

MEMORANDUM

TO: File Number S7-09-21

FROM: Laura Compton
Senior Special Counsel
Office of Derivatives Policy, Division of Trading and Markets
U.S. Securities and Exchange Commission

DATE: September 24, 2021

On September 24, 2021, Santiago Yraola, Deputy Director of International Affairs at the Comisión Nacional del Mercado de Valores (CNMV) provided the following comment on File Number S7-09-21:

With respect to the Know Your Counterparty rules under MIFID/ MIFIR, the following is applicable:

The Commission Delegated Regulation (EU) 2017/565 of 25 April 2016, Articles 74 and 75 which is directly applicable to all EU Member States, and Article 16(6) of Directive 2014/65/EU, transposed into the Articles 193 and 194 of the Recast Securities Market Act ([rld_4_en_rev.pdf](#) ([cnmv.es](#)) RDL 4 2015 TRLMV Ley de Mercado de Valores) referred to Internal organization requirements (Article 193), as well as Records (Article 194). We believe both 193 and 194 are sufficiently broad enough to engage the know your counterparty obligation to maintain and enforce reasonably designed written policies and procedures to obtain and retain a record of essential facts concerning each counterparty. Note that the information and records under TRLMV 193 and 194 are verifiable by the CNMV.

Furthermore, under The Commission Delegated Regulation (EU) 2017/565 of 25 April 2016, Article 74 Recordkeeping of client orders and decision to trade (Article 16(6) of Directive 2014/65/EU) states the following:

An investment firm shall, in relation to every initial order received from a client and in relation to every initial decision to deal taken, immediately record and keep at the disposal of the competent authority at least the details set out in Section 1 of Annex IV to this Regulation to the extent they are applicable to the order or decision to deal in question.

Annex IV (Section 1) establishes the recordkeeping requirements of client orders and decision to deal:

1. Name and designation of the client
- 2. Name and designation of any relevant person acting on behalf of the client**

3. A designation to identify the trader (Trader ID) responsible within the investment firm for the investment decision

In addition, Article 75 Maintenance of transaction records and order processing (Article 16(6) of Directive 2014/65/EU) states the following:

Investment firms shall, immediately after receiving a client order or making a decision to deal to the extent they are applicable to the order or decision to deal in question, record and keep at the disposal of the competent authority at least the details set out in Section 2 of Annex IV.

Note that Investment Firms in accordance with Article 1.2 of the aforementioned The Commission Delegated Regulation (EU) 2017/565 of 25 April 2016, shall encompass credit institutions ([EUR-Lex - 32017R0565 - EN - EUR-Lex \(europa.eu\)](http://eur-lex.europa.eu/lexuri/cs.do?uri=CELEX:32017R0565-EN))

Annex IV (Section 2) states the following:

Recordkeeping of transactions and order processing

1. name and designation of the client;
2. **name and designation of any relevant person acting on behalf of the client;**
3. a designation to identify the trader (Trader ID) responsible within the investment firm for the investment decision

Please note that, in the transaction records the "name and designation of any relevant person acting on behalf of the customer" implies that the investment firm or credit institution for internal control reasons, must obtain documentation of the powers/authorization of the person to be represented which is verifiable by the CNMV.

The CNMV in its supervisory actions requests samples of client transactions in which the supervised Entity is asked for the client's identification documentation (ID card / Passport for individuals and deeds of incorporation in the case of legal entities), as well as that of the representative acting on behalf of the holder / client: power of attorney for individuals / public deed for legal entities (registered in the Commercial Registry) of the attorney-in-fact of the individual.

We hope the above will be useful to you.