

## FAQS ON THE IMPLEMENTATION OF MiFID II

On 30 October 2017, the CNMV published a compilation of FAQs in relation to the implementation of MiFID II. The objective of the FAQs is to clarify certain questions submitted by market players and to unify the construction and implementation of MiFID II.

The FAQs are in line with the recent publications of the ESMA, the European Law and, in particular, with the Delegated MiFID II Directive. Some of the main topics and answers included in the FAQs are detailed below:

### (a) Product governance requirements

The CNMV states that the target market must be defined for each product, instead of being established at the portfolio level. Likewise, the CNMV highlights that the product governance requirements apply to any kind of client, even if such clients are considered eligible counterparties for customized products.

### (b) Incentives

The CNMV considers that entities providing portfolio management services will not be able to continue receiving and retaining incentives from third parties for positions derived from transactions executed before 3 January 2018. In this sense, the CNMV reminds us that MiFID does not provide for a transitional clause in this matter.

### (c) Requirements on pre-contractual information

From a practical point of view, the CNMV has announced that no standardized forms will be approved for submitting the pre-contractual information required by MiFID II. Therefore, distributors will be able to freely choose how to send their clients this pre-contractual information.

### (d) Independent advice

In order to ensure the independence of advice given, the CNMV will analyse, on a case-by-case basis, when there is a close legal or economic relationship with the distributor or the issuer of the financial instrument. If that relationship could jeopardize the independent nature of the advice, then such entity may not present itself to its clients as an independent advisory service provider.

### (e) Record keeping obligations

The CNMV establishes that the record keeping obligations provided under MiFID II shall not apply to entities providing portfolio management services, since portfolio management orders are not given by the client but rather the manager. However, such provisions shall apply when the transaction is performed as a consequence of the portfolio manager receiving an instruction from a client they manage.

(f) **Suitability and appropriateness assessment**

The CNMV establishes that entities can automatically update the suitability test if they have enough information which should be taken into consideration for the suitability assessment. However, not all changes are acceptable in the absence of the client's authorization (e.g. increases in risk tolerance).

(g) **Knowledge and competence**

The CNMV highlights that measures for the assessment of knowledge and competence will also apply to relevant personnel of foreign entities providing investment services in Spain, either through branches or tied agents.

A brief summary of the Technical Guide of the CNMV for the assessment of the knowledge and competence of staff giving information and advice is provided below.

See full text of the FAQs (in English) at: [https://www.cnmv.es/loultimo/FAQMiFIDII\\_EN.pdf](https://www.cnmv.es/loultimo/FAQMiFIDII_EN.pdf)

## **TECHNICAL GUIDE OF THE CNMV FOR THE ASSESSMENT OF THE KNOWLEDGE AND COMPETENCE OF STAFF GIVING INFORMATION AND ADVICE AND LIST OF CERTIFICATIONS/TITLES**

On 27 June 2017 the CNMV issued the Guidelines for the assessment of knowledge and competence - Technical Guide 4/2017-, based on ESMA's guidance provided in this regard. This Guidelines specifies the criteria that the CNMV deems appropriate in order for entities to demonstrate that the staff that provide information or give advice on investment services have the necessary knowledge and skills, as well as the criteria for how such knowledge and skills should be evaluated (i.e. criteria for knowledge and competence, minimum number of teaching hours, list of certifications/titles considered valid for the purpose of demonstrating knowledge etc.).

The Guidelines establish that the management body of the financial institution (or a specific commission created for this purposes) shall establish the qualifications and experience criteria for the relevant staff and shall designate the department(s)/teams of the financial institution -or group- that will be responsible for its application. Likewise, the management body shall establish control procedures that ensure compliance with the established criteria.

In this sense, on 25 October 2017 the CNMV published the initial list of certifications/titles considered valid for the purposes of demonstrating sufficient knowledge to provide information or advice, as applicable. However, the financial institutions may, under their own responsibility, consider others titles and/or certificates suitable.

See full text (in English) of the Guidelines at [http://cnmv.es/DocPortal/Legislacion/Guias-Tecnicas/GuiaTecnica\\_2017\\_4\\_en.pdf](http://cnmv.es/DocPortal/Legislacion/Guias-Tecnicas/GuiaTecnica_2017_4_en.pdf)

See full text (in English) of the list of qualifications at [https://www.cnmv.es/Docportal/Legislacion/Titulos/ListadoTitulos\\_en.pdf](https://www.cnmv.es/Docportal/Legislacion/Titulos/ListadoTitulos_en.pdf)

## **CNMV COMMUNICATION ON THE INFORMATION TO BE SUBMITTED BY CIS FOREIGN MANAGERS**

On 25 October 2017, the CNMV issued Communication 2/2017, amending Communication 2/2011, on the information that foreign collective investment schemes ("CIS") registered with the CNMV shall provide for statistical purposes.

Firstly, the Communication establishes that non-harmonised foreign CIS shall be registered at the CNMV and appoint an entity to represent them. This entity shall report the registrations and de-registrations of entities marketing the CIS in Spain to the CNMV by electronic means in a maximum period of 7 days following the registration or de-registration date.

Moreover, each distributor marketing foreign CIS, either harmonised (UCITS) or non-harmonised, will need to submit standard form A01 on a quarterly basis for statistical purposes. In the event that the distributor has not marketed any CIS during the quarter, the A01 must be also submitted with the corresponding codes set at zero. The deadline for the submission will be 2 months from the last calendar day of the quarter to which the information refers.

The Communication will enter into force on 3 January 2018 and shall apply to the information related to the first quarter of 2018.

See full text (in English) at <http://www.cnmv.es/portal/verDoc.axd?t={b8b1b621-8964-4cfa-8bf0-8fad03d60384}>

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