

PROPOSAL FOR A TECHNICAL GUIDE FOR THE ASSESSMENT OF KNOWLEDGE AND COMPETENCE OF STAFF PROVIDING INFORMATION AND ADVICE.

Article 193 of the revised text of the Spanish Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October (LMV), which is the transposition of Article 13.2 of Directive 2004/39 (MiFID₁), on internal organisation requirements, establishes that investment services firms and other entities providing investment services must define and apply appropriate policies and procedures to ensure that the company, its directors, its staff and its agents comply with the obligations imposed by Stock Market regulations.

For its part, CNMV Circular 1/2014, of 26 February, on internal organisation requirements and control functions of entities which provide investment services, implements and specifies the organisational structure and internal control requirements of entities providing investment services to ensure that, in general, their organisation is in keeping with the range of services provided. As a result of the publication of this Circular, the CNMV's guide to procedures on internal control functions indicates that the entities to which this applies must have continuous staff training and assessment procedures in place to ensure that employees act in an honest, impartial and professional manner in the best interests of their clients. The guide also states that the procedures should include periodic assessments of employees to ensure that they do not provide investment services without the appropriate required training and experience.

In addition, EU Directive 2014/65 (MiFID₂), in a similar vein as MiFID₁ but in a more specific manner, establishes in its Articles 24.2 and 25 that investment services companies must understand the characteristics of the financial instruments they offer or recommend to clients and, to this end, Member States should require that these companies ensure and demonstrate to the competent authorities that the individuals providing information or advice to clients have the necessary knowledge and competence to meet their obligations. For this purpose, Member States will publish the criteria used to assess this knowledge and competence. In short, MiFID₂ expressly establishes the obligation of staff providing advice or information to have the necessary knowledge and competence and stipulates that Member States are to publish the criteria used in their assessment.

In view of the above, on 22 March 2016, the European Securities and Markets Authority (ESMA) has published "*Guidelines for the assessment of knowledge and competence of staff providing advice or information*", which will be applicable as of 1 January 2018.

This Technical Guide, taking into account these ESMA Guidelines, specifies the criteria considered appropriate by the CNMV for entities to demonstrate that staff providing investment information or advice have the necessary knowledge and competence.

The aim is to have investors understand the risks of the products in which they invest. To achieve this, the individual offering these products must have the necessary knowledge to understand them, as well as the capacity to explain them and to assess whether they are appropriate or suitable for each client, which must be guaranteed by entities providing investment services.

In compliance with these guidelines, the Board of the CNMV has approved this Technical Guide on the date of xx, following the report of its Consultative Committee, under the provisions of Article 21.3 and 21.4 of the revised text of the Spanish Securities Market Act.

The CNMV will apply the measures and criteria contained in this Technical Guide in its supervisory activities as of January 2018.

One. Scope of Application

This Technical Guide applies to all relevant staff of Credit Institutions, Investment Services Companies, Collective Investment Institutions and Closed-End Collective Investment Institution Management Companies that provide investment services (hereinafter, all referred to as “firms”).

For the purposes of this Technical Guide, relevant staff is understood to be the staff of firms (including agents) that provide information or advice to clients or potential clients, also considering staff who provide service to clients with discretionary portfolio management contracts as staff giving advice.

Two. Purpose

The purpose of this Technical Guide is to establish criteria regarding the knowledge and competence that staff providing information and/or advice to clients on behalf of the firms must possess, as well as the way in which this knowledge and competence should be assessed.

The Guide also specifies the manner in which the obligated entities must demonstrate their compliance to the CNMV.

Three. General Provisions

The level and depth of knowledge and competence for those providing investment advice should be of a higher standard than those that only give information on investment products and services.

Firms should ensure that staff providing relevant services possess the necessary knowledge and competence to meet relevant regulatory and legal requirements and business ethics standards. In order to ensure a proportionate application of knowledge and competence requirements, firms should ensure that staff have the necessary levels of knowledge and competence to fulfil their obligations, reflecting the scope and degree of the relevant services provided.

Firms should ensure that staff know, understand and apply firm’s internal policies and procedures designed to ensure compliance with MiFID2.

The compliance function should assess and review compliance by the firm in order to ensure that staff have the necessary levels of knowledge and competence and apply firm’s internal policies and procedures with these guidelines. This review should be included in the report to the management body on the implementation and effectiveness of the overall control environment for investment services and activities.

In any case, the necessary time and resources should be made available to relevant staff to allow them to acquire and maintain appropriate knowledge and competence and apply them when providing services to clients.

Four. Criteria for knowledge and competence for staff giving information about investment products, investment services or ancillary services

Firms will ensure that staff providing information about investment products, investment services or ancillary services must have the necessary knowledge and competence to:

- a. understand the key characteristics, risk and features of those investment products available through the firm, including any general tax implications and costs to be incurred by the client in the context of transactions. Particular care should be taken when giving information with respect to products characterised by higher levels of complexity;
- b. understand the total amount of costs and charges to be incurred by the client in the context of transactions in an investment product, or investment services or ancillary services;
- c. understand the characteristics and scope of investment services or ancillary services;
- d. understand how financial markets function and how they affect the value and pricing of investment products on which they provide information to clients;
- e. understand the impact of economic figures, national/regional/global events on markets and on the value of investment products on which they provide information;
- f. understand the difference between past performance and future performance scenarios as well as the limits of predictive forecasting;
- g. understand issues relating to market abuse and anti-money laundering;
- h. assess data relevant to the investment products on which they provide information to clients such as Key Investor Information Documents, prospectuses, financial statements, or financial data;
- i. understand specific market structures for the investment products on which they provide information to clients and, where relevant, their trading venues or the existence of any secondary markets;
- j. have a basic knowledge of valuation principles for the type of investment products in relation to which the information is provided.

Five. Criteria for knowledge and competence for staff giving investment advice

Firms should ensure that staff giving investment advice have the necessary knowledge and competence to:

- a. understand the key characteristics, risk and features of the investment products being offered or recommended, including any general tax implications to be incurred by the client in the context of transactions. Particular care should be taken when providing advice with respect to products characterised by higher levels of complexity;
- b. understand the total costs and charges to be incurred by the client in the context of the type of investment product being offered or recommended and the costs related to the provision of the advice and any other related services being provided;
- c. fulfil the obligations required by firms in relation the suitability requirements including the obligations as set out in the Guidelines on certain aspects of the MiFID suitability requirements¹;
- d. understand how the type of investment product provided by the firm may not be suitable for the client, having assessed the relevant information provided by the client against potential changes that may have occurred since the relevant information was gathered;
- e. understand how financial markets function and how they affect the value and pricing investment products offered or recommended to clients;
- f. understand the impact of economic figures, national/regional/global events on markets and on the value of investment products being offered or recommended to clients;
- g. understand the difference between past performance and future performance scenarios as well as the limits of predictive forecasting;
- h. understand issues relating to market abuse and anti-money laundering;
- i. assess data relevant to the type investment products offered or recommended to clients such as Key Investor Information Documents, prospectuses, financial statements, or financial data;
- j. understand specific market structures for the type investment products offered or recommended to clients and where relevant their trading venues or the existence of any secondary markets;
- k. have a basic knowledge of valuation principles for the type of investment products offered or recommended to clients;
- l. understand the fundamentals of managing a portfolio, including being able to understand the implications of diversification regarding individual investment alternatives

Six. Organisational requirements for assessment, maintenance and updating of knowledge and competence

- 1) Firms, based on the principle of proportionality, will have human and material resources, procedures and an organisational structure that ensures that relevant

staff have the appropriate knowledge and competence, in accordance with the provisions of this Technical Guide. For these purposes, it is necessary to take into account the nature, size and complexity of the activities carried out by the firm, the type of clients to which it provide services and the number of employees, as well as the national or international presence and the training structure the firm may have.

The administrative body or, in the case of large entities, a committee constituted for this purpose, which in all cases will be made up of at least three sufficiently high-level directors (hereinafter the administrative body), will establish the criteria for the qualification and experience of relevant staff and will designate the unit or units of the firm or the group that will be responsible for their application. In addition, the administrative body will establish control procedures that ensure compliance with the criteria established, control that will be carried out by the regulatory compliance unit.

The administrative bodies will determine or establish:

- a. Firms should set out the responsibilities of staff and ensure that, where relevant, in accordance with the services provided by the firm and its internal organisation, there is a clear distinction in the description of responsibilities between the roles of giving advice and giving information. In this regard, they will define the scope and characteristics of the information service and of the advisory service, to enable relevant staff to understand the difference between the two services and the respective scopes and limits of their actions.
- b. Policy on relevant staff qualification. Among other aspects, the policy may cover aspects such as whether or not to establish a minimum official training requirement for providing services or minimum experience of more than six months, as well as a period of less than four years during which relevant staff lacking appropriate qualification or experience may work under supervision, in accordance with the provisions of sections Ten and Eleven below of this Technical Guide.
- c. Procedures to ensure the assessment of relevant staff.
- d. The qualification that relevant staff must possess, as well as the number of training hours considered sufficient, in keeping with the nature and complexity of the service to be provided and the requirements envisaged in this Technical Guide.
- e. Equivalence of qualification with the contents of sections Four and Five of this Technical Guide.
- f. The external entity or the internal area of the firm or its Group responsible for the training that will allow relevant staff to acquire the appropriate qualification, as well as, where applicable, the external entity responsible for assessment and the issuance of the corresponding diplomas or certificates evidencing the qualifications (certification agency).
- g. When accreditation of qualification lies with the firm itself, or with a related entity, reinforced control mechanisms to ensure that relevant staff possess the appropriate knowledge for providing the services. In this

regard, the Regulatory Compliance Unit will verify that the knowledge proficiency tests or exams, which in all cases will be given on-site, make it possible to establish that the staff passing them have obtained the appropriate knowledge for providing the services, conducting tests to verify that relevant staff have such knowledge. The Regulatory Compliance Unit will prepare a report for the administrative body on these verifications.

- h. When training and accreditation is carried out by the same external entity, verification that there are mechanisms in place in the external entity to ensure a sufficient degree of separation between training and assessment activities.
 - i. Carry out an internal or external review, on at least an annual basis, of staff members' development and experience needs, assess regulatory developments and take action necessary to comply with these requirements. This review should also ensure that staff possess an appropriate qualification and maintain and update their knowledge and competence by undertaking continuous professional development or training for the appropriate qualification as well as specific training required in advance of any new investment products being offered by the firm;
- 2) The administrative bodies ensure that when a staff member has not acquired the necessary knowledge and competence in the provision of the relevant services, this staff member cannot provide the relevant services.

However, where this member of staff has not acquired the appropriate qualification or the appropriate experience to provide the relevant services or both, this staff member can only provide the relevant services under supervision. The level and intensity of supervision should reflect the relevant qualification and experience of the staff member being supervised and this could include, where appropriate, supervision during clients meeting and other forms of communication such as telephone calls and e-mails;

Administrative bodies will determine the functions of the person in charge of supervising relevant staff that do not have the appropriate qualifications or experience.

The staff member supervising other staff should:

- a. have the necessary knowledge and competence required by these guidelines and the necessary skills and resources to act as a competent supervisor;
- b. ensure that the supervision provided is tailored to the services to be provided by that staff member and cover the requirements of these guidelines relevant to those services;
- c. ensure that the supervisor takes responsibility for the provision of the relevant services when the staff member under supervision is providing relevant services to a client, as if the supervisor is providing the relevant services to the client, including signing-off the suitability report where advice is being provided;

d. ensure that the staff member, who has not acquired the necessary knowledge or competence in the provision of the relevant services, cannot provide those relevant services under supervision for a period exceeding 4 years (or shorter if required by the firm).

Seven. Relevant staff qualifications

In order for it to be considered that relevant staff possess the necessary qualifications, they must fulfil the following:

- 1) Their knowledge and competence covers all of the aspects set out in sections Four and Five of this Technical Guide. To this effect, knowledge acquired at the various training actions in which relevant staff have participated, whether official or not, will be taken into account.
- 2) Relevant staff should have received or dedicated a minimum number of hours to training activities, at least 80 in the case of staff that only provide information and 150 in the case of staff giving advice. However, based on the principle of proportionality, bearing in mind the nature and complexity of the service to be provided and under the responsibility of the administrative body, the firm may, on reasonable grounds, establish a fewer number of hours.
- 3) The training received should include both technical and practical training.
- 4) Training may be given by the firms themselves or through agreements with training entities (either on-site or distance).
- 5) The assessment of staff and accreditation or certification of qualifications may be carried out by the entity itself or by external entities, according to the stipulations of sections Eight and Nine of this Technical Guide. In the case of assessment by the entity itself, the tests or exams will be in keeping with the provisions of letter g) of section Six above and must be available to the CNMV for verification purposes.
- 6) The minimum continuous training for staff providing information or advice should be 20 and 30 hours per year, respectively. However, based on the principle of proportionality, bearing in mind the nature and complexity of the service to be provided and under the responsibility of the administrative body, the number of hours may be less.
- 7) Continuous training can be given by the firm itself, which must have on-site or distance assessment procedures that accredit staff performance.
- 8) Staff having the qualification to give advice will also be authorized to give information.

Eight. List of CNMV diplomas or certificates

- 1) The CNMV issues a list of diplomas or certificates of specialised entities in regard to the advisory and information services contained in this Technical Guide. It will be considered that relevant staff in possession of one of the

diplomas or certificates included on this list have the appropriate qualification for providing the services indicated by the list in each case.

Diplomas or certificates may be issued by public or private universities or by certification agencies, whether or not they provide the training. Certification agencies should meet the following requirements:

- a. They must have an adequate structure (technical and human resources) to assess the corresponding knowledge and competence.
 - b. They must have a conflict of interest policy that ensures the independence and objectivity of their accreditations, both in regard to firms as well as the areas of the entity or entities carrying out the training activities.
- 2) Entities interested in having their diplomas or certificates included on the list issued by the CNMV should submit the corresponding application accompanied by the following documentation:

- a. In the case of official diplomas issued by public or private universities, certification issued by the dean of the respective faculty, in regard to the diploma or certificate whose publication is being requested (diploma, degree or masters), declaring that the study programme includes the contents listed in section Four and Five of this Technical Guide will suffice. This declaration should be accompanied by an adequate explanation of the equivalence between the subjects comprising the qualification and the contents referred to in sections Four and Five of this Technical Guide, as well as the number of classroom hours dedicated to them.

In the case of specific diplomas or certificates that do not have an official nature, details should be included regarding the quality controls and conflict of interest policy in place.

- b. In all other cases, entities interested in having their diplomas or certificates included on the list issued by the CNMV must accompany the corresponding application with the following documentation:
 - i. Description of the programme: subjects studied, number of training hours, theoretical and practical, minimum level of official education to access the training, on-site or distance training, on-site assessment systems, period of validity, system for the updating of knowledge and the existence of a code of ethics.

The entity in question should analyse and justify the equivalence between the contents and the provisions of sections Four and Five of this Technical Guide. In addition, it may provide any assessments that, in the framework of the ESMA Guidelines for the assessment of knowledge and competence, have been made by an authority equivalent to the CNMV of Member States of the European Union.

- ii. The corporate form of the certification agency, its shareholding and its possible relationships with institutions in the financial sector must be identified. A description must be provided of its presence in Spain and other countries (number of years assessing, number of students

assessed, pass rate of students), its technical and human resources structure and the criteria used in hiring staff for assessing.

In addition, it must provide information regarding agreements and any type of relationship with training centres and the pass rate of students at each training centre.

- iii. In the case of assessment entities which also carry out training activities, either directly or through other related entities, they must identify the policies and measures in place to ensure proper separation between training and assessment activities.
- iv. If there is a mandatory code of ethics for anyone obtaining accreditation, it should be provided.

All entities, universities or other types of entities, whose diplomas or certificates are included on the list issued by the CNMV, must notify any changes in the content or scope of the corresponding training or assessment activities that could determine that they no longer fulfil the criteria and characteristics described in this Technical Guide.

- 3) The list issued by the CNMV will only include diplomas or certificates that comply with the requirements included in this Technical Guide and which are in effect on the date on which the entities submit the corresponding application to the CNMV.

Nine. Other external diplomas or certificates

Notwithstanding the provisions of section Eight, the firm may, under its own responsibility, consider appropriate diplomas or certificates other than those included on the list of qualifications issued by the CNMV. The Regulatory Compliance Unit of the firm, bearing in mind the procedures and criteria established by the administrative body in accordance with section Six of this Technical Guide, should verify the equivalence between the training and assessment activities corresponding to such diplomas or certificates and the criteria and characteristics described in this Technical Guide.

The diplomas or certificates issued by universities or by other certification agencies whose scope does not include all the aspects referred to in sections Four and Five of this Technical Guide may also be considered to be appropriate by the firm, under its own responsibility, if this training and assessment is supplemented so that it covers all of the aspects mentioned.

Training acquired by an employee at training courses organised by the entity in the past may also be taken into account. In this case, the Regulatory Compliance Unit must verify that the employee qualification meets the criteria of this Technical Guide.

The firm may also consider valid those diplomas or certificates accepted as appropriate that are issued by other Competent National Authorities. For these purposes, the Regulatory Compliance Unit must accredit that they meet the criteria and characteristics of this Technical Guide.

Ten. Period of time required to gain appropriate experience

The minimum period of time to gain appropriate experience, both for staff providing information as well as that giving advice, will be six months, working on a full-time basis, providing the corresponding services.

Eleven. The maximum period of time under which an employee lacking appropriate qualification or appropriate experience is allowed to work under supervision

The maximum period of time during which an employee lacking appropriate qualification or appropriate experience may provide the corresponding services under supervision will be four years.

Twelve. Means of accrediting compliance with knowledge and competence requirements

The entities must maintain records of the accreditation of knowledge and competence of relevant staff.

To this end, they must have an updated list of the staff that provide information or advice, recording for each person on the list:

- 1) Accreditation of knowledge acquired to date. This accreditation, both the diploma or certificate, may be issued by any of the entities included on the list of qualifications of the CNMV, as well as those issued by other entities, in accordance with the provisions of section Nine of this Technical Guide or, in the case of internal accreditation by the firm, the certificate issued by the person responsible for assessment, accompanied by that of the Regulatory Compliance Unit.
- 2) Accreditation of experience.
- 3) Accreditation of continuous training received. In the event the training and assessment of continuous training is provided by the firm itself, the tests passed must be stated in the records of each employee.
- 4) In the event the employee does not meet the knowledge and competence requirements, the identification of the employee carrying out the supervisory tasks should appear.
- 5) For internal training actions carried out by the institution prior to July 2017, on which the institution bases accreditation of employee qualification, it will be sufficient to state the training programme, date, number of classroom hours, attendees and the report of the Regulatory Compliance Unit justifying equivalence with the subjects included in sections Four and Five of this Technical Guide.
- 6) When firms hire relevant staff with previous experience, they may rely, under their own responsibility, on the accreditation possessed by this staff.

The documentation accrediting the decisions of administrative bodies, criteria, procedures, the updated list of relevant staff and of those giving advice, as well as

the records of each employee or agent, must be available to the CNMV. The CNMV may perform the tests it deems necessary in this regard.

When it considers it advisable, the CNMV, within the scope of its supervisory actions, may conduct tests on the knowledge of relevant staff.