



## COMMUNICATION FROM CNMV ON THE PRICING PROCESS IN COLLECTIVE INVESTMENT SCHEMES AND PRIVATE EQUITY AND VENTURE CAPITAL VEHICLES

13 June 2022

### 1 ESMA's Actions regarding Fees and Expenses of UCITS and AIFs

In June 2020, ESMA published the *Supervisory briefing on the supervision of costs in UCITS and AIFs*, aiming to promote convergence in the supervision of costs in UCITS and AIFs. This indicates that the national competent authorities are expected to demand managers to develop and periodically review a structured pricing process. This pricing process will permit a clear identification and quantification of all the costs charged to the fund in order to avoid hidden costs.

Subsequently, in 2021, ESMA coordinated the Common Supervisory Action (CSA) on fees and expenses performed by the national competent authorities, targeting UCITS fund managers with the aim to determine the degree of compliance with the UCITS regulations and the aforementioned *Supervisory Briefing*.

ESMA recently published on its website<sup>1</sup> the main conclusions drawn from the CSA. These conclusions indicate that the degree of compliance with the regulations on costs and fees is satisfactory, without identifying relevant problems, either in Spain or in other members of ESMA, while it still being necessary for managers to improve the development of a structured and formal pricing process, since a general lack of procedures has been observed in this area.

As a result, ESMA highlights the importance for all managers to have formal and structured procedures which allow for the identification and quantification of the costs in accordance with the *Supervisory Briefing*. Likewise, the costs and fees must be reviewed periodically, at least once a year, in accordance with the performance review of Spanish CIS.

---

<sup>1</sup> [https://www.esma.europa.eu/sites/default/files/library/esma34-45-1673\\_final\\_report\\_on\\_the\\_2021\\_csa\\_on\\_costs\\_and\\_fees.pdf](https://www.esma.europa.eu/sites/default/files/library/esma34-45-1673_final_report_on_the_2021_csa_on_costs_and_fees.pdf)

In addition, ESMA warns on conflicts of interest with the related parties identified in this context, which may result in higher costs, and highlights the importance of compensating unitholders whenever unduly or wrongly calculated costs lead to financial detriment for investors.

Finally, with regard to the so-called Efficient Portfolio Management (EPM) techniques (repo and reverse repo agreements, and securities lending, among others), ESMA states its concern regarding cases detected in certain jurisdictions, where managers lacked the policies and procedures to control these transactions or appropriately inform the investors. This is not the case of Spanish funds which, in general, only make a limited use of these techniques (basically reverse repo agreements to manage liquidity ).

## **2 Considerations CNMV Wishes to Convey to Spanish Management Companies**

In general, CNMV has not observed undue costs being charged to Spanish UCITS and considers the level of transparency to be suitable in Spain. In this regard, it should be highlighted that the Spanish regulations (supplemented by the Technical Guides and Q&As published by CNMV) regulate in an extremely detailed and precise manner the costs charged to the CIS and the related-party transaction system.

In any case and taking into account the conclusions of ESMA's CSA, CNMV considers it good practice for managers, both CIS Management Companies (CISMCs) and closed-ended CISMCs, regarding fees and expenses the managed vehicle are to bear, to periodically develop and review (at least once a year) a structured and formal pricing process that considers the elements indicated in point 19 of ESMA's *Supervisory briefing on the supervision of costs in UCITS and AIFs* published in June 2020<sup>2</sup>, the aim being to avoid undue costs from being charged to the vehicles managed.

Moreover, CNMV states that, in the case of detecting undue costs or errors in the costs charged for any reason, managers must compensate accordingly in agreement with the compensation mechanisms established in the procedures for identifying incidents, errors and regulatory breaches required by Circular 6/2009 on the internal control of CISMCs.

Finally, the importance of applying the related-party transactions procedure that all managers should have, in accordance with the regulations in force in Spain, is also reminded regarding costs charged to CIS.

---

<sup>2</sup> [https://www.esma.europa.eu/sites/default/files/library/esma34-39-1042\\_supervisory\\_briefing\\_on\\_the\\_supervision\\_of\\_costs.pdf](https://www.esma.europa.eu/sites/default/files/library/esma34-39-1042_supervisory_briefing_on_the_supervision_of_costs.pdf)

CNMV will review compliance with the aforementioned within the scope of supervision of both Collective Investment Schemes and Private equity and Venture Capital vehicles.

***Note for editors:***

Article 46.2 of Spanish Law 35/2003 on Collective Investment Schemes establishes that management companies will act in the best interests of the unitholders or shareholders of the CIS and that the fees received from them will have the limits established in said Law. The same obligation to act in the best interests of the investors may be found in Art. 59 of Spanish Law 22/2014 on Venture Capital Firms.

In addition, Article 5 of Spanish Royal Decree 1082/2012, approving the CIS Regulation, details the provisions regarding fees and expenses. Section 11 of this specifically states that the expenses to be borne by the investment funds will be stated expressly in their information prospectus, and that such expenses will correspond to services indeed provided to the fund that are necessary for this to carry out its activity. Furthermore, such expenses may not represent an additional cost for services inherent to the work of its manager or its depository, which are already remunerated by their respective fees.

Moreover, the Spanish regulations on expenses are supplemented by the corresponding clarifications contained in the CNMV Q&As on the regulation of CIS, venture capital firms and other collective investment vehicles, while also by the manuals for filing periodic public information.

In the specific case of close-ended CISMCS, it should also be noted that that not foreseen by Law 22/2014 on Private equity, Venture Capital and other closed ended vehicles , Law 35/2003 on CIS will be applied in a supplementary manner, in accordance with Art. 41.4 of Law 22/2014.