



Questions and answers on the regime for prospectuses to be published when securities are offered to the public or admitted to trading on a regulated market

PRIMARY MARKETS DEPARTMENT

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This document is not regulatory. Its purpose is to transmit to the sector and, specifically, to issuers, offerors and persons asking for admission to trading of securities on regulated markets, certain explanations in relation to the regulations applicable to issues, public offerings and admission to trading on said markets.

## 1. INTRODUCTION

The entry into force of Regulation 2017/1129 and all its implementing regulations has resulted in the need to make very significant changes as well as a large number of updates to the questions and answers on the primary market that appeared on the CNMV's website.

Accordingly, the answers contained in this document seek to facilitate the implementation of the new prospectus regime and to resolve some of the doubts that may have been raised in this regard. In any case, it must be borne in mind that ESMA has published and will continue to publish Q&As, guidelines and other documents containing clarifications, recommendations, etc., regarding the application of Regulation 2017/1129. Therefore, this section is intended only as a complement to these publications.

The criteria set out below may be subject to revision and, as other issues arise that it is considered necessary to clarify, they will be added to this Q&A document and the date will be indicated in each case.

Moreover, as required by paragraph 7 of Article 20 of Regulation 2017/1129, the CNMV must provide on its website guidance on the scrutiny and approval process in order to facilitate efficient and timely approval of prospectuses. In this regard, this document, together with others that already appear on the CNMV's website, such as the applicable procedures, would constitute said guidance. Paragraph 7 of Article 20 also requires contact details to be included for the purpose of approvals. If you wish to raise any questions regarding the approvals referred to in Regulation 2017/1129 please contact the Primary Markets Department by telephone, on 91 585 09 03, or by e-mail to the following address: [preguntasypuestasprimarios@cnmv.es](mailto:preguntasypuestasprimarios@cnmv.es)

### MAIN ABBREVIATIONS

CA	Competent authority
FT	Final terms
CNMV	<i>Comisión Nacional del Mercado de Valores</i> (the National Securities Market Commission)
RD	Registration document
URD	Universal registration document

MS	Member State (of the EU)
ESMA	European Securities and Markets Authority
SN	Securities note
Regulation 2017/1129	<p>Regulation 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.</p> <p>Amended by Regulation 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations No 596/2014 and 2017/1129 as regards the promotion of the use of SME growth markets</p>
Delegated Regulation 2019/979	<p>Commission Delegated Regulation 2019/979 of 14 March 2019 supplementing Regulation 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal.</p> <p>Amended by Commission Delegated Regulation 2020/1272 of 4 June 2020 amending and correcting Delegated Regulation 2019/979 supplementing Regulation 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal</p>
Delegated Regulation 2019/980	<p>Commission Delegated Regulation 2019/980 of 14 March 2019 supplementing Regulation 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004</p> <p>Commission Delegated Regulation 2020/1273 of 4 June 2020 amending and correcting Delegated Regulation 2019/980 supplementing Regulation 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market</p>

## 2. FORMAT, CONTENT, INCORPORATION BY REFERENCE AND PUBLICATION OF THE PROSPECTUS

### 2.1. What information must a prospectus contain?

#### **CNMV response**

In general, and without prejudice to the specificities established in this regard for certain types of prospectuses such as for example the prospectus for secondary issuances, the materiality criteria that the person responsible for drawing up the prospectus must apply when determining what information must be included in it are set out in paragraph 1 of Article 6 of Regulation 2017/1129.

Notwithstanding the foregoing, Delegated Regulation 2019/980 includes the different annexes that contain the minimum information requirements for the different types of prospectuses depending on the nature of the issuer, the securities, the offer, etc.

However, it is important to bear in mind that these annexes to Delegated Regulation 2019/980 do not contain all the information requirements, as others are contained in the Articles of said Regulation as well as in Regulation 2017/1129 and in Delegated Regulation 2019/979. As an example, the content of the prospectus summary is specified in Article 7 of Regulation 2017/1129, the content of the key financial information that must be included in the prospectus summary is specified in Delegated Regulation 2019/979 and the categorisation needed to establish whether the information must necessarily be included in the base prospectus or whether, on the contrary, it can, if it is unknown at the time of approval of said base prospectus, be left for inclusion in the FT is established in Delegated Regulation 2019/980.

### 2.2. What is the difference between the public offering prospectus and the admission prospectus?

#### **CNMV response**

It is important to clarify that Regulation 2017/1129 does not distinguish between a public offering prospectus and an admission prospectus. Therefore, the information requirements of the prospectus, which are established in the various annexes to Delegated Regulation 2019/980 depending on the type of issuer, security or group to which the offer is directed, will be the same, without prejudice to certain information possibly proving inapplicable when the prospectus refers exclusively to a public offering or to admission to trading on a regulated market.

Publication of a prospectus is required prior to the offering of securities to the public (paragraph 1 of Article 3 of Regulation 2017/1129) or to admission to trading on a regulated market (paragraph 3 of the same Article). If the issuer has prepared a prospectus to carry out a public offering of securities, this prospectus may also be used as long as it is still valid for the admission of those securities to trading on a regulated market.

2.3. Which requirements must be met by a person drawing up a voluntary prospectus in accordance with Article 4 of Regulation 2017/1129?

**CNMV response**

When a voluntary prospectus is drawn up, all the requirements of Regulation 2017/1129 and Delegated Regulations 2019/979 and 2019/980 must be met in order for the prospectus to benefit from the single passport regime of Chapter V of Regulation 2018/1129.

2.4. How is a single document prospectus different from a separate documents prospectus?

**CNMV response**

The prospectus and the base prospectus can be drawn up as a single document (in which case all the information, regardless of the use that may be made of incorporation by reference in relation to certain parts, is found in a single document) or in separate documents (in which case an SN is completed with a RD or a URD previously approved and, where appropriate, a summary).

Although the information may be seen as being more accessible in a single document prospectus, without prejudice to incorporations by reference, the separate documents prospectus system also has its attractions, especially for frequent issuers, since under an RD or a URD with a validity of 12 months from its approval, the various prospectuses or base prospectuses can be issued faster by simply drawing up the part relating to securities (SN) and, where appropriate, the summary. In other words, when a single document prospectus is approved, there is no separate approval of the RD and the SN, so although the single document prospectus will clearly differentiate the part relating to the issuer's information from the part relating to the securities, there would be no RD as such that could be used to complete subsequent SNs.

2.5. What information regarding the securities and the offer must necessarily be included in the base prospectus?

**CNMV response**

Delegated Regulation 2019/980 maintains the categorisation system that was introduced by the previous regulatory framework. This categorisation is intended to establish the information that must necessarily be included in the base prospectus and what information, if not known at the time of approval of the base prospectus, can be provided later in the FTs.

Each type of information is assigned one of the following categories:

- Category A: information that must always be included in the base prospectus.
- Category B: information that must always be included in the base prospectus, such as amounts, currencies, dates, time periods, percentages, reference rates, screen pages, names and places, except for details that are not known at the time of approval of the base prospectus.
- Category C: information that must be incorporated in the FTs.

Regardless of the category in question, Delegated Regulation 2019/980 establishes that when the information required by a certain element is known on the approval date, it may be included in the base prospectus instead. By way of example, if the issuer knows in advance that all the securities it will issue under the base prospectus will be represented in book entries, such information may be included in the base prospectus instead of in the FTs.

For any of the items of information, regardless of category, options may be included in the base prospectus. For example, in a base prospectus that includes structured securities and in relation to provisions for redemption, which is a category B item, the formula for calculating the redemption price must necessarily be included. If the issuer considers that it may use various formulas or structures for redemption over the term of validity of the base prospectus, it must include all of them in the base prospectus in order to be able to choose one or the other in the FTs for each issue.

## 2.6. Is there a mandatory format and content for the Final Terms?

### **CNMV response**

Although the regulations do not harmonise the format of FTs, paragraph 2 of Article 8 of Regulation 2017/1129 establishes that the base prospectus must include a template or form of the FTs, and as regards the information that may be included in the FTs, the categorisation established by Delegated Regulation 2019/980 must be complied with.

In this regard, the following table explains what type of information must be included in the base prospectus and in the FTs:

	Base prospectus	Final terms
Category A	Yes	Only, where applicable, option chosen from among those established in the base prospectus and in the FT template
Category B - Principles	Yes	Only, where applicable, option chosen from among those established in the base prospectus and in the FT template
Category B - Details	Only if known at the time of approval of the prospectus	Only if not known at the time of the approval of the prospectus
Category C	Only if known at the time of approval of the prospectus	Only if not known at the time of the approval of the prospectus
Additional information according to annex 28 to Delegated Regulation 2019/980	No (unless included in the FT template)	Yes (optional)



Additionally, a statement must be inserted in the FTs under the terms established by paragraph 5 of Article 8 of Regulation 2017/1129. Moreover, paragraph 11 of Article 8 requires a warning to be included in the FTs of an offer commenced under a previous base prospectus (the validity of which ends before the offer) and which continues under a succeeding base prospectus.

## 2.7. How are the final terms to be developed?

### **CNMV response**

The FTs relating to a specific issue will be prepared based on the FT template included in the base prospectus, so that:

- For items of information for which, because the information is not known at the time of preparation of the prospectus, a placeholder has been left in the FT template to be filled in later, this information must be included or reference must be made to its not being applicable to the specific issue, as the case may be.
- For items of information for which options have been established in the FT template, the options applicable to the specific issue must be indicated or reiterated.
- The other information mentioned in question 2.6 above must be included, as provided, in the FT template.

It should be noted that FTs may not contradict the information included in the base prospectus (Article 26 (5) of Delegated Regulation 2019/980). For example, in relation to the formula for determining the remuneration of the securities to be issued, the issuer may only choose between those options established in the base prospectus and reproduced in the FT template. In the event that the issuer wishes to use a formula that is not included in the base prospectus, it must assess whether it is possible to incorporate it into the base prospectus by means of a supplement or whether a new prospectus is necessary to issue a security that contains that formula, due for example to said change having a significant impact on the rest of the information on the securities contained in the base prospectus. Furthermore, in order to assess whether or not it is possible to include certain information on the securities in a base prospectus by means of a supplement, it must be borne in mind that the supplement must not be used to incorporate a type of securities that is not already described in the base prospectus (recital 36 of Regulation 2017/1129).

2.8. Is there a model summary? Can a general model summary note be included in the base prospectus?

**CNMV response**

Although Regulation 2017/1129 does not contain a model to be followed for the preparation of the summary, Article 7 of the Regulation establishes certain considerations regarding the format and length of the summary, as well as the order of the sections of the summary and the content of each of those sections. Therefore, every summary of a prospectus and any summary of an individual issue attached to FTs must be prepared in accordance with all the provisions of the aforementioned Article 7. In addition, the key financial information in the summary must contain the content described in the annexes to Delegated Regulation 2019/979.

Regarding the format and content of the summary of the EU Growth Prospectus, account must be taken of the provisions of Article 33 of Delegated Regulation 2019/980 and its annex 23 (Specific summary for the EU Growth Prospectus).

Lastly, the base prospectus may not include a summary or a template thereof. When a summary is required for the offer and/or admission to trading in question in accordance with Article 7 of Regulation 2017/1129, the specific summary of the individual issue will be attached to the FTs by virtue of the provisions of Article 8.

2.9. What conditions must be met by the incorporation of information by reference in a prospectus?

**CNMV response**

Please refer to paragraph 1 of Article 19 of Regulation 2017/1129, which contains an exhaustive list of the information that can be incorporated by reference. In addition, this paragraph establishes that in order to be incorporated by reference, the document in question must have been published prior to or simultaneously with the prospectus, in electronic format and in a language that satisfies the requirements of Article 27.

Sometimes only certain parts of a document need to be incorporated by reference. In such a case, a statement must be included in the prospectus that the non-incorporated parts are either not relevant for the investor or covered elsewhere in the prospectus.

In any case, when incorporating information by reference, every single document prospectus and each document forming a separate documents prospectus must, by virtue of the provisions of the second paragraph of the aforementioned Article 19, provide a cross-reference list enabling investors to easily identify specific items of information, as well as hyperlinks to all documents containing information which is incorporated by reference.

When it is intended to make use of incorporation by reference, together with the first draft of the prospectus, if possible, and in any case during the review process of the same, the information incorporated by reference must be sent to the CA in an electronic format that allows searches to be conducted, unless the information has already been approved by the CA or presented to it in said electronic format allowing searches.

It should also be remembered that, according to paragraph 3 of Article 21 of Regulation 2017/1129, the documents containing information incorporated by reference must be available in the same section in which the prospectus is published, if necessary, through hyperlinks that must work for at least ten years.

Any information that is necessary to the prospectus but that for some reason cannot be incorporated by reference will be attached to it, but must always comply with the prospectus publication requirements of Article 21 of Regulation 2017/1129 (including being in a searchable electronic format).

## 2.10. Where must the prospectus be published?

### **CNMV response**

The issuer, offeror or person asking for admission to trading must publish the prospectus in electronic format on any of the websites mentioned in paragraph 2 of Article 21 of Regulation 2017/1129.

Regarding the publication referred to in the foregoing paragraph, it is also important to note that the prospectus must be published in a specific section of the website that is easily accessible when entering it, from which the prospectus, in searchable electronic format that cannot be modified, can be downloaded and printed. Likewise, the documents incorporated by reference to the prospectus, as well as the supplements and, where appropriate, the FTs of the prospectus and the summary, must all be available in the same section where the prospectus is published, if necessary through hyperlinks. All approved prospectuses must remain available to the public for a minimum of ten years from their publication on the website.

It should also be noted that access to a prospectus that has been published in accordance with paragraph 2 of Article 21 cannot be conditional on a registration process, the acceptance of a limitation of legal liability or the payment of a fee. However, there may be warnings regarding the territory in which the offer is being made or the securities are being admitted to trading.

### 3. VALIDITY OF THE PROSPECTUS AND UPDATES THERETO (SUPPLEMENTS AND AMENDMENTS)

3.1. When does the 12-month validity period of the prospectus begin - from its approval by the CNMV, or from its publication?

#### **CNMV response**

The validity of the prospectus begins with its approval in accordance with paragraph 1 of Article 12 of Regulation 2017/1129, provided that it is completed with the supplements required in accordance with Article 23.

Validity does not vary depending on whether it is a prospectus or a base prospectus. Nor does it differ in the case of a single document prospectus or a separate document prospectus. Therefore, in the case of a prospectus in separate documents, the validity begins from the moment it is definitively established, that is, from the moment the SN is approved. Consequently, in the case of a separate document prospectus it is necessary for the RD to be in force at the time of the SN approval. The regulations do not require the issuer to have an RD in force for the entire life of the prospectus in separate documents.

In relation to the validity of the prospectus, paragraph 8 of Article 21 of Regulation 2017/1129 requires every prospectus to contain a prominent warning stating when its validity will expire. The warning must also state that the obligation to supplement a prospectus in the event of significant new factors, material mistakes or material inaccuracies does not apply when a prospectus is no longer valid. Thus, for example, if the prospectus refers exclusively to admission to trading on a regulated market, its validity ends with the securities' admission to trading and the obligation to include a supplement expires at the same time.

3.2. When is it necessary to publish a supplement?

#### **CNMV response**

According to paragraph 1 of Article 23 of Regulation 2017/1129, the supplement to the prospectus must communicate, without undue delay, any significant new factor, material mistake or material inaccuracy relating to the information included in a prospectus which may affect the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the closing of the offer period or the time when trading on a regulated market begins, whichever occurs later.

In this regard, Chapter V of Delegated Regulation 2019/979 lists cases that require the publication of a supplement. However, this does not mean that the cases referred to in Chapter V are the only grounds for publishing a supplement, since the general rule referred to in the foregoing paragraph applies to any other circumstance. Therefore, when a particular situation is not established in the aforementioned Chapter V of Delegated Regulation 2019/979, the person responsible for the prospectus will have to assess the case in question.

It is also important to stress that, pursuant to paragraph 2 of Article 23, investors who have already agreed to purchase or subscribe for the securities shall have the right, exercisable within two working days after the publication of the supplement, to withdraw their acceptances, provided that the significant new factor, material mistake or material inaccuracy referred to in paragraph 1 arose or was noted before the closing of the offer period or the delivery of the securities, whichever occurs first.

One of the main novelties of the supplement regime refers to the obligations that financial intermediaries that, where appropriate, participate in the offer will have in relation to the aforementioned right of revocation or withdrawal of orders. Specifically, paragraph 3 of Article 23 establishes that when securities are purchased or subscribed through a financial intermediary, the financial intermediary must i) inform investors of the possibility of a supplement being published, where and when it would be published and that the financial intermediary would assist them in exercising their right to withdraw acceptances in such case and ii) contact investors on the day when the supplement is published.

3.3. Does the validity of the prospectus or registration document depend on the financial information included in it?

**CNMV response**

No. The validity of the prospectus is fixed based on the approval date. However, it must be borne in mind that for a prospectus to be approved it must comply with the requirements for content and format set forth in Delegated Regulation 2019/980, which allow a maximum period of 18 months between the date of the audited annual financial statements and approval of the prospectus.

3.4. What happens when the issuer publishes new audited annual financial statements within the 12-month period from the approval of the prospectus or registration document?  
Must the prospectus or registration document be updated?

**CNMV response**

Pursuant to the provisions of Chapter V of Delegated Regulation 2019/979 a supplement to the prospectus must be published where new annual audited financial statements are published by an issuer of shares or analogous securities. For other securities, the general rule will continue to apply to the publication of new audited annual financial statements, that is to say it is the responsibility of the issuer, offeror or person asking for admission to trading on a regulated market to assess whether said audited annual financial statements may affect the assessments of investors, without prejudice to the powers of the CA.

In the event of the publication of audited annual financial statements after the approval of the RD but before the approval of an SN, the person responsible for the prospectus must apply the logic of the foregoing paragraph to decide whether or not to update the information on the issuer. If it is necessary, it must be done by means of a supplement, since with Regulation 2017/1129 it is no longer possible to update the information on the issuer directly in the SN.

In the case of an RD or a URD, where these are used at the same time as an integral part of several prospectuses, a single supplement must be drawn up and approved and must indicate all the prospectuses to which it relates. In the case of a URD that has not yet been complemented by an SN, the update would not be carried out via a supplement, but through an amendment to the URD, the regime for which is established in Article 9 of the aforementioned Regulation.

3.5. How would the inclusion of the annual financial statements and the corresponding audit reports be carried out?

**CNMV response**

Audited annual financial statements may be (but need not necessarily be) incorporated by reference in a prospectus, an RD, a URD, a supplement or an amendment as explained in question 2.9 above.

Notwithstanding the foregoing, it must be borne in mind that since much of the information relating to the issuer included in the prospectus is provided on the basis of the annual financial statements, it may not be enough to make a single reference to the publication of the new audited financial statements without mentioning such significant changes as might have an impact on the related information included in the prospectus, especially if the prospectus is used to carry out a public offer to sell equity securities or other securities with a nominal value of less than €100,000. For example, it may be necessary to update the risk factors section, trend information, etc.

3.6. When must a registration document or universal registration document be registered?

**CNMV response**

Neither Regulation 2017/1129 nor its implementing regulations establish any limitation in this regard. Notwithstanding the foregoing, it is obvious that an RD or a URD that is processed soon after the publication of the audited annual financial statements will normally require far fewer updates than one that is processed at the end of the year when many months have passed since the publication of that annual financial information. Therefore, the most practical approach, especially for issuers that envisage regularly accessing the markets, is to draw up the RD or URD as soon as possible after the audited annual financial statements have been published.

3.7. Must a supplement to the prospectus be published in the case of half-yearly or quarterly information being published?

**CNMV response**

The publication of interim financial information is not one of the cases included in Chapter V of Delegated Regulation 2019/979 for which a systematic obligation to publish a supplement is established. Therefore, the general rule applies in accordance with the provisions of Article 23 of Regulation 2017/1129, so that the issuer, offeror or person asking for admission to trading on a regulated market is responsible for assessing whether the half-yearly or quarterly information may affect investors' assessments, without prejudice to the powers of the CA. However, it is market practice to publish supplements in relation to interim financial information, especially in the case of half-yearly financial information, although, as explained, it will depend on the specific case. For example, in certain cases it may perhaps be considered that interim financial information of an issuing vehicle has less significance than that of the parent company which guarantees the securities issued by said vehicle. In any case, it is important for the person responsible for the prospectus to maintain a clear criterion in this regard, which is sustained over time.

## 4. CROSS-BORDER REGIME

4.1. What is the European passport and how does it work in practice?

**CNMV response**

Notification of approval of a prospectus or European passport implies that prospectuses approved by the CA of an EU Member State (home country) are valid for the offer to the public or the admission to trading on the regulated markets of all host Member States. This represents an important simplification for issuers since all the administrative procedures relating to the approval of the prospectus are centralised with the CA of the home country, without the CA of the host country being involved in such approval.

At the request of the person responsible for the prospectus, the CA of the home country sends the following documentation to the CA(s) of the host Member State(s) in which it is intended to make the public offering or admission to trading:

- a certificate of approval of the prospectus,
- a copy of the approved prospectus, and
- if applicable, a translation of the summary of the prospectus into the language of the host Member State (if required by the CA of that country).

In accordance with Article 27 (2) regarding the language regime for prospectuses, in cases where the passporting of a prospectus is to be requested, it must be drawn up in a language accepted by the CAs of the host countries or in a language customary in the sphere of international finance (which is generally accepted as a reference to English).

The same procedure for notifying the CA of the host country or countries must be followed in the event that the home country CA approves a supplement to a prospectus that has previously been passported.

In the case of a base prospectus that has previously been passported or notified by the home country CA to the CA of the host country, when the person responsible for the prospectus intends to make offers and/or seek admission to trading on regulated markets in that host country, it will be necessary, in accordance with the provisions of Article 25 (4) of Regulation 2017/1129, for the CA of the home country to transmit the FTs electronically to the CA of the host country or countries and to ESMA as soon as practicable after they are filed. In this case, as mentioned for the general case of the passported prospectus, the CA of the host country does not approve the FTs.

4.2. How can I find out which competent authorities require a translation of the summary?  
How can I find out which languages are accepted by the competent authorities?

**CNMV response**

There is a document available on the ESMA website that contains information on the languages accepted by the CAs of the different Member States and on the translation requirements for the summary.

When the prospectus in question requires a summary and in the event that, in accordance with the provisions of Article 27 of Regulation 2017/1129, the CA of the host country requires it, the translation of the summary, prepared under the responsibility of the issuer, is sent to the CA that has approved the prospectus and this CA is responsible for sending each translation, along with the rest of the documentation, to the CA of the host country.

4.3. What does an issuer that is processing a prospectus with the CNMV have to do to obtain the passporting of the prospectus?

**CNMV response**

The cross-border regime is contained in Chapter V of Regulation 2017/1129, without major changes with respect to the previous regulatory framework, except for the possibility of notifying other CAs of the approval of RDs and URDs so that they can be used to form part of prospectuses in separate documents approved by the CA(s) of the host country or countries.

The request for the CNMV to make a notification or passport as mentioned in Article 25, paragraph 1, of Regulation 2017/1129 in the case of prospectuses or a notification as mentioned in Article 26, paragraph 2, of the same Regulation in the case of a RD or URD, must be sent electronically by the person responsible for it. This request may be made together with the request relating to the procedure for the approval of the prospectus, supplement, RD, etc., during processing or even after approval.



4.4. What is the appendix with key information on the issuer referred to in paragraph 4 of Article 26 of Regulation 2017/1129?

**CNMV response**

As mentioned above, Regulation 2017/1129 allows notification of the approval or passporting of RDs and URDs. Notification of these documents makes sense when the issuer wishes to have the possibility of creating prospectuses with them and with SNs approved by other CAs. In such a case, one CA is responsible for approving the part of the prospectus that relates to the issuer and another is responsible for approving the portion of the prospectus that relates to the securities.

The summary that would have to be approved by the CA of the SN also contains information on the issuer. For this reason, Article 26, paragraph 4 of the aforementioned Regulation requires that if an issuer wishes its RD or URD to be notified to one or more host countries, it must submit for approval together with said RD or URD an appendix with key information on the issuer that is included in the summary referred to in paragraph 6 of Article 7 of the same Regulation.

## 5. SPECIAL REGIMES FOR SECONDARY ISSUANCES, SMEs, EXCHANGE OFFERS, MERGERS AND DIVISIONS

5.1. What is the simplified disclosure regime for secondary issuances?

**CNMV response**

Article 14 of Regulation 2017/1129 establishes a simplified prospectus, with a more reduced content than that of the general regime, for public offerings of securities or admission to trading on a regulated market of issuers whose securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the prior eighteen months. The purpose of this minimum period from admission to trading on a regulated market or an SME growth market is to ensure that the issuer has complied with the ongoing disclosure obligations required by these markets.

The more limited information of the specific models of RD and SN for secondary issuances of Delegated Regulation 2019/980 is reflected above all in the fact that RDs for secondary issuances only require financial statements (annual and half-yearly) corresponding to the twelve month period prior to the approval of the prospectus. Where both annual and half-yearly financial statements have been published, only the annual statements shall be required where they postdate the half-yearly statements. According to this requirement, depending on the date of approval of the prospectus, it could be sufficient to include only the last published half-yearly information, the inclusion of the annual financial statements being voluntary, although highly recommended in order to provide the financial information with greater visibility and perspective. In any case, use can be made of incorporation by reference, as explained in question 2.9 above.

As in the case of other types of prospectuses, once the secondary issuance prospectus has been approved, it can benefit from the passporting regime provided in Chapter V of Regulation 2017/1129.

It is important to note that both the simplified prospectus for secondary issuances and the EU Growth prospectus explained in question 5.2 aim to reduce the administrative burden for issuers, in particular for SMEs, understood in a broad sense, establishing information requirements that are lower than for the general regime prospectus, so as to facilitate access to financing in the capital markets of the European Union for these types of companies, which is one of the essential objectives of the Capital Markets Union.

## 5.2. What is the disclosure regime provided for the EU Growth prospectus?

### **CNMV response**

Persons who meet any of the conditions of Article 15 (1) of Regulation 2017/1129 may choose to draw up an EU Growth prospectus under the proportionate disclosure regime in the case of an offer of securities to the public provided that they have no securities admitted to trading on a regulated market. It is a shorter prospectus model designed to facilitate access to financing in the capital markets for SMEs and other companies larger than traditional SMEs but not so large as to have to deal with the burden of a general regime prospectus. Issuers other than SMEs, whose securities are listed or will be listed on an SME growth market, may also make use of this prospectus.

Once approved, the EU Growth prospectus can benefit from the passporting regime provided in Chapter V of Regulation 2017/1129.

It is important to note that both the EU Growth prospectus and the simplified prospectus for secondary issuances explained in question 5.1 aim to reduce the administrative burden for issuers, in particular for SMEs, understood in a broad sense, establishing information requirements that are lower than for the general regime prospectus, so as to facilitate access to financing in the capital markets of the European Union for these types of companies, which is one of the essential objectives of the Capital Markets Union.

- 5.3. Is it necessary to prepare a prospectus in connection with an exchange offer or a merger or division? What is the “document containing information describing the transaction”?

**CNMV response**

Letters f) and g) of paragraph 4 of Article 1 of Regulation 2017/1129 and letters e) and f) of paragraph 5 of the same Article establish that the obligation to publish a prospectus does not apply to offers of securities to the public or to the admission to trading on a regulated market where the securities are offered in connection with a takeover by means of an exchange offer, merger or division, provided that a document is made available to the public containing information describing the transaction and its impact on the issuer, in electronic form on a website (in accordance with the requirements for the publication of a prospectus in paragraph 2 of Article 21 of the aforesaid Regulation).

These prospectus exceptions will only apply to equity securities that are fungible with those already admitted to trading on a regulated market prior to the transaction, under the terms of paragraphs 6a and 6b of Article 1 of Regulation 2017/1129. Reverse acquisition transactions cannot benefit from these prospectus exceptions.

The document describing the transaction will not be reviewed or approved by the CNMV, without prejudice to its being communicated to the market. Since this document is not a prospectus, it cannot benefit from the passporting regime provided in Chapter V of the Regulation.

The European Commission has drawn up a proposal for a Delegated Regulation which establishes the minimum information content of the aforementioned document with information describing the transaction and its impact on the issuer that must be made available to the public.

## 6. OTHER QUESTIONS ABOUT THE PROSPECTUS REGIME

- 6.1. What is an offer of securities to the public?

**CNMV response**

The definition of the term “offer of securities to the public” is to be found in letter d) of Article 2 of Regulation 2017/1129: “a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe for those securities. This definition also applies to the placing of securities through financial intermediaries.”

In this regard, it must be borne in mind that the cases contemplated in paragraph 4 of Article 1 of Regulation 2017/1129 are offers of securities to the public exempted from the obligation to publish a prospectus.

For example, a communication to qualified investors, in any form and by any means, that presents sufficient information about the terms of the offer and the securities that are offered so as to allow investors to make their investment decision would be an offer to the public, although it would be exempted from the obligation to publish a prospectus.

## 6.2. How can authorisation for the omission of information be requested?

### **CNMV response**

The CA that approves the prospectus may authorise the omission of certain information required to be included therein only if any of the conditions of paragraph 1 of Article 18 of Regulation 2017/1129 are met. As a general rule, it must be understood that the omission of information from the prospectus is an exceptional measure and that by virtue of Article 6 the prospectus must include the necessary information that is relevant for the investor to make an informed assessment.

It should be noted that for the CNMV to approve an omission of information, a reasoned request must be submitted. Therefore, it is recommended that the issuer inform the CNMV as far as possible in advance if it intends to request any omission of information, ideally upon presentation of the first draft of the prospectus.

## 6.3. What is the time frame for approval of a prospectus?

### **CNMV response**

In general, the time frame for scrutiny and approval by the CA of a prospectus for a public offering or for admission to trading on a regulated market is 10 working days from the presentation of the draft prospectus, as established at EU level in Article 20 of Regulation 2017/1129. A prospectus drawn up voluntarily in accordance with Article 4 of the aforementioned Regulation would also be subject to this time frame.

In the more specific area of issuance of non-equity securities for qualified investors, the CNMV has for years been committed to improving the review and approval procedures, with shorter deadlines than those provided for in EU regulations. Specifically, the deadlines are:

- 3 business days for the submission of comments on the FTs (2 business days in the case of subsequent comments) and verification of the admission requirements will be carried out within 2 business days from receipt of the documentation.
- 5 business days for the submission of comments on the RDs for non-equity wholesale-type securities and for base prospectuses as long as the issuer provides a draft highlighting the changes with respect to the last base prospectus approved by the CNMV. The CNMV will approve the above within 5 business days from the receipt of the full corresponding documentation, including the final draft of the information prospectus, under the conditions described in question 6.4.

6.4. In what format and by what means must the documentation required in relation to the approval of a prospectus, supplement, registration document, etc. be submitted?

**CNMV response**

In general, the prospectus regulations require that all documentation (final prospectus, the various drafts thereof, documentation required by Article 42 of Delegated Regulation 2019/980, etc.) must be sent to the CA “in searchable electronic format via electronic means”. The EEA (Issuance and Admission) procedure enabled in the CNMV's Electronic Office is the electronic channel for communicating with the Primary Markets Department in relation to the approval of a prospectus, supplement, RD, URD, etc.

In this regard, it is very important that issuers who are new or who have not recently communicated electronically with the Primary Markets Department carry out all the necessary procedures with the CNMV's Electronic Office in good time to ensure that they will be able to carry out all the processing through the aforementioned electronic procedure.

It should also be noted that the persons responsible for signing prospectuses and any necessary supporting documentation with the CNMV must carry out all the necessary procedures to have a valid and current electronic signature at the time of signing.

6.5. Does the CNMV review and approve prospectuses drawn up in English? What are the accepted languages for supporting documents and financial information?

**CNMV response**

The rules for the use of language in prospectuses are established in Article 27 of Regulation 2017/1129. In accordance with this Article, in general, where an offer of securities to the public is made or admission to trading on a Spanish regulated market is sought and the CNMV is asked to approve the prospectus, the prospectus must be drawn up in a language accepted by the CNMV or in a language that is customary in the sphere of international finance. For this reason, the CNMV has been approving and will continue to approve prospectuses drawn up in English (although the decision should be taken with due regard to the type of product and the public to whom the issue is mostly directed). Following this logic, the CNMV also accepts supporting documents and financial information in English.

## 7. INITIAL PUBLIC OFFERINGS (IPOs)

7.1. What must an issuer take into consideration with regard to the schedule envisaged in an initial public offering or a subscription of shares of a company and their subsequent admission to trading on regulated market(s) (hereinafter, the transaction)?

### **CNMV response**

Based on the need to carry out an efficient and orderly supervision, enabling the company to meet its objective of going public within the expected deadlines, the schedule proposed by the issuer, offeror or the person requesting the admission to trading will only be taken into consideration by the CNMV insofar as the draft of the preliminary prospectus submitted to the CNMV, and successive versions thereof, strictly comply with the provisions of Regulation 2017/1129 and the implementing regulations thereof.

In this regard, the mere submission of successive versions of the prospectus, which do not address, in due form and time, the CNMV's requests for information, will not imply compliance with the processing milestones of the transaction until it is verified that the prospectus contains all the necessary information and includes all the observations of the CNMV personnel, as well as any other information, which has not been provided, but as stipulated under the aforementioned regulations is necessary.

The CNMV will not take into consideration the schedule envisaged by the issuer until the version of the prospectus complies with the provisions of Regulation 2017/1129 and the implementing regulations thereof. The expected date of conclusion of the transaction will be set when all the necessary information is complete.

7.2. How much time before the approval date does the prospectus and the rest of the transaction's documentation have to be closed?

### **CNMV response**

The prospectus and the rest of the transaction's documentation must have all their terms closed at least four business days before the date of approval, except for the parts corresponding to aspects directly related to the range of the bid price (definition of the range, shareholder structure after the IPO, etc.), and only when it is strictly necessary to fix such range within the four-business-day deadline.

The provisions of questions 7.1. and 7.2. above will also be applicable, according to the level of compliance of the prospectus with the provisions of Regulation 2017/1129 and the implementing regulations thereof, to the approval of prospectuses corresponding to transactions other than IPOs (namely, prospectuses relating to capital increase transactions and securitisation funds) which are submitted with a schedule for approval proposed by the issuer.