

THE CNMV LAUNCHES AN OPEN COMMUNICATION CHANNEL TO PROMOTE FINTECH IN SPAIN

The CNMV has publicly announced its intention to promote Fintech initiatives in Spain and has recently launched an open communication channel called "Innovation Portal/Fintech Portal", with the aim of:

- (i) Advising promoters and financial entities on securities market regulations which may be applicable from time to time to their businesses and/or projects; and
- (ii) Creating an informal channel of communication with promoters and financial entities for exchanging information on their initiatives in Fintech.

Certain business models which are considered as Fintech may already have a specific regulation in Spain, like the crowdfunding platforms of debt or equity. Other innovative business models, although not expressly regulated, have a security markets focus and/or may require prior CNMV authorization, such as:

- (i) Automated advice or automated portfolio management.
- (ii) Algorithmic trading.
- (iii) Distributed ledger technology.
- (iv) Alternative distribution channels applying to securities markets.
- (v) Big data.
- (vi) Other crowdfunding platforms.

In practice, the Fintech Portal allows promoters, financial entities and/or related parties to contact the CNMV in order to have a first approach on their businesses and/or projects:

- (i) Enquiring about security market regulations which may affect their businesses and/or projects.
- (ii) Raising any suggestions or providing information to the CNMV with regard to their businesses and/or projects.

Any person interested in participating in the Innovation Portal should submit an application form¹ to the email FinTech@cnmv.es

Once the form has been received by the CNMV, the person in charge will reply to the enquirer within the next 3 business days. Such communications will be conducted on an informal basis, either by e-mail or by phone. Face-to-face meetings could also be arranged if requested. Information exchanged shall be treated as confidential and does not imply the opening of an administrative procedure.

CNMV NOTIFIES ITS INTENTION TO APPLY ESMA'S GUIDELINES ON SOUND REMUNERATION POLICIES UNDER UCITS Directive AND AIFMD

On 28 December 2016, the CNMV communicated in its website that it has notified the ESMA of its intention to follow ESMA's Guidelines on sound remuneration policies under the UCITS Directive² (ESMA/2016/575), as well as ESMA's Guidelines on sound remuneration policies under AIFMD³ (ESMA/2016/579), which amended the previous ESMA's Guidelines on remuneration policies for AIFs (ESMA/2013/232). Both Guidelines were published on 14 October 2016 and are in force as of 1 January 2017, without prejudice to the transitional provisions established therein.

Matters covered under such Guidelines include the following: (i) remuneration concept; (ii) identification of employees who are subject to the Guidelines; (iii) application of the proportionality principle; (iv) remuneration for management companies of the same group; (v) application of sectoral rules; (vi) remuneration taking into account the financial situation of the management company; (vii) governance of remuneration; (viii) general and specific requirements on risk alignment; and (ix) disclosure of remunerations. Additionally, new ESMA Guidelines in relation to AIFMD have been drafted in order to include the application of EBA's Guidelines on sound remuneration policies for banks when the management company is part of a banking group and the employees of the company affect the risk profile of the group.

Unlike ESMA's Guidelines with regard to AIFMD, it should be noted that ESMA's Guidelines on UCITS do not envisage a specific criteria for the application of the proportionality principle, and it only replicates the generic reference included at the Level 1 Directive. In this respect, the CNMV highlights its intention to apply to UCITS management companies the same criteria applicable to AIF management companies.

¹ The form merely consists of submitting by mail the following information:

- (i) Contact details of the applicant (i.e. name and surname of the applicant, company name, role in the company, address, phone number and e-mail).
- (ii) Reason for submitting the form:
 - (a) Request information.
 - (b) Provide information.
- (iii) Description of business model:
- (iv) Current development stage of Project.
- (v) Prospective business startup date.
- (vi) Geographical scope of business.
- (vii) What topics would you like to discuss?
- (viii) Have you had previous contact with another supervisory body with regard to this project? If so, which?
- (ix) Do you have links with any supervised entity? If so, which?
- (x) Add any information you consider relevant as an annex.

² Directive 2009/65/EC, of 13 July 2009, on the coordination of laws, regulations and administrative provisions relating to Undertakings for Collective Investment in Transferable Securities (UCITS IV), as amended by Directive 2014/91/EU of 23 July 2014, as regards depositary functions, remuneration policies and sanctions (UCITS V).

³ Directive 2011/61/EU, of 8 June 2011, on Alternative Investment Fund Managers (AIFMD).

The latter implies (i) the possibility of not applying certain rules, such as for example, the partial deferral or the payment by means of the delivery of financial instruments; or (ii) an application of the balance principle between the fixed and variable components of the remuneration⁴ adjusted to the characteristics of each entity. In relation to management companies, this principle is compatible with the possibility that the variable component of the remuneration may exceed the fixed component by twice that amount.

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⁴ I.e. the principle by means of which the fixed component shall represent a sufficiently high proportion of the total remuneration, a principle which is set out in a generic form, without providing any percentage limitation.