



# CHALLENGES OF POST-TRADING IN A TRANSFORMING ENVIRONMENT

## SIXTH SECURITIES SERVICES CONFERENCE

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Good morning,

First of all, I would like to thank José María Méndez (General Manager of Cecabank) and Ana Isabel Pereda (Director of *Expansión*) for inviting me to the inauguration of this Conference on Securities Services.

For the past six years, these conferences have brought together industry professionals, supervisors and regulators to reflect on the operational, regulatory and market changes that have an impact on this business.

The CNMV has participated in almost all previous editions, with the aim of being transparent and sharing our decisions and our criteria, so that market participants are aware of the framework in which they carry out their activity.

As every year, representatives of our industry (securities companies, CIS and pension fund management companies, venture capital companies, banks and supervisors) meet to discuss current issues that affect us.

On this occasion:

1. The global perspective of Securities Services technology and regulation is going to be discussed.

2. In addition, there is going to be a reflection on the pension situation, and
3. The conference is going to close with a roundtable discussion on Cryptoassets.

In this opening ceremony, I am going to focus on the CNMV's vision regarding three issues which are going to be dealt with more extensively throughout the conference:

- First of all, I am going to highlight **the importance of the figure of the securities depository and its main functions**. It is probably the least visible part of our sector, but not for that reason of lesser magnitude. The Spanish custodial industry has now reached 2.2 billion euros, almost twice Spain's Gross Domestic Product (GDP), and custodial assets are owned by more than 10 million clients. It is undoubtedly a vital cog in the wheel.
- Secondly, I am going to refer briefly to the **salient aspects of national and European regulations affecting Securities Services**.
- Finally, I am going to briefly review the **CNMV's position on cryptoassets** and the initiatives we have adopted in this regard.

As I mentioned, securities depositories play a very important role in holding the assets or securities they have in safekeeping.

The Collective Investment Schemes Act **defines** this figure as the entity **entrusted with the custody of the assets** of CISs and **the supervision of the management carried out by management companies**. In addition, the CIS Act confers certain **obligations** on depositories, such as the obligation to repay on behalf of the funds **the redemption** of the units, the net value of which will be debited from the fund's account.

Therefore, the figure of the depository, obligatory in CISs and in certain cases in venture capital firms/closed-ended collective investment schemes, is very relevant, because what it provides is **security for the unitholder and control over the investment**.

It is a crucial element in ensuring investor protection in a **two-pronged approach**:

- On the one hand, the control activity itself requires monitoring of the investments made by management companies, of the subscriptions and redemptions, and of compliance with all legal and own limits of the funds.

Therefore, the depository:

1. Must act independently and in the interests of investors. Thus, if it detects any anomalies in the management of the schemes whose assets it has in its custody, it is obliged to notify the CNMV, so that the latter can take the appropriate measures to ensure investor protection.
  2. In addition, depositories are liable to unitholders of investment funds or shareholders for all damages caused to them by non-compliance with their own obligations.
- Furthermore, there is another function derived from the functions of depository itself (custody of assets that are registered in accounts, registration of other assets, and cash control).

The role of the depositories of management companies is very important at a time like the present, when the number and types of management companies are increasing and the assets under management are becoming increasingly important.

I am going to cite **four main industry features**:

- **Firstly, the number of management companies has increased considerably in recent years.** At the end of 2018, there were 119 collective investment scheme management companies registered with the CNMV, 10 more than at the end of 2017, following the registration of 11 new such companies and one de-registration. This trend extends the expansion that began in 2014 and has continued this year with the registration of four new management companies.

In addition, as a consequence of the entry into force of MiFID II, we are seeing the creation of small or medium-sized management companies, closely linked to asset management or to independent management.

- **Secondly, there continues to be very significant growth in assets and in the number of unitholders.**

Based on data from September, Spanish funds have recovered to surpass the barrier of 270 billion euros of assets. In the first nine months of 2019, funds grew by 5%.

In addition, the number of unitholders' accounts in national investment funds stood at more than 11.2 million.

- **Thirdly, there is a noticeable concentration in the sector, which makes it necessary for these entities to scrupulously fulfil their function.**

In 2007, there were 76 depositories providing this service, while in 2019 there are only 24 active depositories. This concentration can also be seen in the evolution of the business share of the top five entities, which in this period (since 2007) has increased from 53% to 73%.

Depositories received fees amounting to 637 million euros in 2018, of which 95% corresponded to credit institutions, although the service can also be provided by Investment Firms (IFs).

The volume of depository activity, together with this concentration process, highlights the existence of scale economies and significant savings in the technological investments that depositories need to carry out their activity.

We must be aware of the evolution of this phenomenon, since the figure of a quality depository is essential both for investors, since it guarantees their legal certainty, and for the management company, as it makes it easier for the latter to implement its investment policy efficiently. It is therefore vital for management companies to have depositories that fulfil their functions properly and that they have at their disposal a range of entities from which to choose.

- **Finally, we are seeing a change in model, and management companies are turning to external depositories.**

In 2007, before the financial crisis, **85% of the depositories appointed by management companies belonged to the same group.** Based on data from June 2019, this percentage of management companies appointing group depositories has dropped to 58%.

The use of external depositories can lead to greater independence and autonomy in the performance of the depository's functions, and allows the provision of depository services that may require greater specialisation.

I am now going to turn to the **second of the matters** I mentioned at the outset, namely **regulatory developments**.

I am going to refer to two issues: **the revision of the 2011 Alternative Fund Management Directive**, better known as AIFMD, and the obligation established by the **Spanish Royal Decree on Investment Firms** on the block transfer of assets.

With regard to the Directive, the EC commissioned KPMG to prepare a report in order to assess how it has been implemented and what its effects have been. KPMG published its report in 2018, from which I would like to highlight the following matters:

- With regard to depositories in these types of funds, the **assessment is generally positive**, but the report notes that some of the rules have been interpreted in various ways in different jurisdictions (e.g. look through obligations or control of the management company's cash).
- In addition, it mentions that the rules contained in the directive are very generic and are not appropriate for the diversity of existing asset types or geographies.
- It also states that the existence of the depository passport and the use of omnibus accounts by sub-custodians, the latter issue already having been clarified by the EC in 2018, would be beneficial for small countries.
- Lastly, it mentions that the application of stricter rules to alternative funds could have the effect of investors deciding to invest in third countries, directing professional investments outside the EU.

In any case, it will have to wait for the proposals that the European Commission makes regarding the revision of the Alternative Funds

Directive, on the basis of this report. We at the CNMV are going to closely follow this possible revision.

Finally, I am going to refer to the **obligation included in the Spanish Royal Decree on Investment Firms**, which was amended in 2018 and which also applies to depositories of CISs, insofar as they carry on custodial activity. The changes introduced are aimed at preventing the freezing of assets held in custody in cases where the entity providing the custody service is in financial difficulty.

To this end, it is expected that the entities that provide the custody service, will reach agreements to carry out a block transfer of the assets under custody when they are faced with such financial difficulty.

In fact, the CNMV has begun to verify the existence of these agreements, through the review carried out by the auditors, which is reflected in the issuance of the Client Asset Protection Report.

And before I finish, I would like to take a few minutes to explain the **position of the CNMV on cryptoassets**.

As you know, in recent years these types of assets have gained notoriety as a result of the emergence of a new technology known as DLT.

With the advent of this technology came cryptocurrencies, the first and best known of which is bitcoin.

In addition, this phenomenon soon took the form of Initial Currency Offers (known as ICOs). ICOs involve attracting funds from investors in exchange for the issue of what are known as tokens. Specifically, tokens received by investors are usually of two kinds: security tokens, which entitle investors to participate in the future or increasing income of the issuing entity or a business, and utility tokens, which entitle investors to access a service or receive a product.

This is a completely new phenomenon which has raised many doubts, in particular as to whether ICOs should be treated as issues or public offerings of transferable securities, that is to say, whether the tokens that are issued fall within the concept of transferable securities subject to all the provisions of the Securities Market Act (regulation and supervision).

The complexity of determining the nature of the cryptoassets issued in ICOs has led countries to adopt different positions in order to deal with the phenomenon, including: either prohibiting these issues, or warning of their lack of regulation and their risks, or including certain amendments in local regulations or applying current regulations.

The CNMV has been very active in this regard: in 2018 we published a statement to the effect that our strategy was to follow the recommendations of the European Commission, and therefore encourage the application of new technologies to the provision of financial services, **but also to monitor the risks associated with them.**

Among the specific objectives derived from this strategy is that of providing criteria for determining in which cases a cryptoasset (a token) should be considered a transferable security and, accordingly, apply the corresponding rules to it.

On 8 February 2018, we published two statements<sup>1</sup>, one jointly with the Bank of Spain and the other with specific considerations from the CNMV aimed at professionals in the financial sector.

The second statement contained an incomplete list of various methods of commercialisation or acquisition of cryptocurrencies, and perhaps the most relevant issue was the fact that we included initial guidance on the implications of ICOs. We consider that a good part of the transactions carried out as ICOs should be treated as issues or public

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<sup>1</sup> <http://www.cnmv.es/Portal/verDoc.axd?t=%7bf3ab3acc-c4fc-4b99-b61f-b9ef8dab7a98%7d>  
<http://www.cnmv.es/Portal/verDoc.axd?t=%7b9c76eef8-839a-4c19-937f-cfde6443e4bc%7d>

offerings of transferable securities, so that the corresponding national or European rules would be applicable to them, such as those derived from MiFID II, the Prospectus Directive and the Directive on Alternative Investment Fund Managers.

Subsequently, in September 2018, we updated the criteria to determine whether an ICO actually constituted a public offering of transferable securities.

In general, we assumed that a majority of possible ICOs would not require the approval of a prospectus by the CNMV, and in those cases in which it were necessary, the Commission would make an effort to adapt and would take into account the principle of proportionality in order to try to reduce the complexity and length of the document as much as possible.

The reality has been that, so far, we have been consulted by two ICOs, and given their objective, we came to the conclusion that they were not required to submit a prospectus subject to our approval.

Before ending, I would like to refer specifically to stable coins; the case of the cryptocurrency "Libra" that Facebook plans to issue is an example.

In our opinion, it does not appear that this new cryptocurrency will have direct implications from the point of view of securities regulations, at least with the information available until now.

However, it is obvious that these implications do exist with regard to the regulation of payment services, money laundering and personal data privacy. It is also clear that all or many of the precautions that, for example, the CNMV listed in its statements of February 2018 (that there is a custody risk, that there must be transparency in the applicable rates or that there is a need for adequate management of conflicts of interest between clients) are applicable to it.

But above all, there is concern from the point of view of the implications for the monetary system. Given the volume of Facebook users, a high degree of acceptance of this new cryptocurrency could make it systemic in a short period of time and reduce the effectiveness of monetary policy.

Finally, I would like to conclude by thanking you once again for your invitation, and I encourage you to continue this effort to bring together industry, supervisors and regulators to reflect on the operational, regulatory and market changes that impact this business.

Thank you very much.