The intentional or reckless nature of the crime or administrative infraction.
2. Whether or not the conviction or sanction is final.
3. The severity of the conviction or sanction imposed.
4. The classification of the events that gave rise to the conviction or sanction, especially in the case of corporate crimes, crimes against property and against the socioeconomic order, against the Public Treasury and Social Security, crimes of money laundering or receiving of stolen goods or if they involve infringement of the rules regulating the exercise of the banking, insurance or Securities Market Law, or consumer protection.
5. Whether the facts that gave rise to the conviction or sanction were carried out for their own benefit or to the detriment of the interests of third parties whose administration or business management had been entrusted to them, and if applicable, the relevance of the facts for which the penalty or sanction occurred in relation to the functions assigned or to be assigned to the position in question in the investment services firm.
6. The statute of limitations for unlawful acts of a criminal or administrative nature or the possible extinction of criminal liability.
7. The existence of extenuating circumstances and subsequent conduct since the commission of the crime or infraction.
8. Repeated convictions or sanctions for crimes or infractions.

For the purposes of assessing the provisions of this letter, a criminal record certificate issued by the Ministry of Justice or, in the case of other Member States of the European Union or a third country, an equivalent official certificate issued by the State in which the candidate has carried out his professional activity in the last 10 years, must be provided to the National Securities Market Commission. The National Securities Market Commission will consult the databases of the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority on administrative sanctions and may establish a committee of independent experts for the purpose of reporting on assessment records involving criminal convictions.

c) The existence of relevant investigations based on rational indications, both in the criminal and administrative fields, on any of the facts mentioned in paragraph 4 of letter b). The mere fact that a director, general manager or equivalent, or other employee responsible for internal control or holding a key position in the performance of the entity's general activity is the subject of such investigations shall not be deemed to constitute a supervening breach of good repute. In connection with ongoing investigations, the information may be provided by means of an affidavit.

3. Should, during the exercise of their activity any of the circumstances foreseen in the preceding paragraph occur in relation with the person being assessed and this be relevant for the assessment of his/her honourability, the investment services firm shall notify the National Securities Market Commission within a maximum period of 15 working days from the time it becomes aware of it.

4. The members of the governing body and senior management of the investment firm or its parent company, including those responsible for internal control functions or who hold key posts for the day-to-day conduct of the investment firm's business who are aware of any of the circumstances described in paragraph 2 being present in their person, shall inform their entity thereof.

5. The requirements of good repute, honesty and integrity set out in this Article shall be presumed to apply to shareholders that are Public Administrations or entities on which they are dependent.

Article 20 bis. Knowledge, skills and experience requirements.

1. They shall possess the knowledge, skills and experience required pursuant to article 184 bis of the recast text of the Securities Market Law, those persons who have received training of the appropriate level and profile, particularly in the fields of investment services,

banking and other financial services, the appropriate skills for the position in question and practical experience derived from their previous occupations for sufficient periods of time.

This will take into account the knowledge acquired in an academic environment, their proven skills and abilities and their experience in the professional performance of duties similar to those to be carried out in other entities or companies.

2. When assessing the practical and professional experience, special attention should be paid to the nature and complexity of the positions held, the decision-making powers and responsibilities assumed, together with the number of people under their charge, the technical knowledge attained about the financial sector and the risks to be managed.

In any case, the criteria of knowledge and experience will be applied, taking into account the nature, scale and complexity of the activity of each investment firm and the specific functions and responsibilities of the position assigned to the person being evaluated.

3. In addition, the governing body should have members who, taken as a whole, have sufficient professional experience in the governance of investment firms to ensure the effective capacity of the governing body to make decisions independently and autonomously for the benefit of the entity.

Article 21. *Ability to exercise good governance of the investment firm.*

1. In order to assess the ability of the members of the governing body to exercise good governance of the investment services firm as required by article 184 bis of the recast text of the Securities Market Law, the following shall be taken into account:

a) The existence of potential conflicts of interest that generate undue influence from third parties derived from:

1. Positions held in the past or present in the same investment services firm or in other private or public organizations.

2. A personal, professional or economic relationship with other members of the governing body of the investment firm, its parent company or its subsidiaries.

3. A personal, professional or economic relationship with the controlling shareholders of the investment firm, its parent company or its subsidiaries.

b) The ability to devote sufficient time to the performance of their duties and responsibilities, including understanding the entity's business, its principal risks and the implications of the business model and risk strategy.

Should, during the course of their activity, any member of the administrative body be affected by any circumstance that could alter their ability to exercise good governance of the investment services firm, the latter shall notify the National Securities Market Commission within a maximum period of 15 working days from the time they become aware of such circumstance.

2. The members of the governing body who hold a position in a significant entity must comply with the limitation of positions provided in article 188.2 and 3 of the recast text of the Securities Market Law.

Article 22. *Assessment of suitability.*

1. The assessment of compliance by the members of the governing body and senior management of the entities mentioned in article 14.1.f), paragraph one, of the suitability requirements set forth in article 184 bis.1 of the recast text of the Securities Market Law, shall be carried out:

a) By the promoters, on the occasion of the application to the National Securities Market Commission for authorization to carry on the activity of an investment services firm;

b) when there are relevant changes in the composition of the governing body or senior management, in particular:

By the entity, when appointing new members of the administrative body or senior management;

1. by the acquirer of a significant shareholding, when, as a result of a direct or indirect acquisition or increase of a significant shareholding in the investment services firm, new appointments are derived, without prejudice to the subsequent valuation made by the entity;

2. by the entity when re-electing members of the governing body or senior management;

or

c) by the entity, on an ongoing basis.

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If the assessment of the suitability of the positions provided for in letters a) and b) above is negative, the entity shall refrain from appointing or giving office to such person, or, in the case of a supervening circumstance, shall adopt the appropriate measures to remedy the deficiencies identified and, where necessary, arrange for his/her temporary suspension or permanent termination.

2. The entities referred to in the first paragraph of Article 14.1.f) of this Royal Decree shall evaluate or re-evaluate the collective suitability of the governing body, pursuant to the provisions of article 184.1 of the recast text of the Securities Market Law. The assessment shall be carried out:

a) By the promoters, on the occasion of the application to the National Securities Market Commission for authorization to carry on the activity of an investment services firm;

b) by the entity when there are relevant changes in the composition of the governing body, in particular:

1. When new members of the governing body are appointed;
2. when, as a result of a direct or indirect acquisition or increase of a significant shareholding in the investment services firm, new appointments are made;
3. when the members of the governing body are re-elected;
4. when the appointed or re-elected members cease to be members of the governing body; or

c) by the entity, on an ongoing basis.

3. The assessment of compliance by the holders of key functions and other key positions of the entities mentioned in article 187.2 of the recast text of the Securities Market Law, of the suitability requirements set forth in article 184 bis.1.a) and b) of the aforementioned law, shall be carried out:

a) By the promoters, on the occasion of the application to the National Securities Market Commission for authorization to carry on the activity of an investment services firm;

b) by the entity, when appointing new holders of key functions and other key positions, in particular, when, as a result of a direct or indirect acquisition or increase of a significant shareholding in the investment firm, new appointments have been made; or

c) by the entity, when necessary.

4. The National Securities Market Commission shall:

a) The assessment of compliance by the members of the governing body and senior management of the entities mentioned in article 14.1.f), paragraph one, of the suitability requirements set forth in article 184.1 184 of the recast text of the Securities Market Law, in the following cases and deadlines:

1. On the occasion of the authorization of the creation of an investment services firm, within the term provided in article 149.2 of the recast text of the Securities Market Law.

2. When acquiring a significant holding resulting in new appointments, within the period provided for in Article 86(5).

Following notification of the proposal of new appointments provided for in article 23.1, within the term provided for in article 158.3 of the recast text of the Securities Market Law. In the absence of notification within this period, it will be understood that the appraisal is positive.

3. When, given the existence of well-founded indications, it is necessary to assess whether suitability is maintained in relation to active members.

b) The assessment of compliance by the holders of key functions and other key positions of the entities mentioned in article 158.2 of the recast text of the Securities Market Law, of the suitability requirements set forth in article 184 bis.1.a) and b) of the aforementioned law, in the following cases and terms:

1. On the occasion of the authorization of the creation of an investment services firm, within the term provided in article 149.2 of the recast text of the Securities Market Law.

2. When, as a result of a direct or indirect acquisition or increase of a significant shareholding in the investment services firm, new appointments are made following the notification provided for in article 23.2, within the term provided in article 158.3 of the recast text of the Securities Market Law; In the absence of notification within this period, it will be understood that the appraisal is positive.

3. Following notification of new appointments provided for in article 23.1, within the term

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provided for in article 158.3 of the recast text of the Securities Market Law. In the absence of notification within this period, it will be understood that the appraisal is positive.

4. When, given the existence of well-founded indications, it is necessary to assess whether suitability is maintained in relation to active members.

5. Any failure to comply with the requirements specified in Articles 20 to 21 shall be reported to the National Securities Market Commission by the investment firm within 15 working days of becoming aware of such failure.

Article 24. *Suitability policy for the selection, control and evaluation of suitability requirements by entities.*

1. Investment firms and the controlling entities of investment firms subject to Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013, which are a financial holding company or a mixed financial holding company, shall have, under conditions proportionate to the size, internal organization, nature, scale and complexity of their activities, adequate internal units and procedures to carry out the selection, monitoring and succession plan, as well as the re-election of positions, of the persons who are to hold positions subject to compliance with the suitability requirements set forth in article 184 and in article 184 bis.1 of the revised text of the Securities Market Law.

2. The entities referred to in Article 187 of the recast text of the Securities Market Law must have, under conditions commensurate with the size, internal organization, nature, scale and complexity of their activities, appropriate internal units and procedures to carry out the continuous selection and evaluation of key role holders.

Said entities shall keep at the disposal of the National Securities Market Commission an updated list of the persons who perform them, an assessment of the suitability conducted by the entity and the supporting documentation for same.

3. Branches of investment firms not authorized in a Member State of the European Union shall have, under conditions commensurate with the size, internal organization, nature, scale and complexity of their activities, adequate internal units and procedures for the selection and ongoing assessment of persons responsible for the management of the branch.

TITLE II

Other issues of the legal regime of investment services and activities firms and other entities that provide investment services

CHAPTER I

Organisation and operation

Section 1. Internal organisational and operational requirements

Article 30. *Internal organisational requirements.*

1. Pursuant to article 193 of the consolidated text of the Securities Market Act, Investment firms shall comply with the established internal organisation requirements:

- a) In the consolidated text of the Securities Market Act, and in this Royal Decree.
- b) In articles 21 to 43 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.
- c) In all other legislation applicable to them.

2. Investment firms shall establish adequate and sufficient policies and procedures to ensure that the firm, including its directors, employees and related agents, comply with their obligations under the consolidated text of the Securities Market Act, together with the relevant rules applicable to the personal transactions of such persons as set out in articles 28 and 29 of the aforementioned Commission Delegated Regulation (EU) 2017/565 of 25 April 2016. To this end, investment firms shall establish and maintain a permanent and effective compliance verification function which acts independently in accordance with the rules laid down in Article 22 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

3. The systems, procedures and mechanisms shall be comprehensive and proportionate

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to the nature, scale and complexity of the risks inherent to the entity's business model and activities. Likewise, they will be configured in accordance with technical criteria that guarantee adequate management and treatment of the risks provided for in this Royal Decree.

Article 30 bis. *Internal organisational measures regarding conflicts of interest.*

1. An investment firm shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest as defined in article 23 from adversely affecting the interests of its clients, pursuant to articles 33 to 43 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

2. The product approval process shall specify an identified target market of end clients within the relevant category of clients for each financial instrument and shall ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market

3. An investment firm shall also regularly review financial instruments it offers or markets, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether the financial instrument remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate.

Article 30 ter. *Internal organisational measures for risk management.*

1. An investment firm shall ensure, when relying on a third party 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 reasonable steps to avoid undue additional operational risk, in accordance with the provisions of articles 30 to 32 of said Commission Delegated Regulation (EU) No 2017/565 of 25 April 2016.

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 supervisor to monitor the firm's compliance with all obligations.

2. An investment firm shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems which shall be governed as provided in articles 23 and 24 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

3. An investment firm shall have sound security systems to ensure the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage, while maintaining the confidentiality of the data at all times.

Article 30 quater. *Internal organisational measures for asset management.*

1. An investment firm shall, when holding financial instruments belonging to clients, make adequate arrangements so as 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

Among the safeguard measures that investment services companies must adopt will be the need to reach agreements with other entities outside the group so that, at the request of the National Securities Market Commission (*Comisión Nacional del Mercado de Valores*), in the event of financial difficulties or reasonable doubts as to their viability or the adequate protection of investors, they may agree to transfer en bloc the financial instruments under custody and the cash of their clients to one or several entities.

If after three months have elapsed since any of the circumstances referred to in the preceding paragraph have materialised the transfer has not been carried out, and without prejudice to any administrative liability that may have been incurred, the National Securities Market Commission shall request expressions of interest from other authorised entities in accordance with the procedure it develops for such purpose, in order to carry out the transfer to another entity.

Should no authorised entity express an interest in such transfer, or if, despite expressions of interest, no entity complies with the minimum requirements laid down in the procedure set

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forth in the preceding section, the National Securities Market Commission may determine the entity or entities to which the transfer shall be made, based on the procedure developed for such purpose.

Such procedures shall be governed by the principles of transparency, free competition and neutrality.

As an alternative to the provisions of the four preceding paragraphs, Investment firms may deposit the financial instruments and cash of their clients in accounts in other entities authorised to provide custody and administration services for financial instruments.

2. An investment firm shall, when holding funds belonging to clients, make adequate arrangements to safeguard the rights of clients and, except in the case of credit institutions, prevent the use of client funds for its own account.

In particular, cash accounts held in the name of clients shall be instrumental and transitory in nature and shall be related to the execution of transactions carried out on their behalf. Clients shall retain the ownership rights over any funds delivered to the entity even when these are materialised in assets in the name of the entity on behalf of its clients. Investment firms must request from each of their clients the details of a current account to which to transfer the funds of each of them, even without prior orders from the clients when the balances lose their transitory nature or when the National Securities Market Commission, in the exercise of its supervisory powers, determines the necessary individualisation of the cash balances.

Once the insolvency proceedings of a credit institution in which an investment services company has opened an instrumental and transitory cash account in its name on behalf of its clients have been initiated, the bodies involved in such insolvency proceedings shall proceed to immediately individualise the cash balances in favour of each of the clients of the investment services firm, which for these purposes must be properly identified. Accordingly, such balances shall be covered, where appropriate, by the Deposit Guarantee Fund for Credit Institutions.

Article 30 quinquies. *Internal organisational measures for financial collateral agreements with change of title, creation of pledges and conclusion of credit netting agreements.*

1. An investment firm shall not conclude title transfer financial collateral arrangements with retail clients for the purpose of securing or covering present or future, actual or contingent or prospective obligations of clients.

2. It is prohibited to pledge or enter into credit clearing agreements on the financial instruments or funds of retail clients that allow a third party to dispose of such instruments or funds to recover debts that do not concern the client or the provision of services to the client, except when so required by the applicable law in the jurisdiction of a third country in which the client's funds or financial instruments are held. The creation of pledges or the conclusion of credit clearing agreements when they are concluded by any of the entities provided for in article 4.4 of Royal Decree-Law 5/2005, of 11 March, on urgent reforms to boost productivity and improve public procurement, is exempt from this prohibition.

Where investment firms are obliged to enter into agreements giving rise to the creation of such collateral or clearing rights, they shall disclose such information to clients, warning them of the risks associated with such mechanisms.

Where liens or rights of set-off are granted by the company in respect of financial instruments or client funds, or where the company has been informed that they are granted, such rights should be recorded in the clients' contracts and in the company's own accounts, to make clear the ownership status of the clients' assets, in particular in the event of insolvency.

Article 30 sexies. *Other internal organisational measures.*

1. An investment firm which manufactures financial instruments for sale to clients shall maintain, operate and review a process for the approval of each financial instrument and significant adaptations of existing financial instruments before it is marketed or distributed to clients, in accordance with the provisions of article 208 ter of the revised text of the Securities Market Act and this Royal Decree.

An investment firm which manufactures financial instruments shall make available to any distributor all appropriate information on the financial instrument and the product approval process, including the identified target market of the financial instrument.

Where an investment firm offers or recommends financial instruments which it does not manufacture, it shall have in place adequate arrangements to obtain the information

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regarding same and on the product approval process, including the defined target market of the financial instrument to understand the characteristics and identified target market of each financial instrument.

The policies, processes and arrangements referred to in this article shall be without prejudice to all other requirements under this consolidated text of the Securities Market Act and this Royal Decree including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interests, and inducements.

2. An investment firm shall take reasonable steps to ensure continuity and regularity in the performance of investment services and activities. . To that end the investment firm shall employ appropriate and proportionate systems, resources and procedures.

3. When an entity intends to render services remotely, it shall have adequate means to ensure the security, confidentiality, reliability and capacity of the service provided and adequate compliance with the regulations on the prevent of money laundering, the codes of conduct and internal control for adequate execution of the supervisory and inspection activities of the National Securities Market Commission.

Article 31. Risk management and risk committee.

1. In accordance with the provisions of article 192 bis.1 of the consolidated text of the Securities Market Act, the management body is responsible for the risks assumed by an investment services firm. For these purposes, investment firms shall establish effective reporting channels to the management body on the firm's risk management policies and all material risks covered by Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 that the firm faces.

2. In exercising its responsibility for risk management, the management body shall:

a) Devote sufficient time to consideration of risk-related issues. In particular, it shall actively participate in the management of all material risks contemplated in Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 and in the solvency rules set forth in the consolidated text of the Securities Market Act and its implementing provisions, shall ensure that adequate resources are allocated for risk management, and shall intervene, in particular, in the valuation of assets, the use of external credit ratings and the internal models relating to these risks.

b) Approve and periodically review the strategies and policies for the assumption, management, supervision and reduction of the risks to which the investment firm is or may be exposed, including those resulting from the macroeconomic situation in which it operates in relation to the phase of the economic cycle.

3. The obligations to set up a risk committee provided for in article 192 bis.2 of the consolidated text of the Securities Market Act shall not apply to Investment firms that meet the following requirements:

a) Not be authorised to provide the auxiliary service referred to in article 141.a) of the consolidated text of the Securities Market Act.

b) Provide only one or more of the following investment services or activities:

1. The reception and transmission of client orders in relation to one or more financial instruments. This service shall be understood to include the bringing together of two or more investors to execute transactions between them on one or more financial instruments.

2. The execution of orders on account of clients

3. Portfolio management.

4. Investment advice.

c) Not be authorised to hold money or securities of their clients and, for this reason, can never be in a debit situation with respect to such clients.

This article shall also not apply to those Investment firms authorised solely to provide those services referred to in articles 140.1.h) or i) of the consolidated text of the Securities Market Act or both, nor to those Investment firms that also provide any of the services provided for in letter b) above.

4. The risk committee of investment firms required, in accordance with article 192a.2 of the consolidated text of the Securities Market Act, and paragraph 2 prior to its establishment, shall perform the following functions:

a) Advise the management body on the overall risk appetite, current and future, of the

investment firm and its strategy in this area and assist it in monitoring the implementation of that strategy.

b) Monitor that the pricing policy for assets and liabilities offered to clients takes full account of the business model and risk strategy of the investment services firm. Otherwise, the risk committee shall submit a plan to the management body to remedy it.

c) Determine, together with the management body, the nature, quantity, format and frequency of the information on risks to be received by the committee itself and the management body.

d) Collaborate in establishing sound compensation policies and practices. For this purpose, the risk committee will examine, without prejudice to the functions of the remuneration committee, if the incentive policy provided for in the remuneration system takes into account risk, capital, liquidity, and the probability and timeliness of the benefits.

For the proper exercise of these functions, investment firms shall ensure that the risk committee has unimpeded access to information on the risk situation of the investment firm and, if necessary, to the risk management unit and to specialised external advice.

5. The National Securities Market Commission may determine that an investment services firm, due to its size, its internal organisation, the nature, scope or limited complexity of its activities, may assign the role of the risk committee to the joint audit committee or be exempted from the constitution of this committee.

Article 31 bis. Risk management unit

1. When proportionate in view of the nature, scale and complexity of their business activity and the nature and range of investment services they provide, Investment firms, pursuant to article 192 bis.3 of the consolidated text of the Securities Market Act, must create and maintain a risk management unit that operates independently and performs the following functions:

a) Implementation of the policy and procedures outlined in article 23.1 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

b) Presentation of a complete picture of the full range of risks to which the investment firm is exposed.

c) Identification, quantification and adequate reporting of all significant risks.

d) Preparation of reports and advice for the management body on specific risk developments that affect or may affect the investment services company. As well as the reports provided for in article 35.2 of this Royal Decree.

e) Active participation in the development of the investment services firm's risk strategy and in all major risk management decisions.

2. Regardless of the existence or not of the risk management unit, all investment firms shall be able to demonstrate that the policies and procedures adopted in accordance with the provisions of the preceding paragraph comply with the provisions therein and are effective.

3. The director of the risk management unit, provided for in article 192 bis.3 of the consolidated text of the Securities Market Act, shall be an independent senior manager, who shall have no operational role and shall specifically assume responsibility for the risk management function and may not be removed from office without the prior approval of the management body.

In any case, operational functions shall be understood to be those that involve executive or management responsibilities in the lines or areas of business of the investment services firm.

4. For the performance of his duties, the director of the risk management unit shall have direct access to the management body.

5. Where the nature, scale and complexity of the investment firm's activities do not justify the specific appointment of a person, another senior manager of the investment firm may perform that function, provided that there is no conflict of interest.

Article 32. Records .

1. In accordance with the provisions of article 194 of the consolidated text of the Securities Market Act, investment firms shall keep a record of all the services, activities and transactions they perform. Such a record must be sufficient to enable the National Securities Market Commission to perform its supervisory functions and apply the appropriate executive

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measures under article 17 consolidated text of the Securities Market Act, Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014, Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 and Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 and in particular to determine whether the investment firm has complied with all of its obligations, including those relating to its clients or potential clients and market integrity.

2. Records shall include the recording of telephone conversations or electronic communications relating to, at least, transactions concluded when dealing on own account and the provision of client order services that relate to the reception, transmission and execution of client orders.

3. Such telephone conversations and electronic communications shall also include those that are intended to result in transactions concluded when dealing on own account or in the provision of client order services that relate to the reception, transmission and execution of client orders, even if those conversations or communications do not result in the conclusion of such transactions or in the provision of client order services.

For those purposes, an investment firm shall take all reasonable steps to record relevant telephone conversations and electronic communications, made with, sent from or received by equipment provided by the investment firm to an employee or contractor or the use of which by an employee or contractor has been accepted or permitted by the investment firm.

4. An investment firm shall notify new and existing clients that telephone communications or conversations between the investment firm and its clients that result or may result in transactions will be recorded. Such a notification may be made once, before the provision of investment services to new and existing clients.

5. An investment firm shall not provide, by telephone, investment 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.

6. Orders may be placed by clients through other channels, however such communications must be made in a durable medium such as mails, faxes, emails or documentation of client orders made at meetings. In particular, the content of relevant face-to-face conversations with a client may be recorded by using written minutes or notes. Such orders shall be considered equivalent to orders received by telephone

7. An investment firm shall take all reasonable steps to prevent an employee or contractor from making, sending or receiving relevant telephone conversations and electronic communications on privately-owned equipment which the investment firm is unable to record or copy.

8. The records kept in accordance with this paragraph shall be provided to the client involved upon request and shall be kept for a period of five years and, where requested by the competent authority, for a period of up to seven years.

9. The National Securities Market Commission may specify the systems, processes, technical requirements and scope of recordings of telephone conversations and electronic communications with clients that may result in the provision of order services to clients, in accordance with the provisions of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016..

10. The provisions of this article shall apply in accordance with the provisions of Articles 72 to 76 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

Section 3. Corporate Governance

Article 35. Senior management responsibility.

1. The members of the administrative body shall ensure that the firm complies with the obligations imposed by the consolidated text of the Securities Market Act, this Royal Decree and its implementing provisions. In particular, they must evaluate and review as often as deemed necessary depending on the size of the entity, the complexity of its risk management and the nature of the investment services provided, and at least annually, the effectiveness of the policies, measures and procedures established to comply with the obligations imposed on the entity by articles 182 and 183 of the consolidated text of the Securities Market Act and adopt measures to address any deficiencies.

2. The management body shall receive, on a regular basis and at least annually, written reports on regulatory compliance, risk management and internal audit, indicating, where appropriate, the measures taken to address the identified deficiencies.

Section 4. Client assets and funds

Article 36. Obligations regarding corporate governance.

1. Significant investment services and activities firms and their controlling entities must set up an appointments committee and a remuneration committee under the terms set forth in article 188 of the revised text of the Securities Market Law.

2. The National Securities Market Commission may consider the obligation to form the committees provided for in article 188 of the recast text of the Securities Market Law to be fulfilled, provided that:

They are subsidiary investment firms which have been exempted from the application of prudential requirements on an individual basis pursuant to articles 7 or 10 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

Parent investment firms shall set up such committees in accordance with articles 37 and 38 and shall assume their functions vis-à-vis subsidiaries.

3. For the purposes of the exemption from the constitution of committees provided for in section 4 of article 188 of the recast text of the Securities Market Law, the CNMV may consider that the obligations of both committees are assumed by the corresponding committees of their parent entities. When the parent entity is domiciled in a third country, such exemption may only be granted if the legislation of the third country is equivalent to European legislation in these matters.

Article 38. Remuneration Committee.

1. The remuneration committee provided for in article 188 of the recast text of the Securities Market Law shall be responsible for the preparation of decisions relating to remuneration, including those with implications for the risk and risk management of the investment services firm in question, to be adopted by the governing body.

2. In particular, the Remuneration Committee shall report on the general remuneration policy for members of the Board of Directors, general managers or similar, as well as the individual remuneration and other contractual conditions of the members of the governing body who perform executive duties, and shall ensure that they are complied with.

3. In those cases in which the specific regulations of an entity provide for staff representation on the governing body, the remuneration committee shall include one or more staff representatives.

In preparing decisions, the remuneration committee shall take into account the long-term interests of shareholders, investors and other stakeholders in the investment firm, as well as the public interest

Article 39. Remuneration policy.

1. For the purposes of the provisions of article 189 of the recast text of the Securities Market Law, with regard to its reference to article 34 of Law 10/2014 of June 26, discretionary pension benefits shall mean discretionary payments granted by an investment services firm on an individual basis to its personnel, by virtue of a pension plan or different instrument granting retirement benefits and which may be assimilated to variable remuneration. In no case shall it include benefits granted to an employee in accordance with the company's pension system.

2. For the purposes of the referral provided for in article 189 of the recast text of the Securities Market Law, as it affects article 34.1.p) of Law 10/2014, of June 26, the National Securities Market Commission may:

a) Impose restrictions on investment services companies for the use of the instruments indicated in said article of the recast text of the Securities Market Law.

b) Establish the necessary criteria to allow variable remuneration to be contracted on the basis of negative financial performance of investment firms.

c) Require investment firms and their groups to limit variable compensation as a percentage of total revenues when this is not consistent with maintaining a strong capital base.

3. In relation to investment services companies that have received financial support under the terms set forth in article 35 of Law 10/2014, of June 26, referred to in article 189 of the recast text of the Securities Market Law, and without prejudice to other applicable

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regulations, the National Securities Market Commission is responsible for expressly authorizing the amount, accrual and payment of any variable remuneration to directors and executives, and may also establish, if appropriate, limits on their total remuneration.

4. Notwithstanding the foregoing, the National Securities Market Commission shall comply with the provisions of article 189 of the recast text of the Securities Market Law, establishing criteria on the remuneration concepts and policies contained in articles 32 to 35 of Law 10/2014, of June 26, and in particular may establish specific criteria for determining the ratio between the fixed and variable components of total remuneration.

5. The National Securities Market Commission shall collect and transmit to the European Banking Authority the following information:

a) That published by the entities in accordance with article 450.1.g), h) and i) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013. This information will be used by the National Securities Market Commission (Comisión Nacional del Mercado de Valores) to compare remuneration trends and practices.

b) The number of individuals in each entity receiving compensation of 1 million euros or more per year, including their responsibilities in the position held, the scope of business involved, and the main components of salary, incentives, long-term bonuses and pension contribution.

Article 40. *Disclosure obligations as regards corporate governance and the remuneration policy.*

1. Pursuant to articles 183.3 of the consolidated text of the Securities Market Act, the investment services firms shall provide complete, clear, comprehensible and comparable corporate governance information, as set out in articles 182 to 189 ter of the consolidated text of the Securities Market Act, on their website, including information on the manner in which they comply with their corporate governance and remuneration obligations.

2. The board of directors will be responsible for keeping the aforementioned information on the entity's website up to date.

3. Information on the total remuneration accruing in each financial year by the members of the board of directors or comparable body must reflect the total remuneration accruing, with an individual breakdown by remuneration items with reference to the amount of the fixed components and allowances, as well as the variable remuneration items. This information will contain all the remuneration items accruing, whatever their nature or the group entity paying them.

4. The provisions of the preceding paragraph will include, where applicable, all the remuneration items accruing to the members of the board of directors or comparable body for their belonging to the boards or similar bodies of other group or investee companies in which they act in representation of the group.

5. Notwithstanding the foregoing, this article shall not apply to the investment services firms that comply with the following requirements:

a) Entities that are not authorized to render the ancillary service mentioned in article 141.a) of the consolidated text of the Securities Market Act.

b) Entities that only provide one or several of the investment services or activities listed in article 140.1.a), b), d) and g) of the consolidated text of the Securities Market Act.

c) Entities that are not authorized to hold money or securities belonging to their clients in deposit and, for this reason, can never be deemed as debtors with respect to said clients.

6. The National Securities Market Commission shall specify the terms in which the corporate governance and remuneration information and the website are to be laid out for the investment services firms that, according to their nature, size and complexity, must include said information in their website, in accordance with the provisions of the consolidated text of the Securities Market Act and this chapter.

Article 41. *Protection of client assets.*

Pursuant to the provisions of article 193.2.f) and 3.d) of the consolidated text of the Securities Market Act, investment services firms must comply with the following requirements:

a) They shall keep the necessary records and accounts so that they can at all times and without delay distinguish a client's assets from those of other clients and from their own assets.

b) The records and accounts must ensure the accuracy of the data they contain and their correspondence with the financial instruments and client funds, and that they can be used as

documentation on which audit work can be conducted.

c) Where applicable, they must regularly reconcile their internal accounts and records with those of third parties in whose possession their clients' assets are held.

d) They shall adopt the necessary measures to ensure:

1. That the financial instruments of clients deposited with a third party are distinguished from those belonging to the investment firm and the third party. To this end, accounts with a different denomination must be established in the accounts of the third party, or other equivalent measures to ensure a similar level of protection.

2. Client funds deposited with a central bank, a credit institution or an authorised bank in a third country or an authorised money market fund are accounted for by the depositary in an account or accounts identified separately from those in which the funds belonging to the investment firm are accounted for.

e) Adopt appropriate organisational arrangements to minimise the risk of loss or diminution in the value of customer assets, or the rights related to them, as a result of misuse of assets, fraud, poor administration, inadequate record keeping or negligence.

Section 4. Client assets and funds

Article 42. *Custody of clients' financial instruments.*

1. Entities that provide investment services may deposit their clients' financial instruments in an account or accounts opened with a third party, provided that they act with due diligence, competence and care in the selection, designation and periodic review of the third party and of the agreements that regulate the holding and custody of the financial instruments.

In particular, entities should take into account the experience and market reputation of the third party, together with any regulatory requirements or market practices related to the holding of such financial instruments that may prejudice the rights of clients.

2. Where an investment firm intends to deposit client financial instruments with a third party, such deposit may only be made in a jurisdiction where the safekeeping of financial instruments on behalf of another person is subject to specific regulation and supervision, and where such third party is also subject to such specific regulation and supervision.

Likewise, it may only deposit its clients' financial instruments with a third party domiciled in a non-EU Member State that does not subject the custody of financial instruments on behalf of other persons to regulation and supervision, if any of the following conditions are met:

a) The nature of the financial instruments or of the services related to those instruments requires that the custody be carried out in such an entity in a non-EU Member State.

b) The financial instruments belong to a professional client who requests in writing to the company that they be deposited with a third party in that State.

3. The requirements set forth in paragraph 2 shall also apply when the third party has delegated to another third party any of its functions in relation to the holding and custody of financial instruments.

4. Entities that provide investment services must reach agreements with third party entities so that, in the event of financial difficulties, they may agree to transfer the financial instruments under their custody. In the case of investment firms, these agreements should also apply in respect of cash.

5. If within three months after the financial difficulty has arisen, no cash transfer has been carried out, the National Securities Market Commission will require the entity in difficulty and one of the entities authorized to have custody of financial instruments to carry out the transfer without delay.

Article 43. *Deposit of funds from clients.*

1. Investment services firms must immediately deposit the funds they receive from their clients in one or more accounts opened with the following entities:

a) Central Banks.

b) Credit institutions authorized in the Member States of the European Union.

c) Authorized banks in third States.

d) Qualified money market funds.

In any case, the client may refuse at any time to have their funds deposited in a money market fund, and must always give their express and prior consent. Such consent may generally be given at the time of entering into the service provision contract with the entity. To this end, investment firms will inform clients that funds placed in a qualified money market fund will not be held in accordance with the requirements relating to the safeguarding of client funds established in the recast text of the Securities Market Law and this royal decree.

The provisions of this paragraph shall not apply with respect to the placement of funds with a central bank in respect of deposits held by that entity. This exclusion does not apply with respect to the duty to have the client's express and prior consent for the deposit of his funds in a money market.

2. Where funds are not deposited with a central bank, investment services firms must act with due skill, care and diligence in the selection, appointment and periodic review of the chosen entity and in the adoption of the arrangements governing the holding of such funds, and they must consider the need for diversification of such funds as part of their due diligence obligation.

In particular, entities should take into account the experience and market reputation of said entities or the money market fund so as to ensure the protection of clients' rights together with any regulatory requirements or market practices related to the holding of such client funds that may prejudice the rights of clients.

3. Where investment firms deposit cash from clients with a credit institution, they shall identify the balances for each client and report to the credit institution the individualized data of the balances on a regular basis.

4. Where investment firms deposit client funds with a credit institution, bank or money market fund in the same group as the investment services firm, they shall limit the funds they deposit with such group entity or any combination of such entities so that the amount deposited does not exceed 20% of the total of such funds.

An investment firm may breach that limit where it can demonstrate that, in view of the nature, scale and complexity of its business, together with the security offered by such third party entities of the same group, and including in any event the small balance of client funds held by the investment firm, the requirement set out above is not proportionate. Investment firms shall periodically review the assessment of this circumstance and notify their initial and revised assessments to the National Securities Market Commission.

Article 44. *Use of clients' financial instruments*

1. Entities that provide investment services may only enter into agreements for securities financing transactions on their clients' financial instruments or use them in any other way, either for their own account or for the account of any other person or client, subject to the following requirements:

a) The client must give their express consent prior to the use of financial instruments, under precise conditions, clearly demonstrated in writing and formalized with their signature or an equivalent mechanism.

a) The use of financial instruments shall conform to the precise conditions specified and accepted by the client.

2. In addition to the provisions of the preceding paragraph, when the client's financial instruments are deposited in a global account, provided that it is permitted by the applicable regulations, at least one of the following requirements must be complied with:

a) All clients whose financial instruments are deposited jointly in the global account must have expressed their individual and prior consent in accordance with the provisions of letter a) of the preceding paragraph.

b) The entity must have systems and controls in place to ensure compliance with the provisions of the preceding paragraph.

To enable the correct attribution of possible losses, the entity's records should include details of the clients pursuant to whose instructions the financial instruments have been used and the number of financial instruments used belonging to each client.

3. Investment firms shall adopt appropriate measures to prevent the unauthorized use of clients' financial instruments on their own account or for the account of any other person, in particular:

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a) The conclusion of agreements with clients on the measures to be taken by investment firms in the event the client does not have a sufficient provision in their account on the settlement date, such as borrowing the relevant securities on behalf of the client or closing the position,

b) close monitoring by the investment services firm of its expected ability to deliver on the settlement date and the implementation of corrective measures if it is unable to deliver; and

c) close monitoring and prompt claiming of undelivered securities outstanding at the settlement date and thereafter.

4. The National Securities Market Commission may authorize the entities referred to in article 15.1 b) to hold for their own account the financial instruments received from their clients for the execution of investment orders, provided that the following conditions are met:

a) Such positions arise only from the institution's inability to comply with the precise orders received from clients;

b) the total market value of such positions does not exceed 15% of the entity's initial capital;

c) that the entity satisfies the requirements set out in Articles 92 to 95 and Part Four of Regulation (EU) 575/2013;

d) that such positions are of an incidental and temporary nature and are strictly limited to the time necessary to carry out the transaction in question.

5. Investment firms shall adopt specific arrangements in respect of all clients to ensure that the borrower of the clients' financial instruments provides the relevant collateral, and that the firm monitors the ongoing adequacy of such collateral and takes the necessary steps to maintain the balance with the value of the clients' instruments.

Article 45. *Inappropriate use of security agreements with change of title.*

1. Investment firms shall give due consideration to the use of title transfer collateral arrangements in the context of the relationship between the client's obligation to the firm and the client's assets subject to such arrangements by the firm.

2. Investment firms shall be in a position to demonstrate that they have carried out the consideration and assessment of the provisions of the preceding paragraph.

3. Investment firms shall take into account all of the following factors when considering and documenting the appropriateness of the use of title transfer collateral arrangements:

a) If there is only a very weak relationship between the client's obligation to the company and the use of such agreements and if the likelihood of client liability to the company is low or negligible,

b) if the amount of the client's funds or financial instruments subject to title transfer collateral arrangements far exceeds the client's obligation, or is even unlimited if the client has any kind of obligation to the company; and

c) If all financial instruments or customer funds are subject to title transfer collateral arrangements, regardless of the obligation of each customer to the firm.

4. When using title transfer collateral arrangements, investment firms shall inform professional clients and eligible counterparties of the associated risks and the effect of any such arrangements on the client's financial instruments and funds.

5. Investment firms shall not enter into agreements that are prohibited under Article 30 quinquies.

Article 46. *Surveillance and control mechanisms with respect to the safeguarding of client assets.*

1. Investment firms shall appoint a single officer with specific competence for matters relating to the firms' compliance with their obligations concerning the safeguarding of clients' financial instruments and funds. The person in charge shall have sufficient powers and authority to exercise this authority in an appropriate manner.

2. Investment firms may decide, ensuring full compliance with the provisions of the recast text of the Securities Market Law and this Royal Decree, whether the designated officer should devote themselves solely to this task or whether they may perform their duties effectively while attending to other responsibilities.

Article 47. *Auditors' reports.*

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1. Entities that provide investment services shall ensure that their auditors submit to the National Securities Market Commission an annual report on the adequacy of the measures adopted by them to comply with the provisions of article 193.2.f) and 3.d) of the recast text of the Securities Market Law and this section. In the case of credit institutions, the Bank of Spain must receive a copy of this report.

2. The National Securities Market Commission is empowered to determine the content of the report together with the means and deadlines for its submission.

Article 48. *Information relating to clients' financial instruments and funds.*

1. Investment firms shall make information regarding financial instruments and client funds available to the following entities:

- a) National Securities Market Commission (Comisión Nacional del Mercado de Valores)
- b) insolvency practitioners; and
- c) Fund for Orderly Bank Restructuring.

2. The information referred to in the preceding paragraph shall include the following:

a) Accounts and associated internal records in which the balances of funds and financial instruments held for each client are easily identified;

b) the place where the investment firm holds client funds in accordance with article 43, as well as details of the accounts in which such funds are held and the relevant agreements with such entities,

c) the place where the investment firm holds the financial instruments in accordance with article 42, together with details of the accounts open in third parties and the relevant agreements with such entities,

d) details of the third parties performing any associated outsourced tasks and any outsourced tasks,

e) the key individuals within the firm involved in the associated processes, including those responsible for overseeing the firm's requirements with regard to the safeguarding of client assets; and

f) the relevant agreements to establish the clients' ownership of the assets

Article 58. *Professional clients.*

Pursuant to the provisions of article 205.2 of the consolidated text of the Securities Market Act, the following types of clients shall be considered professional clients, to the extent that they are not eligible counterparties:

a) Financial institutions and other legal entities that, in order to operate in the financial markets, must be authorised or regulated by States, whether or not they are members of the European Union.

These shall include:

- 1. credit institutions,
- 2. firms providing investment services.
- 3. underwriting entities or reinsurers,
- 4. collective investment undertakings and the management companies of collective investment undertakings,

5. venture capital institutions, other closed-end collective investment undertakings and management companies of collective investment undertakings,

6. pension funds and their management companies,

7. securitization funds and their management companies;

and

8. operators who regularly contract with raw materials and commodities derivatives, together with operators who contract on their own behalf and other institutional investors.

b) States and regional administrations, including public bodies that manage public debt at national and regional level, central banks and international and supranational bodies, such as the World Bank, the International Monetary Fund, the European Central Bank, the European Investment Bank and others of a similar nature.

c) Entrepreneurs who individually meet at least two of the following conditions:

- 1. That the total of the asset items be equal to or greater than 20 million euros.

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2. that the amount of its annual turnover is equal to or greater than 40 million euros.
3. its equity is equal to or greater than 2 million euros.

d) Institutional investors who, not being included in point (a), habitually engage in investing in securities or other financial instruments.

The entities referred to in the previous paragraphs shall be considered professional clients, without prejudice to the fact that they may request non-professional treatment and that Investment firms may agree to grant them a higher-level of protection. An investment firm must also inform the client that he may request a modification of the terms of the agreement to obtain a higher degree of protection.

The head of the Ministry of Economy and Enterprise or, with its express authorisation, the National Securities Market Commission, may determine the manner of calculation of the magnitudes indicated in this article and in the following article and lay down requirements for the procedures that the entities establish to classify clients.

Article 59. *Criteria for determining treatment as a professional client.*

Pursuant to article 206.1 of the consolidated text of the Securities Market Act, retail customers may request to be treated as professional clients, expressly waiving their treatment as retail clients. Admission of the application and such waiver shall be conditional upon the firm providing the investment service making an appropriate assessment of the client's experience and knowledge with regard to the transactions and services applied for and ensuring that the client is able to make his own investment decisions and understands the risks. When carrying out the aforementioned assessment, the firm must verify that at least two of the following requirements are met:

- a) That the client has carried out transactions of significant volume in the relevant market of the financial instrument in question or similar financial instruments, with an average frequency of 10 per quarter during the previous four quarters.
- b) That the size of the client's portfolio of financial instruments, consisting of cash deposits and financial instruments, is greater than 500,000 euros.
- c) The client holds or has held, for at least one year, a professional position in the financial sector that requires knowledge of the operations or services envisaged.

Professional clients referred to in this article may not be presumed to possess market knowledge and experience comparable to those of the professional clients referred to in article 58.

The evaluation of the client's experience and knowledge, in the case of small entities, will be carried out on the person authorised to conduct operations on their behalf and in the rest will be carried out on directors and managers.

Article 60. *Information regarding client classification.*

1. For the purposes of the provisions of article 59, in order for the persons indicated in said article to be treated as professional clients, the following procedure shall be observed:

- a) The client must request in writing to the entity its classification as a professional client, either generally, or for a specific service or transaction, or for a specific type of product or transaction.
- b) The entity must clearly advise him in writing of the protections and potential rights he would be deprived of.
- c) The client must declare in writing, in a document separate from the contract, that he is aware of the consequences of waiving his classification as a retail client.

2. Before deciding whether to accept the request for waiver, investment firms shall take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the requirements as set out in article 59.

3. Client classifications made prior to the entry into force of this Royal Decree and in accordance with parameters and procedures similar to those referred to above, will not be automatically affected by the entry into force of this Royal Decree.

4. Entities shall develop and apply written internal policies and procedures to classify their clients, and professional clients shall inform the entity of any change that may modify their classification. In any event, when the entity becomes aware that a client no longer meets the requirements to be treated as a professional, it shall immediately, for all intents and

purposes, consider him a retail client.

Article 61. *Conflicts of interest*

1. Pursuant to the provisions of articles 182.1 and 208 bis of the consolidated text of the Securities Market Act, firms that provide investment services must organise themselves and adopt measures to identify and prevent or manage any possible conflicts of interest between their clients and the firm itself or its group, including its directors, employees, agents or related persons, directly or indirectly, by a relationship of control; or between the different interests of two or more of its clients, to each of whom the firm has obligations, including potential conflicts of interest caused by the receipt of inducements from third parties or by the investment firm's own remuneration and other incentive structures.

2. Where the organisational or administrative measures referred to in the preceding paragraph, adopted to manage the conflict of interest and prevent damage to the interests of its clients are not sufficient to ensure, with reasonable certainty, that risks of damage to the client's interests will be prevented, the investment firm shall disclose the nature and source of the conflict to the client before acting on the client's behalf, as well as the measures taken to mitigate the risk of damage to the client.

This information shall be provided on a durable medium and with sufficient detail, taking into account the nature of the client, so that the client can make an informed decision about the service, in the context in which the conflict of interest arises.

3. Conflicts of interest arising in investment firms and the measures necessary to avoid them, in addition to the provisions of this article, are regulated by articles 33 to 43 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

CHAPTER II

Inducements

Article 62. *Inducements*

1. Investment firms that pay or charge fees or commissions, or deliver or receive non-monetary benefits, in connection with the provision of an investment service or ancillary service to the client, shall, at all times, comply with all the conditions set forth in article 220 quinquies of the consolidated text of the Securities Market Act and in the following sections of this article.

2. For the purposes of the provisions of article 220 quinquies of the consolidated text of the Securities Market Act, a fee, commission or non-monetary benefit shall be deemed to be designed to enhance the quality of the relevant service to the client if all of the following conditions are met:

a) It is justified by the provision of any of the following additional or higher-level services to the client in question, commensurate with the level of incentives received:

1. The provision of non-independent advice regarding investment with regard to a broad range of adequate financial instruments and access to said instruments, including an appropriate number of instruments of third-party providers of products that lack close ties to the investment firm.

2. the provision of non-independent investment advice combined either with an offer to the client to assess, at least annually, the continued suitability of the provision of non-independent investment advice combined either with an offer to the client to assess, at least annually, the continued suitability of the financial instruments in which he has invested, or another ongoing service that is likely to be of value to the client, such as advice on the proposed optimal allocation of his assets; or

3. offer, at a competitive price, a wide range of financial instruments that are likely to meet the client's needs, including an appropriate number of instruments from third-party product providers that do not have close links to the investment services firm, together with the provision of value-added tools, such as objective information tools that assist the client concerned in making investment decisions or enable him to monitor, model and adjust the range of financial instruments in which he has invested, or the provision of periodic reports of performance and the costs and charges associated with financial instruments.

For the purposes of numbers 1 and 3, an appropriate number of instruments from third

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party providers is deemed included when at least two third party alternatives are offered in each category of funds marketed and at least twenty-five percent of the total products offered are from third parties.

The category of financial instruments must be established with a level of granularity sufficient to prevent the grouping of financial instruments with different characteristics and levels of complexity and risk. In particular, in the case of Collective Investment Undertakings, the category shall be determined on the basis of their investment target. The National Securities Market Commission may specify the categories of financial instruments with sufficient granularity.

A product shall be considered a third-party product if it is not managed, or advisory services are not provided, by entities of the same group or entities in which the distributor or entities of its group possess a significant shareholding.

b) It does not directly benefit the recipient company, its shareholders or employees without a tangible benefit for the client in question; and

c) is justified by the provision of an ongoing benefit to the client in question in connection with an ongoing incentive.

Non-monetary fees, commissions or benefits shall not be deemed acceptable when the corresponding provision of services to the client is biased or distorted as a result of such fees, commissions or benefits.

For the above purposes, it shall be considered that incentives are received whenever financial instruments designed or managed by entities of the same group are marketed without expressly receiving remuneration or receiving a remuneration of a value lower than the fair value.

The head of the Ministry of Economy and Enterprise or, through its express authorisation, the National Securities Market Commission, may determine other additional or higher-level services to the client, in addition to those contained in letter a) hereof.

3. Investment firms shall abide by the requirements laid down in the previous section on an ongoing basis, as long as they continue to pay or receive fees, commissions or non-monetary benefits.

4. Investment firms shall have the means to demonstrate that any fees, commissions or non-monetary benefits paid or received are intended to enhance the quality of the specific service provided to the client:

a) by maintaining an internal list of all fees, commissions and non-cash benefits received by the investment firm from third parties in connection with the provision of investment or ancillary services; and

b) by recording how the fees, commissions and non-monetary benefits paid or received by the investment firm, or proposed to be used, enhance the quality of services provided to the relevant clients, and the steps taken to ensure that the firm's obligation to act honestly, fairly and professionally in the best interests of the client is not undermined.

5. In relation to payments or benefits received from or paid to third parties, investment firms shall disclose the following information to the client:

a) Prior to the provision of the investment or ancillary service in question, the investment firm shall disclose to the client the information relating to the payment or benefit in question, pursuant to paragraph 2 of article 220 quinquies of the consolidated text of the Securities Market Act. To this end, minor non-monetary benefits may be described in a generic manner while other non-monetary benefits, received or paid by the investment firm in connection with the investment service provided to a client, shall be valued and disclosed separately;

b) where an investment firm has not been able to determine in advance the amount of a payment or benefit to be received or paid, and has instead disclosed to the client the method of calculating that amount, the firm shall also provide ex post to its clients information regarding the exact amount of the payment or benefit received or paid; and

c) at least once a year, and for as long as the investment firm receives ongoing incentives in relation to the investment services provided to the relevant clients, it shall inform its clients individually of the actual amount of payments or benefits received or paid. For this purpose, minor non-monetary benefits may be described in a generic manner.

In applying these requirements, investment firms shall take into consideration the rules on costs and charges laid down in article 77(1)(c) of this Royal Decree and article 50 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

Where several firms participate in a distribution channel, each investment firm providing

an investment or ancillary service shall comply with its obligations to make the relevant disclosures to its clients.

Article 63. *Incentives for independent advice on investments or portfolio management services.*

1. For the purposes of the provisions of articles 220 ter and 220 quater of the recast text of the Securities Market Law, investment firms that provide independent investment advice or portfolio management services must return to clients the fees, commissions or monetary benefits paid or delivered by third parties or persons acting on behalf of third parties in connection with the services provided to such clients as soon as reasonably possible after receipt. Any fees, commissions or monetary benefits received from third parties in connection with the provision of independent investment advice and portfolio management services will be passed on in full to the client.

Investment firms shall put in place and implement a policy to ensure that all fees, commissions or monetary benefits paid or provided by third parties or persons acting on behalf of third parties in connection with the provision of independent investment advice and portfolio management services are allocated and passed on to each relevant client. They may not offset any third party payments against the fees owed by the client to the firm. Investment firms shall inform clients of any fees, commissions or monetary benefits transferred to them, for example, through the periodic reports provided to the client.

2. Investment firms providing independent advice on investment or portfolio management services shall not accept non-cash benefits that cannot be deemed acceptable minor non-cash benefits in accordance with the following paragraph.

3. The following benefits will be considered acceptable minor non-monetary benefits only if they consist of:

- a) Information or documentation relating to a financial instrument or investment service, of a generic or customized nature to reflect the circumstances of a particular client,
- b) Those that an issuer engages and pays a third party firm to produce such materials on an ongoing basis, provided that the relationship is clearly disclosed in such materials, and that such materials are made available at the same time to all investment firms that wish to receive them, or to the general public,
- c) participation in conferences, seminars or other training activities on the benefits and characteristics of a particular financial instrument or investment service,
- d) representation expenses of a reasonable *de minimis* value, such as per diems during a business meeting or a conference, seminar or other training activity referred to in c); or
- e) other minor non-monetary benefits that enhance the quality of service provided to the client and, taking into account the total level of benefits provided by an entity or group of entities, are of such a scale and nature that they are unlikely to impair compliance with an investment firm's duty to act in the best interests of the client.

Acceptable minor non-monetary benefits shall be reasonable and proportionate, and of such a scale that they are unlikely to influence the conduct of the investment firm in any way that is detrimental to the interests of the client concerned.

4. Disclosure of minor non-cash benefits shall be made prior to the provision of the related investment or ancillary services to clients. Pursuant to Article 61 (5), minor non-monetary benefits may be described in a generic way.

Article 64. *Incentives in connection with the analysis.*

1. The provision of research services by third parties to investment firms providing portfolio management or other investment or ancillary services to clients shall not be deemed an inducement if received in exchange for any of the following:

- a) Direct payments by the investment services company from its own resources,
- b) payments from a separate analysis payment account controlled by the investment firm, provided that the following conditions relating to the operation of the account are met:

1. The analysis payments account is funded by a charge for the specific analysis service applied to the client,

2. as part of the establishment of a payments-for-analysis account and the agreement of the charge of the analysis service with their clients, investment firms establish and regularly evaluate an analysis budget as an internal administrative measure,

3. the investment firm assumes responsibility for the payment account for the analysis;
and

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4. the investment firm periodically assesses the quality of the research purchased against sound quality criteria and its ability to contribute to better investment decisions;

c) when an investment firm uses the analysis payment account, it shall provide clients with the following information:

1. Prior to the provision of an investment service to clients, information on the amount for budgeted analysis, and the amount of the estimated analysis charge for each of them;
2. annual information on the total costs incurred by each client for third-party analysis.

2. Where an investment firm operates an analysis payment account, the investment firm is also required, at the request of its clients or the National Securities Market Commission, to provide a summary of the suppliers paid from the account, the total amount paid to them during a given period, the benefits and services received by the investment firm, and how the total amount spent from the account is within the budget established by the firm for that period, indicating any refunds or remaining balance if any residual funds remain in the account.

For the purposes of subparagraph 1(b)(1), the specific analysis charge:

a) It shall be based solely on a analysis budget established by the investment services firm for the purpose of determining the need for third-party research services in respect of the investment services provided to its clients; and

b) shall not be linked to the volume or value of transactions executed on behalf of clients.

3. Any operational mechanism relating to the collection of the analysis charge applied to clients, when not charged separately, but together with a transaction fee, a separately identifiable analysis charge shall be indicated, and such operational mechanism shall fully comply with the conditions set forth in paragraph 1.b) and c).

4. The total amount of analysis charges received may not exceed the analysis budget.

5. The investment services firm will agree with clients, in the firm's investment management agreement or in the general terms and conditions of business, the firm's budgeted research charge and the frequency with which the specific research charge will be deducted from the client's resources throughout the year. The analysis budget can only be increased after providing clear information to clients about the planned increase. If there is a surplus in the analysis payment account at the end of a period, the firm must have a process in place for refunding such resources to the client, or for their offset against the budget and analysis charge calculated for the following period.

6. For the purposes of paragraph 1(b)(2), the analysis budget shall be managed solely by the investment firm, and shall be based on a reasonable assessment of the need for third-party research services.

7. For the purposes of paragraph 1(b)(3), the investment firm may delegate the administration of the analysis payment account to a third party, provided that the relevant arrangement facilitates the procurement of research services from third parties and payments to the providers of such services on behalf of the investment firm, without undue delay and in accordance with the investment firm's instructions.

8. For the purposes of paragraph 1(b)(4), investment firms shall set out all the necessary elements in a written policy which they shall make available to their clients. Such policy shall also address the extent to which research services acquired via the analysis payment account may benefit client portfolios, taking into account, where appropriate, the investment strategies applicable to various types of portfolios, as well as the approach the firm will take to allocate such costs equitably to the various client portfolios.

9. Any investment firm providing execution services shall separately identify the charges for such services so that they reflect only the cost of executing each transaction. The provision of any other benefits or services by the same investment firm to investment firms established in the European Union shall be subject to a separately identifiable charge; the provision of such benefits or services, and the related charges, shall not be affected or conditioned by the payment levels for execution services

CHAPTER III

Associated costs and expenses

Article 65. *Obligations regarding costs and associated expenses.*

1. Investment services firms shall comply with the reporting obligations on costs and associated charges listed in article 50 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

2. The head of the Ministry of Economy and Competitiveness is empowered to develop the provisions of this article and any other relevant aspect relating to the fees charged for the most frequent operations and services of the entities that provide investment services, including their advertising scheme.

CHAPTER IV

Surveillance and control of financial products

Section 1. Product oversight and supervision obligations for investment firms producing financial instruments

Article 66. *Product surveillance and control obligations for investment firms producing financial instruments.*

The production of financial instruments, including the creation, development, issue or design of such instruments shall comply, in an appropriate and proportionate manner, with the relevant requirements set out in Articles 193.2.c) and 208b of the recast text of the Securities Market Law and in this Chapter, taking into account the nature of the financial instrument, the investment service and the target market for the product.

Article 67. *Management of conflicts of interest in the surveillance and control of products.*

1. Investment firms shall establish, implement and maintain procedures and measures to ensure that the production of financial instruments complies with requirements on the sound management of conflicts of interest, including with regard to remuneration.

In particular, investment firms producing financial instruments shall ensure that the design of the instrument concerned, including its various features, does not disadvantage end-clients or give rise to market integrity problems by allowing the firm to mitigate or avoid its own risks or exposure in respect of the underlying assets of the product, where the investment firm already holds such assets on own account.

2. Investment firms shall analyse potential conflicts of interest whenever a financial instrument is produced. In particular, firms shall assess whether the financial instrument creates a situation where end-clients may be disadvantaged if they assume:

- a) An opposite exposure to that previously held by the company itself; or
- b) an opposite exposure to that which the company wishes to maintain after the sale of the product.

Article 68. *Assessment of possible threats.*

Investment firms shall consider whether the financial instrument may constitute a threat to the orderly functioning or stability of financial markets before deciding to proceed with the launch of the product.

Article 69. *Internal organisation of producers.*

1. Investment firms shall ensure that:

a) relevant staff involved in the production of financial instruments have the necessary technical expertise to understand the characteristics and risks of the financial instruments they intend to produce,

b) the management body maintains effective control over the process of monitoring and controlling the company's products,

c) compliance reports to the management body systematically include information about the financial instruments produced by the firm as well as information about the distribution strategy. Investment firms shall make such reports available to their competent authority upon request; and

d) the compliance function is responsible for monitoring the development and periodic review of product surveillance and control mechanisms in order to identify any risk of failure by the undertaking to comply with the obligations set out in this Article.

Article 70. *Written agreement with third party producers.*

Investment firms, when collaborating, including with entities that are not authorised or supervised in accordance with Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014, or with third-country firms, in the creation, development, issuance or design of a product, shall define their mutual responsibilities in a written agreement.

Article 71. *Target market or client of financial instruments.*

1. Investment firms shall identify in sufficient detail the potential target market for each financial instrument and specify the type or types of client whose needs, characteristics and objectives are compatible with the financial instrument.

As part of this process, the company shall identify client groups whose needs, characteristics and objectives are not compatible with the financial instrument.

This analysis shall be based on quantitative and qualitative criteria and shall cover at least the following categories:

- i) Type of client,
- ii) knowledge and experience,
- iii) financial situation in particular in relation to loss bearing capacity,
- iv) risk tolerance and compatibility of the risk-benefit profile of the product with the defined target market; and
- v) objectives and needs of the client.

Where investment firms collaborate in the production of a financial instrument, it is only necessary to identify a target market.

2. Investment firms producing financial instruments that are distributed through other investment firms shall determine the needs and characteristics of clients that are compatible with the product on the basis of their theoretical knowledge and previous experience with the financial instrument or other similar financial instruments, the financial markets and the needs, characteristics and objectives of potential end-clients.

Where investment services other than discretionary and individualised portfolio management are being provided, the sale to retail of complex financial instruments whose terms of issue state that they are intended only for professional clients or eligible counterparties is prohibited, even if those financial instruments are traded on a trading venue.

3. Investment firms shall conduct a scenario analysis of their financial instruments assessing the risks of the product producing poor outcomes for end-clients and under what circumstances such risks may occur.

Investment firms shall evaluate the financial instrument under negative conditions that understand what would happen if, for example:

- a) The market environment deteriorated,
- b) the producer or a third party involved in the production or operation of the financial instrument experiences financial difficulties or other counterparty risk materialises,
- c) the financial instrument does not become commercially viable; or
- d) demand for the financial instrument is much higher than expected, putting the resources of the company or the market for the underlying instrument under pressure.

4. Investment firms shall determine whether a financial instrument meets the identified needs, characteristics and objectives of the target market by examining in particular the following elements:

- a) The risk/reward profile of the financial instrument is in line with the target market; and
- b) that the design of the financial instrument is driven by features that benefit the customer, rather than a business model whose profitability is based on poor customer outcomes.

Article 72. *Definition of the product distribution strategy.*

In relation to the obligation under Article 208 ter of the recast text of the Securities Market Law to ensure that the distribution strategy for financial instruments is compatible with the defined target market, and to take reasonable steps to ensure that the instrument is distributed to the defined target market, investment firms shall establish the extent of the client information that the distributor must have in order to properly assess the target market

for the product.

They shall also propose the type or types of investment services through which distribution should be made, taking into account the nature of the product. If the product is capable of being purchased on a non-advised basis, the investment firm producing the financial instrument shall indicate the recommended distribution channel or channels.

Article 72bis. *Cost structure of financial instruments.*

Investment firms shall consider the proposed cost structure in respect of the financial instrument, examining in particular the following elements:

- a) The costs and charges of the financial instrument are compatible with the needs, objectives and characteristics of the target market,
- b) the charges do not undermine the expected return on the financial instrument, such as where the costs or charges equal, exceed or eliminate substantially all of the expected tax benefits associated with the financial instrument; and
- c) the charging structure of the financial instrument is adequately transparent to the target market and, in particular, does not hide charges or make them too complex to understand.

Article 72 ter. *Information to distributors on financial instruments.*

Investment firms shall ensure that the provision of information about a financial instrument to distributors includes information about the appropriate distribution channels for the instrument in question, the product approval process and the assessment of the target market, and that its quality is adequate to enable distributors to understand and properly recommend or sell the financial instrument.

Article 73. *Review of financial instruments.*

1. Investment firms shall periodically review the financial instruments they produce, taking into account any event that may materially affect the potential risk associated with the identified target market. Investment firms shall consider whether the financial instrument remains compliant with the needs, characteristics and objectives of the target market, and whether it is being distributed in the target market, or is reaching clients whose needs, characteristics and objectives are not compatible with the instrument in question.

2. They shall also review the financial instruments prior to any re-launch or additional issuance, if they become aware of any event that may materially affect the potential risk to investors, and from time to time to assess whether the financial instruments are performing as intended.

3. Investment firms shall determine the frequency with which they review their financial instruments on the basis of relevant factors, including those associated with the complexity or innovative nature of the investment strategies applied.

4. Firms shall also identify critical events that affect the potential risk or return expectations of the financial instrument, such as:

- a) Exceeding a threshold that affects the return profile of the financial instrument; or
- b) the creditworthiness of certain issuers whose securities or guarantees may have an impact on the performance of the financial instrument.

5. When such events occur, investment firms shall take appropriate measures, which may include:

- a) The provision of all relevant information about the event and its consequences on the financial instrument to clients, or to distributors of that instrument if the investment firm does not offer or sell it directly to clients,
- b) modification of the product approval process,
- c) refrain from further issuance of the financial instrument,
- d) the modification of the financial instrument to avoid unfair contract terms,
- e) consideration of the adequacy of the sales channels through which financial instruments are sold when firms become aware that the instrument in question is not being sold as intended,
- f) contact with the distributor to consider a modification of the distribution process,
- g) the termination of the relationship with the distributor; or
- h) information to the *National Securities Market Commission (CNMV)*.

Section 2. Product surveillance and control obligations for distributors

Article 74. Product surveillance and control obligations for distributors.

1. Investment firms shall, when deciding on the range of financial instruments issued by themselves or other firms and the services they intend to offer or recommend to clients, comply, in an appropriate and proportionate manner, with the relevant requirements set out in Articles 74 bis to 76 bis, taking into account the nature of the financial instrument, the investment service and the target market of the product.

Investment firms shall also comply with the requirements set out in article 208 ter of the recast text of the Securities Market Law and section 1 of this chapter when they offer or recommend financial instruments produced by entities not subject to the recast text of the Securities Market Law or to the national regulations of another Member State transposing Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014. As part of this process, these investment firms shall have effective mechanisms in place to ensure that they obtain sufficient information on those financial instruments from such producers.

2. Investment firms shall have in place appropriate product monitoring and control mechanisms to ensure that the products and services they intend to offer or recommend are compatible with the needs, characteristics and objectives of an identified target market, and that the intended distribution strategy is consistent with that market. Investment firms shall identify and properly assess the circumstances and needs of the clients they intend to target, to ensure that the interests of those clients are not jeopardised as a result of commercial or funding pressures. As part of this process, firms shall identify client groups whose needs, characteristics and objectives are not compatible with the product or service.

Article 74 bis. Information to be obtained by distributors on financial instruments.

1. Investment firms shall obtain from producers subject to the recast text of the Securities Market Law or to the national law of another Member State transposing Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 information to acquire the necessary understanding and knowledge of the products they intend to recommend or sell, in order to ensure that such products are distributed in accordance with the needs, characteristics and objectives of the identified target market.

2. Investment firms shall take all reasonable steps to ensure that they also obtain adequate and reliable information from producers not subject to the recast text of the Securities Market Law or to the national law of another Member State transposing Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 in order to ensure that the products are distributed in accordance with the characteristics, objectives and needs of the target market. Where the relevant information is not publicly available, the distributor shall take all reasonable steps to obtain that information from the producer or its agent. For these purposes, information that is clear and reliable and prepared to meet regulatory requirements, such as disclosure obligations under Regulation (EU) No 2017/1129 of the European Parliament and of the Council of 14 June 2017; or Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, shall be acceptable and publicly available information. This obligation concerns products sold on primary and secondary markets and will be applied in a proportionate manner, depending on the extent to which publicly available information can be obtained and the complexity of the product.

3. Investment firms shall use information collected from producers and information available to them about their own clients to identify the target market and distribution strategy. Where an investment firm acts as both producer and distributor, only a single assessment of the target market shall be required.

4. Distributors shall provide producers with information on sales and, where appropriate, on the reviews referred to in Article 73 to substantiate their product reviews.

Article 74 ter. Choice of the range of financial instruments.

Investment firms, when deciding on the range of financial instruments and services they offer or recommend and the respective target markets, shall maintain procedures and

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measures to ensure compliance with all applicable requirements under the recast text of the Securities Market Law, this Regulation and other applicable rules, including those relating to information, assessment of suitability or appropriateness, inducements, and the proper management of conflicts of interest. In this context, special consideration shall be given to cases in which the distributors intend to offer or recommend new products or there are variations in the services they provide.

Article 75. *Target market and product distribution strategy.*

1. Investment firms shall determine the target market for the respective financial instrument, even if that market has not been defined by the producer.

2. Investment firms shall, when defining their distribution strategy, take into account the information provided by the producer in this respect as well as the nature of the financial instrument, the type of clients to be served and the services provided.

3. Where the distributor, because of the type of service to be provided or for other reasons, does not have the necessary information to assess one or more aspects of the target market, it is particularly relevant for the distributor to take into account the target audience and the distribution strategy provided by the producer of the financial instrument.

In such a case, and provided that it is a service other than advice or discretionary portfolio management, it shall warn the client that the investment firm cannot guarantee the client's compatibility with the product. For particularly complex or high-risk products as well as in situations where significant conflicts of interest could arise, the institution shall consider prior to the provision of the investment service the non-inclusion of such a product in the product offering for its client base or a group of clients.

In any case, where the entity intends to approach customers in any way to actively market a product, it must take into account all information available to it about its customers beyond that derived from the provision of investment services.

4. The distributor may deviate from the distribution recommendations of the entity that has designed the product if it is duly justified and in any case if this implies providing a service that entails greater protection for the customer or further restricts the target market defined by the producer.

Article 75 bis. *Review of monitoring and control mechanisms and products.*

1. Investment firms shall regularly review and update their product surveillance and monitoring arrangements to ensure that they remain robust and fit for purpose and take appropriate action where necessary.

2. Investment firms shall periodically review the investment products they offer or recommend and the services they provide, taking into account any event that may materially affect the potential risk associated with the identified target market. Firms shall, at a minimum, assess whether the product or service continues to meet the needs, characteristics and objectives of the identified target market and whether the intended distribution strategy remains appropriate.

3. Companies will reconsider the target market or update product surveillance and control mechanisms if they become aware that they have misidentified the target market for a particular product or service or that the product or service no longer meets the circumstances of the identified target market, such as in cases where the product becomes illiquid or highly volatile due to changes in the market.

Article 76. *Internal organisation of distributors.*

1. Investment firms shall ensure that:

a) Its compliance function oversees the development and regular review of product surveillance and control mechanisms in order to detect any risk of non-compliance with the obligations set out in this section,

b) the relevant personnel have the technical knowledge necessary to understand the characteristics and risks of the products they intend to offer or recommend, and the services provided, as well as the needs, characteristics and objectives of the identified target market,

c) the management body exercises effective control over the monitoring and control process of the firm's products in order to determine the range of investment products they offer or recommend and the services provided to the respective target markets; and

d) compliance reports to the management body systematically include information on the products they offer or recommend and the services provided. Upon request, compliance

reports shall be made available to the National Securities Market Commission.

Article 76 bis. *Liability of distributors.*

Where several firms collaborate in the distribution of a product or service, the investment firm that maintains the direct relationship with the client shall be primarily responsible for complying with the product surveillance and monitoring obligations set out in this Section. However, intermediary investment firms shall:

- a) They shall ensure that the relevant product information is passed from the producer to the final distributor in the chain,
- b) if the producer requires product sales information to fulfil its own product surveillance and control obligations, they shall allow the producer to obtain it; and
- c) apply product monitoring and control obligations to producers, as appropriate, in relation to the service they provide.

Article 77. *General duty of disclosure.*

1. In accordance with article 209.3 of the consolidated text of the Securities Market Act, the information to be provided sufficiently in advance to customers shall include the following:

a) When providing the investment advisory service, the investment firm shall inform the client sufficiently in advance of the provision of such services about:

- 1. Whether the advice is provided independently or not,
- 2. whether the advice is based on a general or narrower analysis of different types of financial instruments and, in particular, whether the range is limited to financial instruments issued or provided by entities having close links with the investment firm, or any other type of legal or economic relationship, such as contractual, which may impair the independence of the advice provided; and
- 3. whether the investment firm will provide the client with a periodic assessment of the suitability of the financial instruments recommended for that client.

b) Information on proposed financial instruments and investment strategies must include appropriate guidance and warnings about the risks associated with investing in such instruments or in relation to particular investment strategies, and whether the financial instrument is intended for retail or professional clients, taking into account the target market identified in accordance with article 208 ter of the consolidated text of the Securities Market Act.

c) Information on all associated costs and expenses shall include information relating both to investment services and ancillary services, including the cost of advice, where applicable, the cost of the recommended financial instrument or sold to the client and the manner in which the client is to pay it, together with any payments related to third parties.

Information on all costs and expenses, including those related to the investment service and the financial instrument, which are not due to the existence of an underlying market risk, shall be aggregated in such a way that the client can understand the total cost as well as the cumulative effect on the return on the investment, and an itemisation shall be provided at the client's request. Where applicable, this information shall be made available to the customer on a regular basis, and at least once a year, throughout the lifetime of the investment.

2. The information referred to in the preceding section must allow clients, including potential clients, to be reasonably capable of understanding the nature and risks of the investment service and the specific type of financial instrument offered, and thus be able to make informed investment decisions.

3. This information may be provided in a standardised format. The head of the Ministry of Economy and Enterprise may establish the criteria and format to be used for this purpose.

Article 78. *Equivalence of the third-country market with a regulated market.*

The Ministry of Economy and Enterprise, on its own initiative or at the request of the National Securities Market Commission, may request the European Commission adopt an equivalence decision on a third-country market referred to in Article 47 of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014.

Article 79. *Obligations relating to the management and execution of orders.*

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1. In order to comply with the provisions of article 221.1.a) of the recast text of the Securities Market Law, institutions must have an order execution policy that defines the relative importance attributed to price, costs, speed and probability of execution and settlement, volume, the nature of the transaction and any other element they deem relevant to the execution of the order.

Such order execution policy shall include, for each class of instrument, information on the different venues where the firm executes client orders, and the factors influencing the choice of execution venue. It is necessary for the firm to identify those venues which it believes consistently achieve the best possible result for the execution of client orders.

2. Where an investment firm executes an order on behalf of a retail client, the best possible result referred to in the previous paragraph shall be determined in terms of the total consideration, taking into account the price of the financial instrument and the costs related to the execution, which shall include all costs incurred by the client that are directly related to the execution of the order, including execution venue fees, clearing and settlement fees and other fees paid to third parties involved in the execution of the order.

3. For the purposes of the provisions of article 221.1.c) of the recast text of the Securities Market Law, firms shall, unless the client indicates otherwise, immediately make public such client limit order, so that other market participants may easily access it. The firm shall be deemed to comply with this obligation by transmitting client limit orders to a trading venue. The National Securities Market Commission may exempt from the obligation to publish information on limit orders whose size may be considered large in comparison to the standard market size, as set out in Article 4 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014.

In order to determine the best possible result in accordance with Article 221 of the recast text of the Securities Market Law and the previous sections, if there is more than one venue in competition to execute an order relating to a financial instrument, in order to assess and compare the results that the client would obtain by executing the order in each of the execution venues suitable for this purpose indicated in the order execution policy of the investment firm, the commissions and costs of the investment firm arising from the execution of the order at each eligible execution venue shall be taken into account in that assessment.

4. The provisions of this Article shall apply in accordance with Articles 64 to 70 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

CHAPTER IV [SIC]

Assessment of suitability and appropriateness

Article 80. *Suitability test.*

1. For the purposes of the suitability assessment provided for in Article 213 of the recast text of the Securities Market Law, institutions shall obtain the necessary information on the knowledge and experience of the client or potential client in the investment field corresponding to the specific type of product or service, his financial situation, including his capacity to bear losses, and his investment objectives, including his risk tolerance.

Institutions shall take into account the provisions of Articles 54 and 55 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 when conducting suitability assessments.

Article 82. *Content of the contract.*

For the purposes of the provisions of Article 218 of the consolidated text of the Securities Market Act, the rights and obligations of the parties may be included in the contract entered into by the entity and its client by means of a reference to other documents or legal texts.

Article 87. *Scope of application*

2. Notwithstanding the provisions set out in the preceding paragraph, articles 89, 92, 95, 98 and 101 of this title shall not apply to the investment services firms that comply with the following requirements:

a) Entities that are not authorized to render the ancillary service mentioned in article 141.a) of the consolidated text of the Securities Market Act.

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b) Entities that only provide one or several of the investment services or activities listed in article 140.1.a), b), d) and g) of the consolidated text of the Securities Market Act.

c) Entities that are not authorized to hold money or securities belonging to their clients in deposit and, for this reason, can never be deemed as debtors with respect to said clients.

3. Additionally, articles 90, 91, 93, 94, 99 and 100 of this title shall not apply to the investment services firms defined in the previous section and that only provide the investment services or activities mentioned in article 141.a) of the consolidated text of the Securities Market Act.

Article 88. *Liability of the board of directors in assuming risks.*

1. For the purposes of the proper exercise of the responsibilities of the board of directors regarding risk management set out in Article 70 ter. Three.2 of Law 24/1988, of 28 July, on the Securities Market, the investment services firms:

a) Shall establish information channels towards the board of directors covering all significant risks and risk management policies and their modifications.

b) Shall ensure that the board of directors has easy access to the information on the entity's risk situation and, if necessary, to the risk management function and to specialized external advice.

2. The board of directors shall determine, together with the risk committee, the nature, amount, format and frequency of the information on risks to be received by the aforementioned committee and the board of directors.

Article 90. *Counterparty and credit risk.*

As regards credit and counterparty risk, the investment services firms, in a manner proportional to the nature, size and complexity of their activities, shall:

a) Base the granting of credit on sound and well-defined criteria.

b) Establish a clear procedure for approval, modification, renewal and refinancing of credits.

c) Have internal methodologies that allow them to assess the credit risk of exposures to individual obligors, securities or securitization positions, as well as to assess the credit risk of the portfolio as a whole.

Internal methodologies shall not rely solely or mechanically on external credit ratings. The fact that capital requirements are based on the rating issued by an external credit rating agency or the absence of an exposure rating shall not preclude investment services firms from taking into account other relevant information in assessing their internal capital allocation.

d) Use effective methods to manage and supervise on an ongoing basis the various portfolios and exposures with credit risk.

e) Identify and manage nonperforming loans and make appropriate value adjustments and allowances.

f) Diversify credit portfolios appropriately according to the target markets and the overall credit strategy of the entity providing investment services.

Article 91. *Liability of the board of directors in assuming risks.*

. For the purposes of the proper exercise of the responsibilities of the board of directors regarding risk management set out in Article 192 bis of the consolidated text of the Securities Market Act, the investment services firms:

a) Shall establish information channels towards the board of directors covering all significant risks and risk management policies and their modifications.

b) Shall ensure that the board of directors has easy access to the information on the entity's risk situation and, if necessary, to the risk management function and to specialized external advice.

2. The board of directors shall determine, together with the risk committee, the nature, amount, format and frequency of the information on risks to be received by the ~~aforementioned committee and the board of directors.~~

Article 92. *Concentration risk.*

Investment services firms shall have written policies and procedures, among other means, to control concentration risk arising from:

a) Exposures to individual counterparties, including central counterparties, groups of related counterparties and counterparties in the same economic sector, in the same geographical region or in the same activity or commodity pursuant to the terms set out by the National Securities Market Commission.

b) The application of credit risk mitigation techniques, including risks linked to large indirect credit exposures, such as a collateral issuer.

Article 93. *Securitisation risk*

1. Risks arising from securitization transaction in which the entity providing investment services acts as investor, originator or sponsor, including reputational risks, shall be assessed and controlled by appropriate policies and procedures in order to ensure, in particular, that the economic content of the transaction is fully reflected in the risk assessment and management decisions.

2. Investment services firms originating revolving securitization transactions that include early prepayment clauses shall have liquidity plans in place to address the implications arising both from repayment at maturity and from prepayment.

Article 94. *Market risk.*

1. Investment services firms shall apply policies and procedures for the identification, assessment and management of all significant market risks sources and the material effects of such risks.

To that end, the equity level of investment services firms shall be adequate to cover significant market risks that are not subject to an own funds requirement. More specifically, investment services firms shall hold adequate equity levels in the following cases:

a) To cover the basis loss risk resulting from the difference between the change in the value of a futures contract or other product and the change in the value of the underlying shares where, when calculating own funds requirements arising from position risk in accordance with Part Three, Title IV, Chapter 2 of Regulation (EU) No 575/2013 of 26 June 2013, they have netted their positions in one or more of the shares that make up the stock index with one or more positions in the futures contract or other stock index-based product.

b) When they hold opposite positions in futures contracts based on stock indexes whose maturity or composition are not identical.

c) To cover the loss risk that exists between the time of initial commitment and the following business day, when the investment services firms apply the net position reduction regime set out in Article 345 of Regulation (EU) No 575/2013 of 26 June 2013.

2. Likewise, in the event that the entity's short positions mature before the long positions, the National Securities Market Commission shall require the entities to adopt measures against the risk of insufficient liquidity.

Article 95. *Interest rate risk arising from non-trading book activities.*

Investment services firms shall implement systems to identify, assess and manage the risk arising from possible variations in interest rates that affect non-trading book activities.

Article 96. *Operational risk.*

1. Investment services firms shall apply policies and procedures for the assessment and management of operational risk exposure, including, where appropriate, model risk, that cover the risk of very high loss-generating infrequent events.

To that end, model risk shall be deemed to mean the risk of potential loss in which an entity could incur as a consequence of decisions based primarily on the results of internal models, due to errors in the design, implementation or use of such models.

Investment services firms shall specify what constitutes operational risk for the purposes of such policies and procedures.

2. Investment services firms shall establish contingency and business continuity plans to

enable them to maintain their business and limit losses in the event of severe business interruptions.

Article 97. *Liquidity risk.*

1. Investment services firms shall have strategies, policies, procedures and systems in place for the liquidity risk management which shall be proportional to the nature, size and complexity of their activities. To that end, the National Securities Market Commission shall require investment services firms to:

- a) Develop methods for monitoring funding positions.
- b) Identify the unencumbered assets available in emergency situations, taking into account the possible legal limitations to eventual liquidity transfers.
- c) Study the impact of different scenarios on their liquidity profiles.

2. Investment services firms, taking into account the nature, size and complexity of their activities, shall maintain liquidity risk profiles consistent with those necessary for the proper functioning and soundness of the system. The National Security Markets Commission will monitor the evolution of such profiles maintained by the investment services firms taking into account elements such as product design and volume, risk management, funding policies and funding concentrations. In particular, the National Securities Market Commission will require the entities to:

- a) Have liquidity risk reduction tools in place such as liquidity buffers or an adequate funding source diversification that allow them to face situations of financial stress.
- b) Draw up emergency plans to face the scenarios set out under letter c) of the preceding section and plans to cover eventual liquidity deficits. The latter shall be tested by the investment services firm at least once a year.

3. When the National Securities Market Commission considers that an investment services firm has liquidity levels below the adequate levels pursuant to the criteria set out in this article and its implementing regulations, it may adopt, among others, any of the measures listed in Article 87 octies.2 of Law 24/1988, of 28 July, on the Securities Market.

These measures shall be applied regardless of the corresponding sanctions pursuant to Title VIII, Chapter II of Law 24/1988, of 28 July, on the Securities Market and must be related to the entity's liquidity position and the stable funding requirements set out in the solvency regulations.

[...]

Article 98. *Excessive leverage risk.*

1. Investment firms shall establish policies and procedures for the identification, management and control of excessive leverage risk.

2. Indicators of excessive leverage risk shall include the leverage ratio, calculated in accordance with Article 429 of Regulation (EU) No 575/2013 of 26 June 2013 and asset-liability mismatches.

3. Investment services firms shall address excessive leverage risk on a precautionary basis by taking into account any potential increases in said risk arising from reductions in the investment services firm's own funds derived from expected or actual losses, in accordance with the applicable accounting rules. To that end, investment services firms shall be able to face several stress situations as regards excessive leverage risk.

Article 103. *Applicable criteria for supervisory review and evaluation.*

1. Besides credit risk, market risk and operational risk, the review and evaluation carried out by the National Securities Market Commission in accordance with the preceding article shall include, at least, all of the following aspects:

[...]

- c) The soundness, adequacy and manner of implementation of the policies and procedures set out by investment services companies for the management of residual risk linked to the use of recognized credit risk mitigation techniques.

OFFICIAL SPANISH STATE GAZETTE
CONSOLIDATED LEGISLATION

I, JAVIER GONZÁLEZ LÓPEZ, a sworn English-language translator appointed by the Spanish Ministry of Foreign Affairs and Cooperation, do hereby CERTIFY that the foregoing is a faithful and complete translation into English of Regulations: RD 217/2008 articles 14(1)(f), 20, 20bis, 21, 22, 24, 30, 30bis, 30ter, 30quáter, 30quinques, 30sexies, 31, 31bis, 32, 35, 36, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 72bis, 72ter, 73, 74, 74bis, 74ter, 75, 75bis, 76, 76bis, 75ter, 76bis, 77(1) through (3), 79, and 80.

Madrid, 20 August 2021