



## TECHNICAL GUIDE 4/2017 FOR THE ASSESSMENT OF THE KNOWLEDGE AND COMPETENCE OF STAFF GIVING INFORMATION AND ADVICE

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Article 193 of the consolidated text of the Securities Market Act, enacted by Royal Legislative Decree 4/2015, of 23 October, which implemented Article 13.2 of Directive 2004/39 (MiFID1), relating to the internal organisational requirements, provides that investment firms and the other institutions that provide investment services must establish and implement appropriate policies and procedures to ensure that the firm, its managers, its staff and its agents fulfil the obligations imposed on them by Securities Market legislation.

Furthermore, Circular 1/2014, of 26 February, of the CNMV, on the internal organisational requirements and the control functions of institutions that provide investment services, develops and specifies the organisational structure and the internal control requirements of institutions that provide investment services in order to ensure that, in general, their organisation covers the range of services which they provide. In the procedural guide regarding internal control functions drawn up by the CNMV as a consequence of the publication of that Circular it is pointed out that institutions subject to its provisions should have staff training and ongoing assessment procedures to ensure that they act honestly, impartially and professionally in the best interests of clients. It is also pointed out that the procedures should provide for periodic assessments of employees so that they do not provide investment services without the appropriate training and experience required.

In addition, EU Directive 2014/65 (MiFID2), along lines similar to MiFID1 but in more specific terms, provides in Articles 24.2 and 25 that investment firms must understand the characteristics of the financial instruments which they offer or recommend to clients and that, for this purpose, Member States must require such firms to ensure and show to the competent authorities that the persons who give information or advice to clients have the knowledge and competence necessary to fulfil their obligations. For such purpose, Member States shall publish the criteria used to assess such knowledge and competence. In conclusion, MiFID2 expressly establishes the obligation for the staff that provides advice or information to have the necessary knowledge and competence and provides that the Member States shall publish the criteria used for assessing them.

In view of the above, the European Securities and Markets Authority (ESMA) published on 22 March 2016 *“Guidelines for the assessment of knowledge and competence of staff that give information and advice”* which will be applicable from 1 January 2018.

This Technical Guide, taking into account these ESMA Guidelines, specifies the criteria which the CNMV considers appropriate so that institutions may show that the staff that give information or that give advice on investment services has the necessary knowledge and competence.

The objective is for investors to understand the risks of the products in which they invest, for which purpose it is necessary for whoever offers such products to them to have the necessary knowledge to understand them and to know how to explain them and to assess whether they are appropriate or suitable for each client, which must be ensured by institutions that provide investment services. Although the possession of appropriate knowledge by whoever gives information or advice is not a guarantee of adequate provision of the service, it constitutes an essential requirement for this purpose.

The CNMV Board has approved on June 27, 2017, following a report of its Advisory Committee, this Technical Guide, pursuant to the provisions of Article 21.3 and 21.4 of the consolidated text of the Securities Market Act.

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

### One. Scope

1. This Technical Guide will apply to Credit Institutions, Investment Firms, Investment Management Firms and Alternative Investment Fund Management Firms which provide investments services in Spain (hereinafter all of them are referred to as “financial institutions”) and to their relevant staff.
2. For the purposes of this Technical Guide, relevant staff of financial institutions (including tied agents) will mean those who give information or advice to clients or potential clients. Those who attend clients with discretionary portfolio management contracts will also be considered staff who give advice.

### Two. Purpose

3. The purpose of this Technical Guide is to specify the criteria regarding the knowledge and competence that the staff giving information and/or advice to clients on behalf of financial institutions should have, and the manner in which such knowledge and competence should be assessed.
4. In addition, it specifies the manner in which financial institutions bound must prove the observance thereof to the CNMV.

### Three. General Provisions

5. The level and intensity of knowledge and competence of those providing investment advice should be of a higher standard than the one of those that only give information on investment products and services.
6. Financial institutions should ensure that the relevant staff has the knowledge and competence necessary to comply with the legal and regulatory requirements and the rules of conduct applicable. In order to ensure a proportionate application of knowledge and competence requirements, financial institutions should ensure that staff has the necessary level of knowledge and competence to fulfil their obligations, taking into account the scope and degree of the services provided as well as the complexity of the financial instruments on which they provide information or advice.
7. In addition, financial institutions should ensure that staff know, understand and apply the institution’s internal policies and procedures designed to ensure compliance with securities market legislation.
8. The compliance function should take into account the content of this Technical Guide when assessing and reviewing the compliance by the financial institution with its duty to ensure that the relevant staff has the appropriate knowledge and competence and know the institution’s internal policies and procedures referred to in the previous paragraphs. This assessment and review by the compliance function 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.

9. In any event, the relevant staff should be provided with sufficient time and resources so that they may acquire and maintain the appropriate knowledge and competence and apply it to providing services for clients.

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

10. Financial institutions should have, on the basis of the principle of proportionality, human and material resources, procedures and an organizational structure to ensure that the relevant staff has appropriate knowledge and competence, in accordance with the provisions of this Technical Guide. For these purposes, account should be taken of the nature, size and complexity of the activities engaged in by the financial institution, the complexity of the instruments on which it provides information or advice, the type of clients for which it provides services, the size of its workforce, the presence at national or international level and the structure which, in the area of training, the financial institution may have.
11. The management body or, in the case of financial institutions of a substantial size, a committee which, under its direct responsibility, may be established for this purpose, of which in any at least three executives of a sufficient level should form part (hereinafter the management body), should establish the criteria in relation to qualifications and experience of the relevant staff and should designate the unit or units of the institution or of the group which will be responsible for the implementation thereof. The management body should also establish the control procedures to ensure the observance of the criteria set. Such control should be carried out by the compliance unit.
12. For such purpose, management bodies should determine or establish:
  - a. The responsibilities of the staff, ensuring that, where relevant, taking into account the services provided by the financial institution and its internal organisation, there is a clear distinction in the description of responsibilities between the roles of giving advice and of giving information. In this respect, they should define the scope and the characteristics of the information service and of the advisory service, so that the relevant staff understands the differences between both services and their respective scopes and the boundaries of their activity.
  - b. The policy relating to the qualification of the relevant staff. The policy should address, inter alia, aspects such as whether or not minimum regulated training is required to be eligible to provide services or minimum experience exceeding six months, as well as a period of less than four years during which the relevant staff that do not have the appropriate qualification or experience are allowed to work under supervision, in accordance with the provisions of sections Eleven and Twelve below of this Technical Guide.
  - c. The procedures to ensure that the relevant staff is assessed.
  - d. The qualifications which the relevant staff should have, as well as the number of hours of training which is considered appropriate in light of the

nature and complexity of the service which is going to be provided and of the requirements provided in this Technical Guide.

- e. The equivalence of the qualifications to the contents of sections Five and Six of this Technical Guide.
  - f. The external entities and/or the internal department of the financial institution or of its Group in charge of training so that the relevant staff acquire an appropriate qualification, and, where relevant, the external entities in charge of the assessment and of the issue of the relevant qualifications or certificates accrediting the qualification (certifying entity).
  - g. When the accreditation of the qualification is the responsibility of the financial institution itself or of a related institution, reinforced control mechanisms to ensure that the relevant staff have the appropriate knowledge to provide the services. In this respect, the Compliance Function should verify that any tests of knowledge or examinations which are held, provide proof that the staff that pass them have obtained the appropriate knowledge for the provision of the services, and should carry out tests to verify that the relevant staff have such knowledge. In the case of remote assessment systems, section 22.b.i) shall apply. The Compliance Function should draw up a report for the management body relating to these verifications.
  - h. When training and accreditation is the responsibility of a single external entity, it should be ensured that the financial entities have reasonable mechanisms for separation of training and assessment activities.
  - i. A review will be conducted, using for this purpose internal or external resources, at least once a year, on the evolution and the needs of the relevant staff; it should assess the legislative developments and should adopt the necessary measures to comply with such requirements. This review should ensure that the relevant staff have the appropriate qualification and that they maintain and update their knowledge by ongoing professional training in order to maintain the appropriate qualification and specific training activities in relation to any new investment product which is offered by the financial institution.
13. Management bodies should ensure that when the relevant staff has not acquired the necessary knowledge and competence for the provision of the services, they cannot provide such services.
14. However, a staff member who has not acquired the appropriate qualification or experience, or both, may provide the services under supervision. The degree and the scope of the supervision should be consistent with the qualification and experience of the staff member under supervision and may consist, where relevant, of supervision at meetings with clients or relate to other forms of communication with clients, such as telephone calls or emails.
15. Management bodies should determine the functions of the person who is in charge of the supervision of the relevant staff that do not have the appropriate qualification or experience.
16. Any staff member supervising other staff:

- a. should have the necessary knowledge and competence envisaged in this Technical Guide and the necessary skills and resources to act as a competent supervisor;
- b. the supervision provided should be tailored to the services to be provided by the staff member under supervision and should comply with the requirements of this Technical Guide relating to those services;
- c. should take responsibility for the provision of the services when the staff member under supervision is providing services for a client, as if the supervisor is providing the services for the client, including signing-off the suitability report where advice is being provided;
- d. should ensure that any staff member under supervision who has not acquired the necessary knowledge or competence for the provision of the relevant services, cannot provide such services under supervision for a period exceeding that which may be established by the financial institution, which may not exceed 4 years.

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

17. Financial institutions should ensure that staff giving information about investment products, investment services or ancillary services 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 for clients;
  - e. understand the impact of economic figures and national, regional and global events on financial markets and on the value of investment products on which they provide information for clients;
  - f. understand the difference between past performance and future performance scenarios, as well as the limitations of predictive forecasting;
  - g. understand sufficiently securities market legislation and all other relevant aspects of market abuse and money laundering;

- h. assess data relevant to the investment products on which they provide information for 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 for 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 information is provided.

#### Six. Criteria for knowledge and competence for staff giving investment advice

18. Financial institutions 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 the advice relates 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 to the suitability requirements, including the obligations as set out in the ESMA Guidelines on certain aspects of the MiFID suitability requirements;
  - 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 of investment products offered or recommended to clients;
  - f. understand the impact of economic figures and national, regional and global events on financial 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 limitations of predictive forecasting;
  - h. understand sufficiently securities market legislation and all other relevant aspects of market abuse and money laundering;



- i. assess data relevant to the type of 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 of 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 the implications of diversification regarding individual investment alternatives.

### Seven. Qualification of the relevant staff

19. So that the relevant staff may be considered to have the necessary qualification the following should be observed:

- 1) Their knowledge and competence should include all aspects provided for, in sections Five and Six of this Technical Guide. For such purpose, the knowledge acquired in various training activities, regulated or otherwise, in which the relevant staff may have participated should be taken into account.
- 2) They should have received a minimum number of class hours, at least 80 in the case of staff that only provide information and of 150 in the case of staff that give advice. However, **on the basis of the principle of proportionality**, taking into account the nature and complexity of the service to be provided and of the instruments on which information or advice is given, and under the responsibility of the management body, the financial institution may establish, stating reasons, a lower number of hours.
- 3) The training received should include both theoretical and practical training.
- 4) The training may be provided by the financial institutions themselves or by means of agreements with training institutions and may be classroom or distance training.
- 5) The assessment of staff and the accreditation or certification of the qualification may be performed by the institution itself or by external entities in accordance with the provisions of sections Eight and Nine of this Technical Guide. In the case of assessment by the institution itself, tests or examinations should comply with the provisions of section 12 g) above and should be available to the CNMV for verification purposes.
- 6) The minimum ongoing training for staff that give information and advice should be 20 and 30 class hours annually, respectively. However, **on the basis of the principle of proportionality**, taking into account the nature and complexity of the service to be provided and of the instruments on which information or advice is given, and under the responsibility of the management body, the number of hours may be lower.

- 7) Ongoing training may be provided by external entities or by the financial institution itself, which should have onsite or distance assessment procedures to confirm the staff's progress.
- 8) The qualification to give advice should qualify the staff that holds it to give information.

#### Eight. List of qualifications or certificates of the CNMV

20. The CNMV will publish a list of qualifications or certificates of specialized entities in relation to the advisory and information services included in this Technical Guide. Relevant staff that has any of the qualifications or certificates included on this list will be deemed to have the appropriate qualification to provide the services which the list itself indicates in each case.
21. The qualifications or certificates may be issued by public or private universities or by certifying entities, whether or not they provide training. Certifying entities should comply with the following requirements:
  - a. Have an appropriate structure (technical and human resources) to assess the relevant knowledge and competence.
  - b. Have a policy on conflicts of interest to ensure the independence and objectivity of their accreditations, both in relation to the financial institutions and to the departments of the institution itself or institutions which engage in training activities.
22. Entities wishing to have their qualifications or certificates included on the list which is published by the CNMV should submit the appropriate application enclosing the following documentation:
  - a. In the case of official qualifications issued by public or private universities, a certificate issued by the dean of the relevant faculty will be sufficient if it states, in relation to the qualification or certificate the publication of which is requested (diploma, primary degree or master's degree), that its syllabus includes the contents listed in sections Five and Six of this Technical Guide. This statement should be accompanied by a sufficient explanation of the equivalence between the subjects which form the qualification and the contents referred to in sections Five and Six of this Technical Guide, and of the number of class hours devoted to them.  
  
In the case of specific qualifications or certificates of an unofficial nature, a description should be included of the quality control and the policy on conflicts of interest which may be established.
  - b. In all other cases, entities wishing to have their qualifications or certificates included on the CNMV list should enclose the following information with the relevant application:
    - i. Description of the program: subjects studied, number of hours of theoretical and practical training, minimum formal education to be eligible for training, classroom or distance training, onsite and remote assessment

systems, period of validity, system of updating of knowledge and existence of codes of ethics.

The entity interested should analyse and show the equivalence between the contents and the provisions of sections Five and Six of this Technical Guide. It may also provide any assessment which, in the framework of the ESMA Guidelines for the assessment of knowledge and competence, has been performed by any authority equivalent to the CNMV of Member States of the European Union.

In the case of remote assessment systems, the total reliability of the tests must be ensured. For this purpose, these systems shall comply with the following conditions:

1. The visual identification of the student must be provided for through the use of image systems and the identity of the student must be verified through the DNI or equivalent document.
2. The control of the tests shall be possible in an equivalent way as for the onsite tests (with active image and sound during the test), in such a way that the quality of the process is ensured, avoiding the possibility of the student to receive any help from third parties or to make available materials which are not a part of the test.
3. They should allow to keep the documentation proving the tests carried out and the controls on the identification and development of the assessment process for a period of three years from the date of the tests.

The entities included in the list of the CNMV with on site assessment systems only and subsequently they would like to use remote systems shall communicate it to the CNMV in advance manifesting their willingness to comply with this section. This communication will not be required for the entities that have already done as a result of the CNMV's communication of 13 April 2020.

- ii. The corporate form of the certifying entity should be identified, as well as its shareholders and its possible links to entities in the financial sector. Its presence in Spain and in other countries should be described (number of years engaged in assessment, number of students assessed, percentage pass rate of students), its structure of technical and human resources and the criteria used for hiring the assessment staff.

Information should also be provided regarding the agreements and any kind of connection which exists with training centres and regarding the percentage pass rate of each training centre.

- iii. In the case of assessment entities which also engage in training activities directly or through other related entities, the policies and measures to ensure the proper separation of training and of assessment activities should be identified.
- iv. Any existing code of ethics which is binding on whoever obtains its accreditation should be provided.
- v. Undertaking to make available to the CNMV any information relating to the qualifications or certificates included on the List of the CNMV

which the latter may require in the performance of its supervisory tasks.

23. All entities, universities or other kind of entities, whose qualifications or certificates have been included on the list which is published by the CNMV should notify any change in the content or scope of the relevant training or assessment activities which may lead to the criteria and characteristics described in this Technical Guide no longer being observed.
24. The list which is published by the CNMV should only include qualifications or certificates complying with the requirements included in this Technical Guide and which are in force on the date on which the entities submit the relevant application to the CNMV.

#### **Nine. Other external qualifications or certificates**

25. Subject to the provisions of section Eight, financial institutions may, under their own responsibility, consider appropriate qualifications or certificates other than those included on the list of qualifications published by the CNMV. The financial institution's Compliance Unit, taking into account the procedures and criteria established by the management body in accordance with section Four of this Technical Guide, should verify the equivalence between the training and

assessment activities relating to such qualifications and certificates and the criteria and characteristics explained in this Technical Guide.

26. Qualifications or certificates issued by universities or by other certifying entities whose scope does not include all the aspects mentioned in sections Five and Six of this Technical Guide may also be considered appropriate by financial institutions, under their own responsibility, if the training and the assessment is completed so that all the above-mentioned aspects are covered.
27. For such purposes, external training already acquired by staff members as well as that acquired in training courses which the institution has organised in the past may be taken into account. Training acquired at other financial institutions may also be taken into account. In these cases, the Compliance Unit should verify that the staff member's qualification complies with the criteria in this Technical Guide.
28. Financial institutions may also consider as valid qualifications or certificates accepted as appropriate and published by other Competent National Authorities. For these purposes, it will be necessary for the Compliance Unit to verify that they are included, where relevant, on the List published by the relevant Competent National Authority.

#### Ten. Form of accreditation of observance of the knowledge and competence requirements

29. Institutions should keep records relating to the accreditation of the knowledge and competence of the relevant staff.
30. For this purpose, they should have an up-to-date list of the staff that give information or advice, stating the following for each person that appears on the list:
  - 1) Accreditation of the knowledge acquired to date. Such accreditation may be either the qualification or certificate issued by any of the entities included on the list of qualifications of the CNMV, or that 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 financial institution itself, a certificate issued by the head of assessment together with the head of the Compliance Unit. In the latter case, the examinations held should be available to the CNMV for 5 years.
  - 2) Accreditation of experience.
  - 3) Accreditation of ongoing training received. Where training and assessment of ongoing training is provided by the financial institution itself, each staff member's record should state the tests which such staff member has passed.
  - 4) If a staff member fails to comply with the knowledge and competence requirements, the staff member or staff members who perform supervisory tasks should be identified.

- 5) For internal training activities conducted by an institution before July 2017, in which the institution bases the accreditations of the staff member's qualification, it will be sufficient to have a record of the training program, the date, the number of class hours, the attendees and the report of the Compliance Unit showing the equivalence to the subjects included in sections Five and Six of this Technical Guide.
- 6) Institutions which hire relevant staff with prior experience may rely, under their own responsibility, on such staff's accreditation.
31. Documentation proving decisions of management bodies, the criteria, the procedures, the updated list of relevant staff and of staff that give advice, as well as the record of each staff member or agent, should be available to the CNMV. The CNMV may carry out the tests in this respect which it considers necessary.
32. Whenever it considers appropriate, the CNMV, within the scope of its supervisory activities, may perform tests on the knowledge of the relevant staff.

#### Eleven. Period required to obtain the appropriate experience

33. The minimum period to obtain the appropriate experience, both for staff that give information and for staff that give advice, will be six months on a fulltime basis (or the equivalent on a part-time basis) providing the relevant services.

#### Twelve. Maximum period of time in which a staff member lacking the appropriate qualification or experience is allowed to work under supervision

34. The maximum period in which a staff member lacking the appropriate qualification or experience is allowed to provide the relevant services under supervision will be four years.