Questions and answers on the implementation of the MiFID II Directive

30 October 2017

Last update: 13 July 2018

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This document is not regulatory. Its purpose is to transmit to the sector and, in particular, the entities providing investment services, interpretation criteria for the proper implementation of the requirements that according to Directive 2014/65/EU (MiFID II) should be applied from 3 January 2018.

1. INTRODUCTION

CNMV has been in contact with the main associations of the sector related to the provision of investment services in recent years in order to identify and collate MiFID II issues that may raise doubts or concerns about their interpretation prior to the entry into force of this Directive.

Given the imminent entry into force of MiFID II, CNMV is publishing a set of questions and answers on various issues that the sector has raised based on the information currently available.

This document sets out the interpretative criteria that are considered appropriate in relation to the issues raised, although these could be affected depending on the final text of the transposition into the Spanish legal system of the MiFID II regulations. It should also be borne in mind that issues relating to the interpretation of the MiFID II regulations continue to be discussed within ESMA in order to achieve adequate supervisory convergence.

For all these reasons, the criteria set out in this document shall be reviewed once more information is available, both with regard to transposition into the Spanish legal system and the interpretation at European level of the issues under discussion.

To the extent that other issues are considered necessary to clarify, they will be added to this question and answer document with an identification of the update date.

Main Abbreviations List

PRIIPs	Packaged Retail and Insurance-based Investment Products
KID	Key Investor Document
KIID	Key Investor Information Document
UCITS	Undertakings for the Collective Investment of Transferable Securities
AIFMD	Alternative Investment Funds Managers Directive
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU http://cnmv.es/portal/MiFIDII_MiFIR/MapaMiFID.aspx
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 http://cnmv.es/portal/MiFIDII_MiFIR/MapaMiFID.aspx
Delegated	Commission Delegated Regulation (EU) 2017/565 of 25 April 2016

Regulation/RD	supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive http://cnmv.es/Portal/MiFIDII_MiFIR/ESI-Actos-Delegados.aspx
Delegated Directive/DD	Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits http://cnmv.es/Portal/MiFIDII_MiFIR/ESI-Actos-Delegados.aspx
ESMA Q&As	ESMA Questions and Answers On MiFID II and MiFID investor protection and intermediaries topics http://cnmv.es/Portal/MiFIDII_MiFIR/ESI-FAQ-ESMA.aspx
Delegated Regulation of PRIIPs	Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0653&from=EN
Q&A´s on the KID of PRIIPs	Preguntas y respuestas sobre el Documento de Datos Fundamentales para el Inversor en relación a productos PRIIPs, publicadas por el Joint Committe of the European Supervisory Authorities https://esas-joint-committee.europa.eu/Pages/Activities/Packaged-Retail-and-Insurance-Based-Investment-Products.aspx

2. PRODUCT GOVERNANCE REQUIREMENTS (Last update: 13 July 2018)

2.1. Are the product governance requirements established in Article 9 of the Delegated Directive (hereafter, DD) for manufacturers applicable to Collective Investment Scheme Management Companies (CISMCs) (Last update: 13 July 2018)?

CNMV's reply

CNMV considers that, in accordance with Recital 16 of the Delegated Directive (hereafter, DD), the product governance requirements established in Article 9 of the DD for manufacturers also applies to CISMC to the extent that they provide an investment service in relation to the CIS they manage.

However, it should be remembered that Article 10(2) of the DD, in its third paragraph, provides that the entities that provide investment services must take all reasonable measures to ensure that they obtain adequate and reliable information from manufacturers which are not subject to MiFID to allow them to ensure that the products are distributed according to the characteristics, objectives and needs of the target public. This implies that, at the request of the distributing entities, CISMC will have to provide them with the appropriate and necessary information about the CIS they manage to guarantee that they are offered or marketed when it is in the interests of the client and in accordance with the characteristics, objectives and needs of the target market.

2.2. What information must a distributor provide to an entity as a manufacturer of financial instruments (hereinafter, FIs) not subject to MiFID? (Last update: 30 October 2017)

CNMV's reply

In cases where the manufacturer is not subject to the requirements of MiFID manufacturers, Article 10(2)(3) of the DD states that distributors must take all reasonable steps to ensure that they obtain adequate and reliable information from manufacturers not subject to MiFID II in order to ensure that the products are distributed according to the characteristics, objectives and needs of the target market. Where the relevant information is not publicly available, the distributor shall take all reasonable steps to obtain such information from the manufacturer or its agent. Acceptable and publicly available information will be that which is clear and reliable and is prepared to meet regulatory requirements.

For its part, section 62 of the Product Governance Guidelines establishes that the information contained in the documents prepared in accordance with the requirements of the Brochures Directive, Transparency Directive, UCITS Directive and AIFMD or other equivalent legal documents of third countries. It also determines that if all relevant information were not publicly available, it would be reasonable to conclude an agreement with the manufacturer or its agent.

These obligations to obtain information from the manufacturer must be applied proportionally depending on the level of complexity of the product.

2.3. Should the distributor of an FI in any case provide information to the manufacturer on the sales of the FIs? (Last update: 30 October 2017)

CNMV's reply

CNMV considers that, to the extent that the manufacturer is not obliged under MiFID II to process the information that may be received from the distributor (as an entity not subject to MiFID), the receipt of such information must be understood as a good practice. In this case, it is the distributor that has to review its product governance procedures to ensure that they remain robust and meet the objectives, so that appropriate action is taken if necessary.

2.4. Should the target market be defined at the level of the portfolio or at the level of each of its products? (Last update: 30 October 2017)

CNMV's reply

The definition of the target market must be established for each product. However, when considering the product's compatibility with the client, the level of the portfolio can be taken into account in the case of portfolio management or portfolio-based advice (see the ESMA Product Governance Guidelines).

2.5. In the case of customized products for eligible counterparties, e.g. portfolio management or advice for an eligible counterparty, are product governance obligations also applicable? (Last update: 30 October 2017)

CNMV's reply

On the one hand, it should be noted that according to the answer 78 of the Commission Q&As document regarding Directive 2004/39/EC (MiFID I), the eligible counterparty category only applies in relation to the services identified in Article 24(1), i.e. reception and transmission of orders, dealing as agent and dealing on own account. It does not apply in a situation of investment advice or portfolio management.

On the other hand, the product governance obligations set forth in Art. 16.3 of MiFID II apply regardless of the nature of the client. The Product Governance Guidelines address the application of target market requirements for entities operating with eligible counterparties in paragraphs 75 et seq.

2.6. If portfolio management is delegated to a CISMC by an IF or a credit institution, do the product governance obligations apply to the CISMC to which it has been assigned? (Last update: 30 October 2017)

CNMV's reply

Yes, they do apply; the treatment is identical if the delegated entity is a CISMC (which provides the portfolio management service) or an IF. In accordance with Article 31 of the Delegated Regulation (hereinafter, DR) on outsourcing of relevant operational functions, the IF or credit institution that delegates is fully responsible for ensuring compliance with the product governance obligations. Compliance with these obligations is also the responsibility of the entities to which the provision of the investment service is delegated and apply to portfolio management even when the client of the entity to which it is delegated is an eligible counterparty. In order to ensure compliance with these obligations by the delegated entity (CISMC in this case) responsibilities should be clearly assigned in a written agreement with the IF or credit institution.

2.7. **If a CISMC provides an investment service in relation to some of the CIS that it manages, will only the product governance obligations apply to it in relation to those CIS or to all the CIS it manages?** (Last update: 13 July 2018)

CNMV's reply

Under MiFID II, CISMC are subject to product governance obligations as distributors in relation to the CIS with respect to which they provide investment services (whether they manage them or not).

Product governance obligations for manufacturers must be applied in relation to managed CIS with respect to which investment services are provided.

Additionally, as indicated in reply 2.1, CISMC, at the request of distributing entities, have to provide them with the appropriate and necessary information about the CIS they manage to guarantee that they are offered or marketed only when it is in the interests of the client and in accordance with the characteristics, objectives and needs of the target market.

3. INCENTIVES (Last update: 13 July 2018)

3.1. **Would the incentive rules apply in the case of a distribution model in which there is vertical integration?** (Last update: 30 October 2017)

CNMV's reply

CNMV considers that the new regulation of the perception (or prohibition) of incentives cannot be avoided through vertical integration practices, in which the explicit payment of incentives by the CISMC to the group marketer is simply abolished without the other conditions in the provision of services being modified. The economic fund would be the same, since the bank would provide the management company with a service (the distribution of its CISs) which, instead of being paid explicitly through the fee rebate, would be paid via dividend distribution or reserve accumulation in the subsidiary.

In particular, it is understood that there will be an incentive, to which the corresponding regulations would apply, when the distributor does not expressly receive a reversal from the CISMC, or receive an abnormally low reversal, through the marketing of CISs whose management fees are the same (or similar) to those that would exist with an express remuneration policy, or when they exceed those normally applied in the market for similar CISs that do not generate rebates (clean classes), taking into account a reasonable margin differential between management companies.

3.2. Is a CISMC that distributes CISs from third parties subject to the rules on incentives? (Last update: 13 July 2018)

CNMV's reply

CISMC that provide investment services must comply with the obligations related to incentives set out in Article 24, sections 7(b), 8 and 9 of MiFID II and Articles 11 and 12 of the Delegated Directive. In relation to the activity of marketing third-party CIS, see question 23.1.

3.3. Are the incentive registration obligations additional to the content of the incentive register of the CNMV Resolution of 7 October 2009 or, conversely, can they already be understood as included in the current incentive register? (Last update: 30 October 2017)

CNMV's reply

Yes. The registration obligations of Article 11(4) of the Delegated Directive (DD) deal with matters additional to those included in the CNMV Resolution of 7 October. The DD establishes that it is necessary to record how the payments granted or received by the entity or those that the entity tries to use, reinforce the quality of the services provided to the clients and the steps adopted so as not to damage the duty of the entity to act in a way that is honest, fair and professional in accordance with the best interests of the client. In section 20 of the CNMV Resolution of 2009 registration refers only to the communications issued to clients on incentives granted or received and client requests for information on incentives.

3.4. Should the remuneration that a tied agent would receive from an entity be considered as an incentive? (Last update: 30 October 2017)

CNMV's reply

The remuneration received by agents of an entity for the provision of investment services or ancillary services to clients on behalf of the entity are not considered incentives but, in accordance with the criteria set out in the ESMA Guidelines on Remuneration Practices and Policies (published in June 2013), they are considered as an internal payment of the entity, and not as a payment to a third party.

3.5. **How should the term "wide range of suitable instruments" be understood for the purpose of fulfilling the obligation contained in Article 11(2)(a) of the DD? Would this requirement be fulfilled if all the instruments were CISs, without the need for any type of financial instrument other than a CIS, when there is adequate diversification in terms of investment vocations, risk profiles, geographical and sectoral areas, etc.?** (Last update: 30 October 2017)

CNMV's reply

The concept of a wide range of instruments is a concept that has not been specified in Level 2 regulations or in the ESMA Q&As. In principle, CNMV considers that the requirements established in Art. 24.7.a of the Level 1 Directive and Art. 53 of the Delegated Regulation (DR) regarding the consideration of independent advice could be used as a reference. The Directive states that they must be sufficiently diversified by type of product and issuer or supplier and in the DR there are several conditions that could serve as a reference: (i) that they are adequately representative of the financial instruments available on the market and (ii) that for the selection of products all relevant aspects such as risks, costs and complexity have been considered, as well as the characteristics of the entity's clients.

In addition, it should be considered that, in accordance with Art. 53 of the RD, it would be possible to meet this "wide range of suitable financial instruments" requirement by offering a single type of financial instrument provided that the investment service being provided to the client (in this case, non-independent advice or marketing) is circumscribed to that type of financial instruments, which is considered appropriate for the client and in which the client has expressed interest.

3.6. **In the event that new classes of CIS shares are issued in order to comply with the prohibition of incentives, what entity (the CISMC or the distributor) should urge the exchange of the shares in question?** (Last update: 30 October 2017)

CNMV's reply

The CISMC must communicate to the distributors the issuance of new share classes and the distributor is responsible for urging the exchange of the shares in question.

3.7. How should the prohibition of the perception of incentives in the discretionary management of portfolios be applied as from the entry into force of MiFID II in relation to third-party payments from positions arising from transactions carried out prior to 3 January 2018? (Last update: 30 October 2017)

CNMV's reply

CNMV considers that portfolio managers will not be able to continue receiving and retaining incentives from third parties for positions that arise from transactions made prior to 3 January 2018. In relation to this issue it should be noted that in MiFID II there is no transitional clause or grandfathering in this regard.

3.8. How should the incentive regime be applied to services other than portfolio management and independent advice as from the entry into force of MiFID II in relation to third-party payments from positions arising from transactions carried out prior to 3 January 2018? (Last update: 13 July 2018)

CNMV's reply

For services other than portfolio management and independent advice, it is reasonable to apply the same criteria indicated in question 3.7. However, entities must comply with what is definitively established in the SMA, once MiFID II has been transposed.

In any case, and subject to the content of such transposition, so that an IF or credit institution can continue to receive retrocessions for positions acquired, prior to the implementation of MIFID II regulations related to services other than portfolio management or independent advice, it should be sufficient for the distributor to implement a modification in its general procedures, or in the model for the provision of investment services, so that the conditions established in the Directive are met.

Regarding the requirement to increase service quality, it should be sufficient for the distributor to meet any of the following conditions, which are the same as those required to receive incentives for new investments made by those same or new clients (assuming that the transposition at this point corresponds to the published drafts):

a. Provide a non-independent advisory service to such clients regarding a wide range of financial instruments, of which an appropriate number should not have close links with the distributor, giving access to the same instruments.

b. Provide a non-independent advisory service to such clients that includes a continuous assessment of the suitability of the instruments in which they have invested or of the optimal allocation of their investments.

c. Give access to, that is, offer a wide range of financial instruments at a competitive price of which an appropriate number must not have close links with the distributor, together with a tool that provides added value to the investor.

3.9 How should the incentive regime be applied to the provision of the portfolio management service that includes CIS when there is a distribution model with vertical integration? (Last update: 13 July 2018)

CNMV's reply

As indicated in reply 3.1, it is considered that the prohibition of incentives in the field of portfolio management cannot be circumvented through vertical integration practices. In this respect, it is considered that a clear criterion to avoid a breach of the prohibition to receive incentives in relation to CIS that are going to be included in the managed portfolios would be that in the funds/sub-funds/classes allocated to portfolio management clients a higher management fee is not applied to the net management fee of the distribution fee applied to the same or similar funds/sub-funds/classes of the same CISMC that are distributed by paying incentives to the distributor.

For these purposes, it is not appropriate for the comparison of the fees to be made with respect to the average of other CISMC (regardless of the conditions agreed within the group itself), given that each group has a specific policy in this regard according to its business model. Therefore, comparison with the policy for margins and price of services (management/distribution) of the group itself is more appropriate, since there do not seem to be technical arguments that justify departing from such policy exclusively for the service of discretionary portfolio management.

3.10 Are the “platform fees” received by the entities that act as a platform for CIS of the CISMC considered incentives? (Last update: 13 July 2018)

CNMV's reply

It is considered that what are known as "platform fees" or variable fees paid periodically by CISMC to the platform, as a percentage of the brokered volume, are incentives insofar as they are directly linked to the provision of an investment service to the client and are linked to the equity of the fund that the intermediary places.

Platform fees may be considered permitted incentives by the entity acting as a platform, insofar as they are related to the RTO service if the conditions established in Article 11(2) of the Delegated Directive are met.

However, if the entity that acts as a platform also provides the service of portfolio management (or independent advice), then it will not be able to receive or retain incentives for the positions in CIS, included in the portfolios managed (or independently advised).

It should be noted that in the event that the entity that acts as a platform belongs to the same group as the entity that provides the portfolio management service (or independent advice), the business would be structured in a way that would avoid the new incentive regime. Therefore, it is not acceptable. Furthermore, if the incentive does not stem directly from the investment of the portfolios managed (or independently advised) in CIS, but from the indirect investment through subfunds of the group that provide a service in other CIS, it would be equally forbidden to receive and retain it.

CNMV is analysing these same types of issues with regard to the case that the platform does not provide the portfolio management service, or independent advice, but rather the service of brokerage to other entities which, in turn, provide investment services to their end clients. Once the analysis is completed, Q&As will be published.

4. INDUCEMENTS IN RELATION TO RESEARCH (Last update: 22 December 2017)

4.1. What should the periodicity of the budget be? Annual or could it be less than a year or multi-annual? (Last update: 30 October 2017)

CNMV's reply

Article 13(1) of the DD states that the entity receiving the research service must annually report the costs to the clients. In this regard, it does not seem appropriate to prepare multi-annual budgets; rather they should be drawn up with a periodicity equal to or less than one year.

4.2. How can the agreement between the entity and the client on the budget and its method of payment be formalized? (Last update: 30 October 2017)

CNMV's reply

Art. 13.5 of the DD states that the charge for research budgeted by the entity and the frequency of the charge in each year may be agreed with the clients, in the management agreement or in the general conditions of the contract. These documents could also include the method of payment.

4.3. What should the content of the written policy on the research incentives of an entity be? (Last update: 30 October 2017)

CNMV's reply

Art. 13.8 of the DD states that the policy to be provided in writing to clients shall include all the elements necessary to assess the quality of the research purchased based on robust quality criteria and its ability to contribute to better investment decision-making. It will also address the extent to which the research can benefit clients' portfolios and the approach to allocate costs fairly among client portfolios.

4.4. What criteria for allocating the cost of research between clients of the entity could be considered valid? (Last update: 30 October 2017)

CNMV's reply

An allocation criterion included in the ESMA Q&A 1 and 10 on "Inducements (research)" is that it be a transparent method that is set out in writing in the research policy provided to the client. But the main requirement to take into account is that it must be a fair method for allocation among client portfolios. ESMA indicates that the research budget can be established for a group of client portfolios or accounts that have similar third-party research needs. The budgeted cost could be prorated among all client accounts benefiting from the research, based, for example, on the value of each client's portfolio. Other elements that could also be valued are the expected relevance of the research to certain investment strategies or the level of use by individuals or teams that manage or advise certain portfolios or accounts. Under no circumstances is it possible to use the intermediate volume, the number of transactions or the cost of intermediation as criteria.

In any case, institutions should not draw up an research budget for a group of client portfolios or accounts that do not share sufficient investment objectives or similar research needs. For example, when portfolios have material differences in the types of financial instruments or geographic regions or market sectors in which they can invest or are investing.

4.5. In what way and in what detail should the "ability to contribute to the adoption of a better investment decision" be justified in the management and assessment of the RPA [Research Payment Account]? (Last update: 30 October 2017)

CNMV's reply

The justification must be made in writing and in sufficient detail so that the entity can justify to CNMV that the research received is useful for the adoption of investment decisions.

4.6. Would it be possible for an entity to have different criteria for allocating research expenditure according to the type of products? That is, if an entity is provided with research that is used for different products (managed portfolios, Pension Funds, EPSV (individual pension plans), CISs), would it be possible for the cost of the research of some of them to be borne by the client and the research of others by the entity? (Last update: 30 October 2017)

CNMV's reply

We see no impediment provided that the requirements are met and, therefore, the different allocation criteria are duly informed and justified. Art. 13 of the DD states that the analyses provided by third parties will not be considered an incentive if they are received in exchange for: (i) payments with funds of the entity itself or (ii) payments of an RPA (Research Payment Account) controlled by the entity that meet the established operating conditions.

4.7. Does the inclusion of the research in the prospectus of a CIS as an expense borne by the Investment Fund require the right of separation to be granted to the unitholder of said Fund? (Last update: 22 December 2017)

> **CNMV's reply**
>
> In the case of a fund whose prospectus already envisages the existence of brokerage fees that incorporate the analysis service, the substitution of the above with the analysis expense (separate from the brokerage fee) would not give the right to information.
> If it is a question of funds whose prospectus does not envisage that brokerage fees incorporate the analysis service, the inclusion for the first time of the analysis expense, as attributable to the investment fund, would entail granting unitholders the corresponding right to information. In such case, the said expense may only be attributed to the fund from the time when the prospectus is updated.

4.8. How can one determine when the research in relation to fixed income securities should be considered as an incentive? (Last update: 30 October 2017)

> **CNMV's reply**
>
> ESMA Q&A 9 on "Inducements (research)" considers that for fixed income, currency and commodities (FICC) products, material produced in relation to these FICC markets could be considered as research or as a minor non-monetary benefit. For this type of product there is no established market practice with regard to the inclusion of research costs in explicit execution fees. ESMA also considers that there are many similarities between the macroeconomic reports and the FICC research. It would therefore be a question of assessing whether they meet the requirements as minor non-monetary benefits.
>
> In accordance with recital 29 of the DD, minor non-monetary benefits are non-substantive material consisting of short-term market commentaries on the latest economic statistics or company results which contain only a brief summary of their own opinion on such information that is not substantive or includes a substantive research, such as simply repeating a vision based on an existing recommendation. In addition, reports on fixed income securities that are received free of charge when paid by a potential issuer or issuer to promote a new issue would also be considered minor non- monetary benefits as long as they are published and made available to the public.
>
> In addition, Art. 12.3 of the DD contains a non-exhaustive list of minor non-monetary benefits. It includes: (i) information or documentation on a financial instrument that is generic or customized to reflect the circumstances of an individual client and (ii) material received free of charge from an issuer with a contractual relationship under which the issuer produces the research on an ongoing basis provided that the relationship is clearly revealed within the research and that the material is available at the same time to all entities wishing to receive it or to the general public.

ESMA Q&A 6 on "Inducements (research)" points out that the assessment of whether the material is substantive should be linked only to its content and not to the consideration given to it by the supplier of the research. Examples of minor non-monetary benefits include:

- brief market updates with limited comments or opinions and
- material that repeats or summarizes news, stories or public statements by issuers, such as quarterly results or other market announcements.

5. CONFLICTS OF INTEREST (Last update: 13 July 2018)

5.1. Should the information provided to clients be changed regarding conflicts of interest, is it also necessary to inform the existing clients of the entity with whom an ongoing relationship is maintained? (Last update: 30 October 2017)

CNMV's reply

Yes, to the extent that the change entails a material change in the information provided to the client in advance.

5.2. If communication were necessary to existing clients, could it be conducted through a communication on the entity's website? (Last update: 30 October 2017)

CNMV's reply

Yes, as long as the conditions established in Art. 3 of the DR for the provision of information in a durable medium other than paper and through a website are met.

5.3. In relation to the remuneration policies and practices to be defined by the entities that provide investment services, is it possible to establish a 100% variable remuneration scheme for tied agents? (Last update: 13 July 2018)

CNMV's reply

MiFID II has introduced certain provisions on remuneration that were already included in the ESMA Guidelines. Specifically, Article 27 of the DR establishes that remuneration policies and practices will be designed so that they do not generate a conflict of interest or incentives that may lead relevant persons to favour their own interests, or the interests of the company in possible detriment to a client. Thus, it is determined that similar remunerations and incentives will not be based exclusively or primarily on quantitative business criteria, and that they will fully take into account adequate qualitative criteria that reflect compliance with the applicable standards, fair treatment of clients and quality of the services provided to clients.

On the other hand, it is established that a balance between the fixed and variable remuneration components will be maintained at all times, so that the structure of the remuneration does not favour the interests of the investment firm or of the relevant persons within it, to the detriment of the interests of clients.

In relation to the possibility of establishing a 100% variable remuneration in the case of agents, in principle, while ESMA does not take a stand to the contrary, it is considered acceptable that the remuneration of agents be 100% variable, provided that conflicts of interest that arise from this situation are adequately managed. In any case, a neutral remuneration scheme should be adopted that does not favour some products over others, that does not include accelerators, and which incorporates, in a meaningful way, qualitative and not only quantitative criteria that are conducive to compliance with the rules of conduct.

In this regard, it should be remembered that MiFID II insists that remuneration should not be based solely on commercial quantitative criteria, but that what should be considered is, adequate qualitative criteria that reflect compliance with regulations, an honest treatment of clients and quality of the services provided to clients. The weight of the qualitative criteria in the determination of agents' remuneration should be sufficient to achieve a relevant influence of the qualitative aspects.

Without prejudice or, as an illustration of the criteria set out, under no circumstances would the following remuneration practices be considered acceptable:

(i) remuneration policies based on percentages of the different volume of sales by product or type of product, given the high risk of them leading to sales of the products to which a higher remuneration is applied and not those that best satisfy the interests of clients.

(ii) remuneration systems based on fixing the same percentage of the income generated by each product or type of product or of the acquisition or sale fees of each product or type of product, since they encourage the sale of products with a greater profit margin for the entity and not those that best satisfy the interests of clients.

(iii) remuneration systems based on setting a percentage of the total amount paid by the agent, or depending on the investor's profile, since they encourage the sale of the product or type of product which generates higher income for the agent.

Conversely, it is acceptable, as quantitative criteria, to establish a fixed percentage of the total sales volume in a given period, since it eliminates any possible incentive to favour the sales of a certain product.

These criteria would also apply to the remuneration systems of the presenting agents, given that a different remuneration by product or type of product would imply a clear risk that the agent goes beyond mere representation work and tries to influence the client to opt for that investment that provides them with a higher percentage of returns. However, it must be clarified that in this case the weight of the qualitative criteria in the determination of remuneration may be less relevant.

6. GENERAL INFORMATION REQUIREMENTS FOR CLIENTS (Last update: 30 October 2017)

6.1. For the purposes of delivering pre-contractual information to clients, how should the term "in good time" in recital 83 of MiFID II be understood? (Last update: 30 October 2017)

CNMV's reply

As set out in recital 83 of MiFID II, the information should be provided it so that the client has sufficient time to read and understand it before making an investment decision. A fixed minimum period of time is not established, so that entities can establish the delivery times that they consider appropriate in each case, taking into account, as established in the aforementioned recital, whether it is a complex product or not, or if the client is familiar with it or has no experience of it.

It should also be noted that an eventual urgency of contracting in the case of volatile markets or instruments with a contracting period nearing its end should not prevent clients from having sufficient time to analyse the information, understand the product and make a well-founded investment decision.

6.2. What format should be used to provide pre-contractual information to clients? (Last update: 30 October 2017)

CNMV's reply

CNMV does not plan to develop standardized pre-contractual information documents in principle. Entities may use the format they deem appropriate to comply with MiFID II pre-contractual information obligations.

7. FAIR, CLEAR AND NON-MISLEADING INFORMATION (Last update: 30 October 2017)

7.1. In relation to the profitability scenarios on which information containing future performance data should be based, what is the methodology to be applied for the calculation of these scenarios corresponding to different market conditions? (Last update: 30 October 2017)

CNMV's reply

The Delegated Regulation of PRIIPS includes in its Annex IV the methodology for the calculation of scenarios for PRIIPs products.

This Regulation will apply to CISs from January 2020. Until that date, performance scenarios for structured UCITS will be in accordance with the methodology established in the CNMV Communication of January 2015 on measures to strengthen transparency in the marketing of CISs.

7.2. **Should the new requirements established in Art. 44 of the Delegated Regulation to the information already submitted or to the advertising communications made before 3 January 2018? That is, will it be necessary to send back to the clients the information or advertising communications adjusted to the new requirements?** (Last update: 30 October 2017)

CNMV's reply

It will not be necessary to re-send the information or advertising communications adjusted to the new requirements. In any case, the information adjusted to the new requirements should be used to provide information or to issue advertising communications to retail or professional clients as of 3 January 2018. For these purposes, communications issued close to that date and that could take effect as of 3 January 2018 should comply with the provisions of the new regulations.

8. INFORMATION ABOUT THE ENTITY AND THE SERVICES (Last update: 13 July 2018)

8.1. **Does the information about the entity and its services apply to the marketing of IFs and, in particular, in cases of "execution only" in which the entity is limited to attending a specific request by the client?** (Last update: 13 July 2018)

CNMV's reply

Yes, the reporting obligations apply to the marketing of IFs and, in particular, to the cases of execution only.

8.2. **Is the prohibition of setting the remuneration based on sales targets or otherwise that could provide an incentive for staff to recommend a particular financial instrument to a retail client if a different financial instrument can be offered that is better suited to the needs of the client applicable to the activity of advising and marketing the IFs of a CISMC? And, in that case, can it be understood as included in the remuneration policies applicable to CISMC?** (Last update: 13 July 2018)

CNMV's reply

Yes, it does apply. Article 1(1) of the DR states that obligations relating to remuneration policies and practices are applicable to CISMC when they provide investment services. It should be noted in this regard that the ESMA Guidelines on Remuneration Policies and Practices of June 2013 were already applicable to CISMC when providing investment services.

The different remuneration rules have a different approach: UCITS, AIFMD and CRD IV have a prudential approach and are aimed at staff who have influence over the entity's prudential risks while MiFID II targets staff that affect compliance of the rules of conduct. It could be the case that the UCITS and MiFID Compensation Guidelines apply to the same person when that person is managing a portfolio of a fund and is also providing investment services. This case is envisaged in the UCITS Compensation Guidelines, dated October 2016, which establish the following:

When CISMC employees perform activities subject to different sectoral remuneration principles, they will be remunerated according to the following two options:

- applying the principles of sectoral remuneration pro rata according to objective criteria such as the time spent on each service or assets managed for each service or
- applying the sectoral criteria that are considered most effective in order to discourage inappropriate risk-taking and better align individual interests with those of the investors of CIS.

8.3. **Is the information to be provided to professional clients and eligible counterparts in accordance with Art. 47 of the Delegated Regulation is applicable only to new professional clients and eligible counterparties of entities from 3 January 2018 or also for those already existing at that date?** (Last update: 30 October 2017)

CNMV's reply

The obligation is applicable to new and existing clients who are offered an investment service from 3 January 2018. The information will be provided in a durable medium or through the web provided that the requirements established in Art. 3.2 of the DR are met.

9. INFORMATION ON FINANCIAL INSTRUMENTS (Last update: 13 July 2018)

9.1. Will the obligation to provide information on financial instruments continue to be non-applicable in the case of the discretionary portfolio management service? (Last update: 13 July 2018)

CNMV's reply

In relation to CIS, the criteria established in the CNMV Communication of February 2009 on the implementation of Circular 4/2008 on the content of the quarterly, semi-annual and annual reports of collective investment schemes and the state of their position to which they refer will continue to apply. It is therefore not necessary to provide the prospectus or the periodic reports, since this information is intended to enable investors to make informed decisions on investment or divestment and in the case of discretionary portfolio management these decisions are taken by the manager.

These criteria are extended to other financial instruments: in the transactions carried out by the manager on behalf of the client, it is not necessary to provide prior detailed information on financial instruments.

9.2. How should the new client information obligations on financial instruments established in Art. 48 of the DR be applied? Can it be understood that it only applies to the new financial instruments on which advice is given or which are marketed from 3 January 2018? (Last update: 30 October 2017)

CNMV's reply

As of 3 January 2018, entities that provide advice on or market financial instruments to clients (retailers, professionals or eligible counterparties) must provide them with all the information set forth in Article 48 of the DR, in the case of new financial instruments as well as in the case of the financial instruments that they had already been marketing or recommending.

9.3. In relation to the new information required by Article 48 of the Delegated Regulation, does "operation and results of the financial instrument in different market conditions, both positive and negative" refer to the development of scenarios? If this were the case, additional information would be needed on the types of scenarios to which it relates and on the methodology to be used for their development, in accordance with different market conditions. (Last update: 30 October 2017)

CNMV's reply

The required information can be assimilated to the development of scenarios. Although not specified, it may be understood that at least three favourable, moderate and unfavourable market scenarios should be considered. Regarding the methodology, we refer to response 7.1 given in the section on fair, clear and non-misleading information.

9.4. What information should be provided to retail clients about the characteristics and risks of financial instruments? Would the KID on PRIIPS be sufficient? And for products that are not PRIIPS would the information contained in Order ECC/2316/2015 be sufficient? (Last update: 30 October 2017)

CNMV's reply

In general, entities must comply with the information obligations on financial instruments included in Article 24(4)(b) of MiFID II and Article 48 of the Delegated Regulation. The latter establishes that a description should be provided explaining the nature of the specific type of financial instrument in question, the operation and performance under different market conditions, including positive and negative, as well as the particular risks of the financial instrument in sufficient detail so that the client can make a well-founded investment decision. It should be noted that MiFID II set forth additional information obligations in relation to the marketed financial instrument, such as costs and charges information (in Article 24.4.c) or inducements (in Article 24.9).

In the case of PRIIPs products, the KID could cover the information obligations included in Article 24.4.b of MiFID II as long as it includes all the information previously mentioned in Article 48 of the Delegated Regulation.

In the case of non-PRIIP products, the information contained in Order ECC/2316/2015 is not sufficient since the risk indicator specified in the Order does not include all information obligations mentioned in the first paragraph.

9.5. How should the principle of proportionality be applied to the content of information on financial instruments referred to in Article 48 of the Delegated Regulation? Can it be agreed with the eligible counterparties for them to be provided the information only at their own request? (Last update: 13 July 2018)

CNMV's reply

It is considered that there is some scope to apply the principle of proportionality to the content of information on financial instruments (general description of the nature and risks, including their operation and performance in different market situations, as well as the specific risks of the financial instrument) depending on the category of the client, specifically for professional clients per se and eligible counterparties. However, even in these cases, clients need to know the essential conditions of the specific financial instrument that they intend to purchase.
Therefore, for eligible counterparties and professionals per se, some flexibility is admitted regarding the detail of the information, provided that it can be assumed that the client already knows it sufficiently.

Regarding the possibility of specifying with the client what level of detail they would like to receive, although the rule only allows it expressly in the case of information on costs and expenses to be provided to eligible and professional counterparties in certain cases, it seems reasonable that it can be agreed with the client what level of detail will be received by the eligible counterparties and professionals per se, in relation to the information on financial instruments, taking into account what was mentioned in the previous paragraph.

Finally, it should be clarified that the obligations in terms of prior information to be provided to eligible counterparties on financial instruments must be complied with in any case, it not being possible for it to be provided only at the request of the client.

9.6. **Given that the UCITS KID model does not generally include estimates of product results in different scenarios, is it necessary for entities to provide additional information as to the operation and results of the financial instrument under different conditions, in accordance with the provisions of Article 48 of the Delegated Regulation?** (Last update: 13 July 2018).

CNMV's reply

In relation to CIS that prepare a KID in accordance with the provisions of CNMV Circular 2/2013, of 9 May, the information contained in the KID is sufficient to comply with the obligations of Article 48 of the Delegated Regulation in a consistent manner with the transitional period established in the PRIIPs Regulation for products with a KID until January 2020. However, it should be made clear that the UCITs KID is not sufficient to comply with the cost information obligations established in Article 50 of the Delegated Regulation, since Article 51 expressly states that additional information must be provided on all the costs and expenses associated with the product and the service that has not been included in the UCITs KID. In this regard, see question 11.1.

9.7 **Should the fact that the shares can be subject to bail-in be disclosed? How it should be disclosed** (Last update:13 July 2018)

CNMV's reply

Article 48 of the DR, which is applicable to shares, establishes in section 2(a) that information must be provided on *"the risks related to this type of financial instrument, including an explanation of the leverage and its effects, the risk of the investment's total loss, as well as the risks associated with the insolvency of the issuer or related events, such as internal recapitalisation".*

Therefore, regardless of the information that must be disclosed and the warnings that CNMV stipulates must be included in the prospectus or other documents, on the occasion of public offerings for the sale and subscription of shares, the entities that provide services for the reception and transmission or execution of orders or advice must take into account this reporting obligation and, consequently, establish the appropriate procedures to be able to prove proper compliance therewith.

Although the information to be provided in compliance with this obligation does not have to comply with the text provided in the third rule of Circular 1/2018, nor is it necessary to obtain the client's signature, it is important to emphasise that the information must always be clear and sufficient for the client to understand the nature and extent of the risk of the shares being affected by an internal recapitalisation.

On the other hand, CNMV considers that the foregoing does not imply that the client has to be informed about the risk of internal recapitalisation prior to each share purchase transaction by credit institutions or investment firms, in the event that the client submits orders on said instruments for their execution in trading venues on a frequent basis, it being sufficient for the information to be periodically provided (for example, once a year).

10. INFORMATION ON THE SAFEGUARDING AND USE OF FINANCIAL INSTRUMENTS (Last update: 30 October 2017)

10.1 Will the person designated as responsible for safeguarding FIs be able to perform other functions within the entity? (Last update: 30 October 2017)

CNMV's reply

An entity may decide whether the designated person responsible for safeguarding assets may reconcile that task with other responsibilities, provided that it performs its functions effectively.

11. INFORMATION ON COSTS AND EXPENSES (Last update: 13 July 2018)

11.1 Is the information provided by the PRIIPS KID sufficient to fulfil the ex-ante information obligations on costs and expenses? (Last update:13 July 2018)

CNMV's reply

For PRIIPS products, entities must inform the client of any costs or expenses related to the financial instrument not included in the KID, the costs and expenses of the service, except for those that may have been included in the KID, and on what part of the costs paid are reimbursed to the company which provides the investment service (incentives).

In relation to this matter, the Q&As published by ESMA in this field should be taken into account, and in particular Q&A 7 on how entities should use the costs of the products presented in the PRIIPS KID.

11.2 **With regard to the transaction costs of CIS that in accordance with MiFID II should be provided, what methodology should be applied for their calculation?** (Last update: 13 July 2018)

CNMV's reply

ESMA Q&A 10 states that the methodology that would be expected to be used by entities is the methodology established in the PRIIPs Delegated Regulation, in paragraphs 21-23 of Annex VI. The KID on PRIIPS issued by the Joint Committee of the European Supervisory Authorities on 4 July 2017, which clarifies some aspects of this methodology, should also be taken into account.

In any case, as is reflected in the Activity Plan, CNMV plans to modify PPI Circular 4/2008 to provide transparency on transaction costs and other costs not included in the KID, developing its calculation method.

11.3 **Is the information provided by the KID on PRIIPS sufficient to fulfil the ex-ante information obligations on costs and expenses?** (Last update: 30 October 2017)

CNMV's reply

For PRIIPs products, entities must inform the client of any costs or expenses related to the financial instrument not included in the KID, the costs and expenses of the service and on what part of the costs paid are reimbursed to the company which provides the investment service (incentives).

11.4 **How would information on annual ex-post costs and expenses on CISs be obtained?** (Last update: 30 October 2017)

CNMV's reply

The data will be provided by the CISMCs to the distributor annually, and if a material change occurs, the information provided will be updated.

Distributors may use the information provided annually by the CISMCs to deliver personalized, annual ex-post information to their clients, calculating costs and expenses on a pro rata basis or on an average basis.

11.5 What are the obligations for ex-ante and ex-post information on costs and expenses of the discretionary management service? (Last update: 30 October 2017)

CNMV's reply

Recital 75 of the DR states the following: "Taking into account the general obligation to act in the best interest of the clients and the importance of informing them in advance of all the costs and expenses that they will bear, the reference to the financial instruments recommended or marketed must include, in particular, investment providing advice on investment or portfolio management services ...". A literal application of this recital is considered very rigorous within the framework of the discretionary portfolio management service as it would entail an obligation to inform the client of the costs of the financial instrument prior to its acquisition on behalf of the client.

We consider that a reasonable approach is that the client is informed ex ante of the costs of the portfolio management service and of the cost of the services associated with the portfolio management that are charged to the client. To the extent that these costs change, the client must be informed of them.

For ex-post information, we understand that it is relevant that the client is provided with information on the costs of the financial instrument included in Art. 50.9 of the DR. Art. 60.2.d, which specifically addresses ex-post reporting obligations in portfolio management, would also be applicable.

However, for the moment, ESMA has not stated its stance on this matter.

11.6 Confirmation that, in the case of marketing of a CIS by a CISMC, annual ex-post information should not be provided to the client, since it should be understood that there is no continuous relationship between the client and the CISMC. (Last update:13 July 2018)

CNMV's reply

With regard to this issue, it is necessary to take into account Q&A 23.1 in relation to the application of the MiFID II rules of conduct to the marketing of CIS by CISMC.

11.7 Is it possible to meet the ex-ante cost disclosure requirements by referring to a list of standardized transactions on the website? (Last update: 22 December 2017)

CNMV's Reply

Pursuant to Articles 24(4)(c) and 24(5) of MiFID II and Article 50 of the Delegated Regulation, all information on costs and expenses related to the service and financial instrument must be disclosed ex ante in such a way that it is understandable to the clients for whom it is intended. In addition, payments received from third parties in relation to the provision of the service to the client (incentives) must be itemised separately.

In order to assess whether this obligation can be fulfilled using a list of standardized transactions, the possibility of standardization of the costs for the specific type of financial instrument or service shall be analised. It is difficult to standardize the cost information for certain products, such as fixed income or others that include implicit costs in the price, being different in each transaction. Conversely, for other products that only have explicit costs fixed in terms of volume, such as equity, it could be feasible for standardized information to meet MiFID requirements.

On the other hand, we understand that the MiFID II requirement to offer cost information in a comprehensible manner to the client would not be met by providing a list of standardized fees or costs including all the entity's products and services, thereby burdening the client with the task of locating the product it is interested in and identifying the corresponding costs. The information on costs must be clear before each transaction is carried out and it is not enough for the entity to publish a generic table of applicable fees.

11.8 Is it possible to use the PRIIPs methodology (defined to provide cost estimates ex ante) for the purposes of the ex post calculation of costs to be disclosed to the client? (Last update: 22 December 2017)

CNMV's Reply

Article 50(9) of the Delegated Regulation indicates that ex post cost disclosure must be based on costs incurred. Furthermore, section 4 of this article states that in relation to the disclosure of the costs and charges that are not included in the UCITS KIID, , investment firms must calculate and disclose such costs, for example, by liasingwith UCITS management companies to obtain the relevant information.

Indeed, Q&A's 9 and 12 published by ESMA in relation to the cost disclosure requirements indicate that, in general terms, it is expected that the methodology set out in PRIIPS be applied for the calculation of the fund portfolio transaction costs , also for the purposes of the information to be provided to clients on costs required by MiFID II. But the reference to the PRIIPS methodology must be understood in relation to the method used to calculate the cost of each operation (as the difference between the execution price – including explicit costs – and the "arrival price" – in general terms, the average market price at the time the order is made). These data are generally real costs. An exception to this is that for illiquid instruments, transaction costs will be estimated on the basis of fair value.

On the other hand, in ESMA Q&A 9 it is indicated that distributors are expected to contact manufacturers to obtain the necessary data to comply with their obligations. Manufacturers of a PRIIP, for their part, should already have calculated the data that the distributor needs (those relating to the fund portfolio transactions during the last 12 months), since the manufacturer needs to calculate these data on a recurring basis in order to be able to calculate and keep the ex-ante cost estimate that must be included in the PRIIPS KID updated.

11.9 Ex post information on costs must be provided on an annual basis. How must the 'annual' be interpreted? (Last update: 22 December 2017)

CNMV's Reply

We understand that, among other reasons, in order to apply a uniform criteria for all firms, a reasonable interpretation of the term 'annual' for the purposes of the provision of ex post information on costs would be the calendar year. Thus, as of 2018, the costs incurred for each calendar year must be disclosed. If during 2018 the relationship with the client ends, the disclosure requirement will be understood as having been met, including only the costs incurred from the beginning of the year to the date of the end of the relationship.

11.10 Is it possible to comply with ex ante cost information obligations to eligible counterparties by means of a website through a list of costs, without providing the exact cost of the operation? (Last update: 13 July 2018)

CNMV's reply

In those cases in which a limited application of the cost information obligations on eligible counterparties is allowed, in accordance with Article 50(1) of the Delegated Regulation, it is reasonable that when it is very complicated to provide this information ex ante (for technical or operational agility reasons) the exact cost of the transaction is not previously provided and the estimated cost is reported through a website provided that the following conditions are met: (i) a sufficiently detailed list is provided by type of instrument, underlying, type of client, term, etc; (ii) the estimated cost is not reported using ranges or maximum costs; (iii) the exact cost is subsequently reported and (iv) it has been expressly agreed with the counterparty.

11.11 Is it possible to limit the ex post information on costs with eligible counterparties if this is agreed with the clients? (Last update: 13 July 2018)

CNMV's reply

Art. 50(1) of the Delegated Regulation envisages the possibility of agreeing on a limited application of obligations to provide information on costs included in the article itself to eligible counterparty clients, but not in all cases. It would not be possible when an investment service is provided on financial instruments that involve a derivative and the eligible counterparty intends to offer them to its clients. In any case, it should be remembered that limited application can never be understood as a complete absence of information.

11.12 Is it possible to limit the scope of ex post information on costs to portfolio management clients if agreed with the client? If the client agrees with another entity to provide a service linked to portfolio management, which entity would be responsible for providing the ex post information on custody costs? (Last update: 13 July 2018)

CNMV's reply

Regarding the possibility of limiting the scope of ex post information on portfolio management costs, note that no possibility of limiting the information provided in Art. 60(2) of the Delegated Regulation is envisaged. In fact, Article 50(1) explicitly excludes portfolio management from the possibility of agreeing a limited application of obligations to provide information on costs with professional clients. Therefore, entities must periodically provide, in accordance with the requirements established in Article 60(3) of the DR, information on all costs incurred by clients during the period in relation to the services provided by the entity or by other entities to the client.

In the event that a service related to portfolio management (such as the custody and administration service) is provided by another entity, chosen by the client, the entity that provides the portfolio management service would not be obliged to add these costs, the entity providing the related service being responsible for informing the client.

11.13 When should the cost and expense information be sent in the event of termination of the relationship with the client? (Last update: 13 July 2018)

CNMV's reply

According to ESMA Q&A 21 on cost and expense information, it is considered that the information must be provided as soon as possible, after termination of the relationship with the client. However, a certain degree of flexibility with regard to these criteria is acceptable, depending on the proximity to the end of the year or, for example, the existence of other periodic information to be sent to the client which is to be sent soon.

11.14 What is the information on costs to be provided by an entity providing the advisory service that does not offer the services of reception, transmission or execution of orders or custody? (Last update: 13 July 2018)

CNMV's reply

In advance, the entity must provide information on the costs of the advisory service as well as on all the costs of the recommended financial instruments. These costs must be taken into account in the selection process used to recommend these financial instruments.

Regarding annual periodic information, Article 50(9) of the DR establishes that information must be provided on all costs and expenses actually incurred in relation to financial instruments and investment services when the entity has recommended or sold a financial instrument and has or has had a continuous relationship with the client during the year. The term "continuous relationship" has been clarified in ESMA's Q&A 1 in the Section on "Other Issues"; it is considered that there is a continuous relationship when the entity and the client have concluded a contract for the provision of an investment service that is not provided on a one-off basis, citing as an example a service that is not permanent such as the case of advice when the client is provided with a periodic suitability assessment. It is also considered that there is a continuous relationship when there is an agreement for the entity to continuously receive an incentive. Therefore, in these cases, the advising entity will be obliged to provide the ex post cost information when the advice is followed up or is going to continuously be receiving incentives for the recommended financial instruments.

12. INDEPENDENT ADVICE: INFORMATION AND DEFINITION (Last update: 30 October 2017)

12.1. **Can the information set out in Art. 24.4 of Directive 2014/65 and Art. 52 of the Delegated Regulation be provided to the client in a standard document?** (Last update: 30 October 2017)

CNMV's reply

Yes, to the extent that it is standardized information common to a particular type of advice model.

12.2. **May the revisions and consequent updates of the consulting contracts existing before 3 January 2018 be understood as accepted by the clients by tacit consent, once a period of 15 days has elapsed after they are submitted to the client without the client having expressed his/her opposition to them.** (Last update: 30 October 2017)

CNMV's reply

Yes, although the 15 days will be counted from the reception of the information by the client.

12.3. In order for the advice to be considered as independent, how should the requirement to evaluate a sufficiently diversified range of financial instruments available on the market be understood? (Last update: 30 October 2017)

CNMV's reply

The L1 Directive states that diversification refers to the type of instrument and the issuers or suppliers of products, although it is considered in the implementing regulations that it is possible to provide independent advice on a category or range of financial instruments. In short, the entity is required to analyse a universe of products broad enough to decide which ones it recommends to its clients. For these purposes, this requirement is not considered to have been fulfilled simply because the entity enables clients to purchase several of the financial instruments included in MiFID II.

The entity must define and implement a process to select the products to be evaluated in order to make a recommendation to the client. This selection process must include, according to Article 53 of the Delegated Regulation, inter alia, the following requirements:

(i) the number and variety of the financial instruments considered must be in proportion to the scope of the investment advisory service offered

(ii) the number and variety of the financial instruments considered must be representative of the financial instruments available on the market.

12.4. In order for the advice to be considered as independent, how should the requirement that the financial instruments analysed be limited to "tied" financial instruments be understood? (Last update: 30 October 2017)

CNMV's reply

The entities providing independent advice may not only consider financial instruments issued by the entity itself, an entity in their group or another entity in which there is a stake in the capital (of 20% or more of the voting rights) or a control relationship, or by other entities with legal or economic relationships, such as contractual relations (see question 12.5).

It is therefore possible to provide independent advice including a number of "tied" financial instruments provided that the following criteria are met:

(i) that the number of financial instruments issued by the entity or by related entities does not represent a relevant portion of the total amount of financial instruments considered

(ii) that the criteria for comparing different financial instruments include all relevant aspects such as risks, costs and complexity as well as the characteristics of the clients, and ensure that the selection of the instruments that can be recommended is not biased.

12.5. How should the requirement of "contractual legal or economic relationships" be understood with the issuer or distributor of the financial instruments? (Last update: 30 October 2017)

> **CNMV's reply**
>
> Contractual legal or economic relationships should be assessed on a case-by-case basis to determine whether such a relationship could jeopardize the independent nature of the advice. In such a case, the entity may not present itself to its clients as an independent advisory service provider.

13. PERIODIC INFORMATION ON THE PORTFOLIO MANAGEMENT SERVICE (Last update: 13 July 2018)

13.1. Would it be possible to agree with the client that non application or limited application of periodic information to eligible counterparties and professional clients is not possible, given that it is currently only mandatory for retail clients? (Last update: 13 July 2018)

> **CNMV's reply**
>
> First of all, remember that in the field of portfolio management services it is not possible to classify a client as an eligible counterparty (see Q&A 2.5 for this purpose).
>
> Regarding the specific question, it is considered that it is not possible. Art. 60 of the DR has been extended to professional clients and the possibility of agreeing with these clients on a limited application has not been established, as has been established in Articles 50). Therefore, it is not possible to apply it or to apply it to a limited extent.

13.2 Do Arts. 62.1 and 62.2 of the DR apply to CISMCs? (the entity shall inform the client when the overall value of the portfolio is depreciated by 10%, and thereafter by a multiple of 10%, no later than the end of the business day on which the threshold is exceeded or the following day if that occurs on a non-business day) (Last update: 30 October 2017)

> **CNMV's reply**
>
> CNMV understands that it does apply. Article 1(1) of the DR contains an error due to a failure to update the references to the articles of an earlier version. In principle, the entire Section 4 applies to CISMCs. The European Commission is expected to correct this error.

13.3 **There is currently a similar requirement in the case of discretionary portfolio management for retail clients, which requires that the client be notified immediately when there is a loss level equal to or greater than 25% of the managed assets (Rule 9 of Circular 7/2011). Will the obligation to inform the client of the losses in the portfolio managed be maintained in the current terms of Rule 9 of Circular 7/2011?** (Last update: 13 July 2018)

> CNMV's reply
>
> No. Article 62(1) prevails over Rule 9(4) of Circular 7/2011, which had set a threshold of 25% given that the equivalent Article 42 of the MiFID I Directive 2006/73/EC did not specify any threshold and it was left to be agreed with the retail client. Therefore, the threshold of losses to be taken as a reference as of 3 January 2018 is that of 10% of the value of the portfolio. It should also be remembered that not only retail clients but also eligible professionals should be informed.

13.4 **Which entity is responsible for providing the information required in Article 62(2) of the Delegated Regulation, in relation to the depreciation of 10% or multiples of the positions in leveraged financial instruments or operations of contingent liabilities?** (Last update: 13 July 2018)

> CNMV's reply
>
> Article 62(2) of the DR establishes that the entity that maintains an account with the retail client shall inform the client of the depreciation. According to ESMA's Q&A 11 in the ex post information section, the term "maintain an account with the retail client" could be understood as: (i) the provision of the custody and administration service or (ii) the maintenance of an account for registration of transactions on financial instruments in the context of the provision of an investment service to the retail client.

14. RECORD KEEPING OBLIGATIONS (Last update: 13 July 2018)

14.1. **Should cost and expense information be included in a new register or could it be included in any of the existing registers in accordance with the Resolution of 7 October 2009?** (Last update: 30 October 2017)

> CNMV's reply
>
> The entity must keep a record of the information on costs and expenses. This information can be incorporated into an existing register or a new one can be created.

14.2. What should the content of the register named in Annex I of the Delegated Regulation of MiFID II "Obligation in respect of services rendered to clients" be? (Last update:13 July 2018)

> **CNMV's reply**
>
> The reference of this register to "Reporting to clients" in Annex I of the DR is to articles 24(1) and 6 and articles 25(1) and 6 of MiFID II and articles 53 to 58 of the DR. This last reference is incorrect, articles 59 to 63 corresponding to Section 4, Reporting to clients, of the DR that develop article 25(6) of level 1 are correct.

14.3. Does the registration of orders apply to the orders derived from the discretionary portfolio management service? (Last update: 30 October 2017)

> **CNMV's reply**
>
> The registration of client orders and trading decisions established in Article 74 of the DR does apply to orders derived from the discretionary portfolio management service. The specific mention in the standard of "every trading decision taken when providing the portfolio management service" has been deleted in order to also include the orders arising from the own account trading activity as proposed by ESMA in its technical advice to the EC.

14.4. Does the registration of transactions apply to the transactions derived from the discretionary portfolio management service? (Last update: 30 October 2017)

> **CNMV's reply**
>
> Yes, it does apply. Article 75 of the DR, which establishes the registration of transactions and the processing of orders, is applicable both to orders received from clients and to trading decisions taken by the entities in relation to the provision of the discretionary portfolio management service. This is confirmed by ESMA in its technical advice to the EC.

15. RECORDING OF TELEPHONE CONVERSATIONS OR ELECTRONIC COMMUNICATIONS (Last update: 30 October 2017)

15.1. Does the obligation to record telephone conversations or electronic communications apply to the transmission of orders made as part of the discretionary portfolio management service? (Last update: 30 October 2017)

CNMV's reply

Article 16(7) stipulates that the register shall include recordings of telephone conversations or electronic communications relating, at least, to transactions carried out when trading on own account and the rendering of services related to the receipt, transmission and execution of orders of clients, even if such conversations or communications do not ultimately lead to the performance of such transactions or the provision of such services.

The general purpose of these recordings is therefore the follow-up of conversations with clients whose intention is the provision of a client service order; given that in portfolio management orders are not given by the client but the manager, who is the one who adopts the specific investment decisions, the recording obligation does not apply to this service.

What if the transaction is performed as a consequence of the receipt by the manager of an instruction from a managed client? (Last update: 30 October 2017)

In this case telephone conversations or electronic communications should be recorded to record the instruction given by the client.

15.2. **Confirmation that the obligation to record telephone and electronic conversations does not apply to the advisory service, even if as a result of the transaction an operation is carried out on a financial instrument that would already be in the framework of another investment service, i.e. the reception and transmission of orders.** (Last update: 30 October 2017)

CNMV's reply

The recording obligation in relation to advice has been addressed in ESMA Q&A 13 included in Section 3, Recording of telephone conversations and electronic communications. ESMA considers in this regard that if advice is provided when there is an intention to provide an order service to the client, the content of the advice has to be recorded.

15.3. **Is the obligation to record telephone and electronic conversations only applicable when, through a given channel, the execution and transmission of the order is allowed in addition to the transmission and reception of the order?** (Last update: 30 October 2017)

CNMV's reply

No. As explained in ESMA Q&A 12 in Section 3, Recording of telephone conversations and electronic communications, ESMA considers that the content of Article 16(7) of MiFID II and the corresponding Article 76 of the Delegated Regulation do not support this interpretation. In fact, Article 16(7) of MiFID II makes clear that the conclusion of an operation is not a prerequisite to apply the recording obligation.

15.4. **When must minutes of face-to-face conversations with clients be drawn up? Can orders be used as minutes of relevant face-to-face conversations with the client?** (Last update: 30 October 2017)

CNMV's reply

Article 76(9) of the DR establishes that entities must register in a durable medium the relevant information from the relevant face-to-face conversations with the clients in relation to the client order services established in Article 16(7) of MiFID II. One option to do this is through minutes as determined by Article 16(7) itself. In any case, at least the following information must be included: (a) the date and time of the meetings, (b) the location, (c) the identity of the attendees, (d) the "initiator" of the meetings and (e) the price, volume, type of order and when it will be transmitted or executed.

Considering the above, only the client's order would be sufficient if it contains all the required information.

An important aspect is to determine when the conversation and information are considered to be "relevant". For example, the information that makes it possible to determine who takes the initiative in the contracting of a certain product is relevant, as is the information that makes it possible to prove how long in advance the client was informed of the characteristics and risks of the product and any oral information that was provided to the client on the characteristics, risks and costs.

15.5. **What are the technical requirements for storing telephone conversations and electronic communications?** (Last update: 30 October 2017)

CNMV's reply

Telephone conversations and electronic communications should be stored in a durable medium that makes it possible to reproduce or copy in a format that does not alter or erase the original record.

15.6. **What should the content of the order and transaction registration fields be?** (Last update: 30 October 2017)

CNMV's reply

The order and transaction registration fields are listed in Sections 1 and 2, respectively, of Annex IV of the MiFID II Delegated Regulation. The detail or explanation of the content of the fields has not been developed, although it is pointed out that for fields that are also included in articles 25 and 261 of MiFIR, relating to transaction reporting, they must be maintained according to the same MiFIR standards.

15.7. If the client requests the recordings of telephone conversations, can a transcription be delivered? (Last update: 30 October 2017)

> **CNMV's reply**
>
> The MiFID II rules states very clear that the client is entitled to be provided with the recordings (Article 76 (10) of the Delegated Regulation). Having said that, CNMV considers acceptable to provide the client only with the transcription of the recordings, provided that the client has been informed of the right to have the proper recordings and the client agrees on that.

15.8. ¿What is the detail and the retention period of the records associated with the underwriting and placement service? (Last update: 30 October 2017)

> **CNMV's reply**
>
> These records have not been specifically included in the list of minimum records in Annex I of the MiFID II Delegated Regulation, nor have the fields or possible technical specifications been detailed. CNMV considers that the entities should store and keep the information required by the Delegated Regulation in the way it deems appropriate in one or more registers whenever the required information is included[2].

16. SUITABILITY AND APPROPRIATENESS ASSESSMENT (Last update: 30 October 2017)

16.1. Can the client suitability test be automatically updated by the entity in the event that it has sufficient information to determine the risk tolerance of said client and communicate the result to the client? (Last update: 30 October 2017)

> **CNMV's reply**
>
> In relation to the method of updating the suitability test, if the entity had sufficient information that pointed to a change in the characteristics of the client that should be taken into account for the suitability assessment, it would be reasonable to update the suitability test and report the result to the client. For example, the entity may have information about a change in the client's financial situation and it would be reasonable to update the test based on this information, informing the client. Communications may also be made when maintaining the characteristics that allow the client to be profiled. In contrast, it is not acceptable to make these communications to make certain changes not formally agreed with the client, such as establishing an increase in the risk tolerance of the client as a result of having performed certain operations or by providing a service with a level of risk superior to that derived from a suitability test given that the client may have a different risk profile or objective for different parts of his or her assets or mandates.

1 These articles have been developed respectively by the Delegated Regulation (EU) 2017/590 of the EC and the Delegated Regulation 2017/580 of the EC.

2 This information includes: (i) the content and date of instructions received from clients, (ii) assignment decisions made in a way that allows complete tracking to be carried out between the transactions of client accounts and instructions received from clients, and (iii) the final assignment to the clients.

16.2. Can the registration obligations set forth in Art. 56.2 of the Delegated Regulation be considered included in CNMV Circular 3/2013? (Last update: 30 October 2017)

CNMV's reply

The registration obligations provided in Article 56(2) of the DR are included in part in Circular 3/2013. The fifth rule of this Circular requires the maintenance of an updated record of evaluated clients and non-adequate products that will reflect for each client the products whose appropriateness has been evaluated with a negative result. The appropriateness assessment records are also included in the CNMV Resolution of 7 October 2009, according to which the information or documentation must be registered in order to evaluate the appropriateness and all the warnings sent or made by the company that provides investment services, which would include both warnings regarding the non-appropriateness of the product and warnings regarding the impossibility of evaluating appropriateness when faced with a lack of client information.

Article 56(2) of the DR requires that a record be kept of not only the assessment carried out and of the warnings regarding the non-appropriateness or lack of information but also: (i) if the client requested to proceed with the transaction despite the warning and, if applicable (ii) if the entity accepted the client's request to proceed with the transaction. In principle, it is considered that if the client gives an order and the entity processes it, these two facts are recorded in the register.

16.3. How should the obligation to globally assess the appropriateness or suitability of a product package be understood? (Last update: 30 October 2017)

CNMV's reply

This obligation should be understood as a single product consisting of several components being offered. Therefore, when assessing appropriateness or suitability, the characteristics of the product as a whole should be considered in terms of performance, risk, costs, etc.

The suitability assessment should take into account the joint risk of the product or the recommended time horizon of the investment as a whole in order to conclude whether it is suitable to the client's risk profile or investment objectives.

An example of a combined sale would be a non-complex, low-risk fund together with a complex structured deposit or structured insurance product with a higher risk. It should be evaluated jointly if the package is advisable (or suitable). For these purposes, it should be taken into account that the structured deposit or structured insurance would add complexity and risk with respect to the non-complex investment fund.

16.4. For the purposes of the suitability assessment, what responsibility does the entity have vis-à-vis the information obtained from the client? (Last update: 30 October 2017)

> **CNMV's reply**
>
> Entities have the right to rely on the information provided by their clients or potential clients unless they know, or should know, that the information is manifestly out of date, inaccurate or incomplete. Likewise, entities must take reasonable steps to promote that the information obtained about their clients or potential clients is reliable. In this respect, CNMV considers it important that entities have systems that allow them to verify that the information obtained in the suitability test is consistent with any other information that they may have on the client.

17. NON-COMPLEX FINANCIAL INSTRUMENTS (Last update: 30 October 2017)

17.1. Can it be understood that CISs other than UCITS (except structured UCITS which are in any case complex financial instruments) regulated in the LCIS and RCIS, insofar as they comply with the six criteria established in Art. 57 of the delegated regulation, will be a non-complex financial instrument that can be acquired through "execution only", without having to carry out the assessment of its appropriateness for the client? (Last update: 30 October 2017)

> **CNMV's reply**
>
> No. According to ESMA Q&A 1 on Appropriateness/Complex Financial Instruments, shares of CISs that are not UCITS are explicitly excluded from the universe of non-complex products in accordance with Article 25(4) of MiFID II and cannot be reassessed according to the criteria of Article 57 of the MiFID II DR.
>
> This treatment is consistent with the general criterion applicable to any other financial instrument; if the instrument is explicitly exempted from the list of non-complex products of Article 25(4) of MiFID II, the instrument will be considered complex and cannot be reassessed as not complex according to the criteria of Article 57 of the DR as reflected in Recital 80 of MiFID II. This is the case, for example, of stocks and bonds that incorporate a derivative, bonds that incorporate a structure that makes it difficult to understand the associated risks, or structured UCITS. Their treatment as a complex product responds to the objective of improving investor protection by requiring entities to conduct an appropriateness assessment before providing execution services in relation to these instruments.

17.2. **Would funds with a fixed income return objective that invest only in a portfolio of term purchased bonds have the status of structured CISs?** (Last update: 30 October 2017)

> CNMV's reply
>
> No. Funds with a fixed income return objective do not qualify as structured CISs regulated in Art. 36 of EU Regulation 583/2010.

18. STRUCTURED DEPOSITS (Last update: 30 October 2017)

18.1. **MIFID II equates the marketing of structured deposits with financial instruments in relation to; inter alia, the rules of conduct. Could structured deposits be included in the managed portfolios?** (Last update: 30 October 2017)

> CNMV's reply
>
> Although structured deposits are not a financial instrument within the scope of MiFID II, Art. 1(4) set out the provisions that apply to investment firms and credit institutions when they provide advice on and sell these products to clients. These provisions include several that affect the portfolio management service. In addition, Article 1(2) of the MiFID II Delegated Regulation states that, "References to (...) financial instruments shall encompass structured deposits in relation to all the requirements referred to in (....)1(4) of Directive 2014/65/EU and their implementing provisions as set out under this Regulation".
>
> Furthermore, it is reasonable to consider that the inclusion of structured deposits in clients' managed portfolios, within the framework of the provision of the discretionary portfolio management service, has the broader concept of providing advice on and selling these products to clients. Therefore, CNMV considers that structured deposits can be offered as an alternative in the discretionary portfolio management, if the product fits the profile and contract of the client, along with other products that are considered financial instruments.

19. CONTRACTS WITH CLIENTS (Last update: 30 October 2017)

19.1. **Is it necessary to formalize a basic contract with retail and professional clients for the mere reception and transmission of orders? Can CISs' subscription and redemption orders be considered valid for the purpose of complying with these requirements, especially in those cases in which there is no securities custody agreement linked to such transaction?** (Last update: 30 October 2017)

CNMV's reply

Article 58 of the MiFID II Delegated Regulation establishes that a basic agreement must be concluded that establishes the essential rights and obligations of the company and the client, and does not provide for any exception regarding the service of receipt and transmission of orders on CISs. To the extent that the subscription and redemption orders of CISs contain the information indicated, they may be considered valid to fulfil the obligation to have a basic contract for the reception and transmission of orders.

19.2. **Can it be understood that the revisions and consequent updates of the contracts will be understood as accepted by the clients by tacit consent, once a period of 15 days has elapsed after they are submitted to the client without the client having expressed his/her opposition to them?** (Last update: 30 October 2017)

CNMV's reply

CNMV considers that it can, although the 15 days will be counted from the reception by the client.

19.3. **What types of clients affect the obligation to sign a contract in the provision of investment services?** (Last update: 30 October 2017)

CNMV's reply

MiFID II requires that a basic contract be entered into with professional clients as well as with retail clients. This obligation will be applied in the provision of investment services and the auxiliary service of custody and administration, although in the advisory service it will only be obligatory to enter into a contract in those cases in which the entity is to perform a periodic assessment of the suitability of financial instruments or recommended services. It is not appropriate, as from the entry into force of MiFID II, for this obligation to apply only to new professional clients. Rather, all professional clients must have entered into a contract.

20. BEST EXECUTION (Last update: 30 October 2017)

20.1. **How must the execution obligations be applied to CISMCs in both their collective management and discretionary portfolio management activities?** (Last update: 30 October 2017)

CNMV's reply

As far as collective management is concerned, there have been no developments and it should be remembered that CIS regulations already contain specific rules on better execution.

Regarding discretionary portfolio management, as mentioned above, Article 1(1) of the DR contains an error due to a failure to update the references to the articles of an earlier version. In principle, Articles 64(4) and 65 of Section 5 on best execution (and Articles 66(2) to 66(9) by reference to Article 65) apply to CISMCs.

Furthermore, in general, those entities, when providing portfolio management services or receiving and transmitting orders must identify in their execution policy, for each class of FI, the entities to which they are to transmit the orders for execution. The mention of the execution centres in Article 66 should be understood in this case as the entities to which orders are transmitted for execution. The execution policy for CISMCs provided by the portfolio management service must therefore, where appropriate, include information on the selected intermediaries and not necessarily on the execution centres.

20.2. Does the annual publication requirement of the five main investment firms to which client orders have been placed or transmitted, for each type of FI, for their execution in terms of volume, as well as information on the execution obtained, apply to CISMCs? If so, should this publication be made with the content contained in RTS 28[3]? (Last update: 30 October 2017)

CNMV's reply

Yes. Article 65(6) states that such information to be published shall coincide with the information published in accordance with RTS 28.

21. KNOWLEDGE AND COMPETENCE (Last update: 13 July 2018)

21.1. Must portfolio managers meet the knowledge and competence criteria of staff providing information or advising on investment? (Last update: 30 October 2017)

CNMV's reply

In accordance with the scope of application of the CNMV Technical Guide, relevant personnel of the financial entities (including the agents) are those who provide information or advice to clients or potential clients, those staff who assist clients in relation to discretionary portfolio management contracts also being considered advisers.

[3] COMMISSION DELEGATED REGULATION (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution.

21.2. Confirmation of the application of the measures for the assessment of the indicated knowledge and competence to the foreign entities that render investment services in Spain through branches or to related agents in Spain. (Last update: 30 October 2017)

> CNMV's reply
>
> Given that the provision of services is carried out in Spain, the 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.

21.3. What are the criteria that must be taken into account, according to Technical Guide 4/2017, to consider that the relevant staff of an entity obliged to provide information have the necessary qualifications? (Last update: 13 July 2018)

> CNMV's reply
>
> Technical Guide 4/2017 on knowledge and competencies of the staff that provide information and advice, approved by the CNMV Board on 27 June 2017, establishes criteria on the knowledge and competencies that the staff that provide information to and/or advise clients on behalf of the entities must have, as well as on the manner in which said knowledge and competencies must be evaluated/accredited.
>
> In order for it to be considered that relevant staff have the necessary qualifications, their knowledge and competencies must comprise, inter alia, all the aspects envisaged in sections Five/Six of the aforementioned Guide.
>
> The Guide acknowledges three ways to accept that relevant staff have the required knowledge and competencies:
>
> - That the relevant staff have any of the qualifications or certificates included in CNMV’s published list of qualifications and certificates of specialised entities in relation to advisory and information services.
>
> - That the training accreditation of relevant staff rests with the financial institution itself, fulfilling the requirements established for such purpose.
>
> - That the financial institution, under its own responsibility, considers the qualifications or certificates other than those included in the list of qualifications published by CNMV to be appropriate, for which purpose the entity's Regulatory Compliance Unit, taking into account the procedures and criteria established by the board of directors, must verify the equivalence between the training and evaluation activities corresponding to such qualifications or certificates and the criteria and characteristics developed in the Guide.

21.4 Should knowledge accreditation exams be done in person in all circumstances without exception? (Last update: 13 July 2018)

CNMV's reply

In relation to this question, and for each of the three channels to accept that the relevant staff have the required knowledge and competencies, indicated in question 21.3 above, it is worth mentioning that:

- List of qualifications published by CNMV. Section 22(b) of the Guide requires interested entities to publish their qualifications in the CNMV list that accompanies the programme's application description, among whose content it is required to mention "in person evaluation systems", as opposed to training, which may be "in person or remote".

  Consequently, the evaluation systems for obtaining the qualifications that, at the request of the interested entities, CNMV will publish on its website, must necessarily be in person.
- Accreditation of staff training by the entity itself. Among the requirements that must be met, section 12(g) of the Guide mentions that the knowledge tests or exams to be carried out must, in any case, be done in person.
- Other qualifications or certificates. When entities, under their own responsibility, consider as appropriate the titles or certificates other than those included in the list of qualifications published by CNMV, their Compliance Unit shall, as indicated in section 25 of the Guide, taking into account the procedures and criteria established by the board of directors, verify the equivalence between the training and evaluation activities corresponding to such qualifications or certificates and the criteria and characteristics developed in the Guide.

21.5 Are the qualifications issued by certifying entities valid before they are included in the CNMV list? What if the evaluation has been carried out through remote systems in these cases? (Last update: 13 July 2018)

CNMV's reply

The inclusion of the qualifications in CNMV's list is effective from the date on which CNMV adopts the corresponding resolution.

This does not prevent the financial institution, under its own responsibility, according to what is indicated in question 21.4 above from considering those qualifications or certificates as having been granted before the date of their inclusion in CNMV's list.

The issued certificates in which the evaluation has been performed prior to their incorporation into CNMV's list using a remote evaluation method may not be issued as an entity included in the list of the eighth rule of the Technical Guide.

21.6 What is the consideration of the operators of a Securities Company for the purposes of the provisions of CNMV Technical Guide 4/2017? (Last update: 13 July 2018)

CNMV's reply

Technical Guide 4/2017 establishes in its scope that relevant staff of financial institutions (including agents) will be understood as those persons who provide information to or advise clients, advisory staff also being considered as those who attend to clients with discretionary portfolio management contracts.

Likewise, the purpose of the Technical Guide is to establish criteria on the knowledge and competencies that staff who provide information to and/or advise clients or potential clients on behalf of entities must have, as well as the manner in which said knowledge and competencies must be evaluated.

Consequently, if the staff referred to in the consultation did not perform or provide any of the aforementioned activities or services, they would not be considered relevant staff, since they would not be included in the scope and purpose of Technical Guide 4/2017.

21.7 Do the obligations established in Technical Guide 4/2017 apply to Spanish branches of foreign Investment Firms? (Last update: 13 July 2018)

CNMV's reply

Technical Guide 4/2017 establishes criteria on the knowledge and competencies that staff who provide information to and/or advise clients on behalf of entities must have, as well as the manner in which said knowledge and competencies must be evaluated.
In this regard, the Guide, in its scope, mentions financial institutions "that provide investment services in Spain and the relevant staff thereof". Therefore, the branches of foreign financial institutions that provide investment services in Spain and the relevant staff thereof will be obliged to comply with Technical Guide 4/2017.

21.8 Will CNMV evaluate the validity of certificates at the request of the persons who hold them? (Last update: 13 July 2018)

CNMV's reply

Technical Guide 4/2017 specifies the manner in which entities obliged to provide information (that is, financial institutions) must demonstrate their compliance to CNMV.

Consequently, CNMV's evaluation of qualifications and certificates at the request of persons who hold them is not envisaged, but rather exclusively at the request of the issuers thereof.

The evaluation, as the case may be, of qualifications and certificates at the request of persons who hold them will be the responsibility of the financial institution to which the interested party renders their services.

21.9 In relation to the minimum number of ongoing training hours referred to in Technical Guide 4/2017, must this ongoing training be carried out the year in which the Training Programme was carried out and the Accreditation Certificate acquired? Must temporal criteria be applied to this question? (Last update: 13 July 2018)

CNMV's reply

Article 12(i) of Technical Guide 4/2017 establishes that entities shall carry out a review, at least once a year, of the development and needs of the relevant staff. This review will ensure that the relevant staff have the appropriate qualifications and that they maintain and update their knowledge through ongoing professional training.

Additionally, Article 19(6) of the aforementioned Guide informs of the minimum number of annual teaching hours that this training should consist of, although under the responsibility of the entity's board of directors, the number of hours may be lower.

Therefore, the entity's criteria and decision will dictate whether in the same year that the training programme is carried out and the Certificate acquired, some additional training must be taken, taking into account the need and opportunity to provide training on new developments in markets or financial instruments.

22. Other Organizational Requirements (Last update: 13 July 2018)

22.1 How is the compliance verification function modified under MiFID II regarding the principle of authority and independence? (Last update: 13 July 2018)

CNMV's reply

Under MiFID II, the guiding principles of "authority" and "independence" that the compliance verification function must observe have been reinforced, since Article 22 of Delegated Regulation (EU) 217/565 of the Commission, of 25 April 2016, explicitly establishes, among others, the following requirements not included in Article 6 of Directive 2006/73/EC of the Commission, of 10 August 2006 (previously in force):

The person discharging the compliance verification function must inform the Board of Directors, at least annually, about the implementation and effectiveness of the general control environment for investment services and activities, the risks that have been identified and the reports related to the processing of claims, as well as the solutions applied or that should be applied.

- The person discharging the compliance verification function must report "ad hoc" directly to the Board of Directors if he/she detects a significant risk of non-compliance by the company.

- The Board of Directors is the body responsible for appointing and, where appropriate, replacing the person discharging the compliance verification function.

In view of the above, in large and/or very complex entities, it is considered that the ideal situation would be for the person discharging the compliance verification function to directly report hierarchically to the Board of Directors (or any Delegated Committee thereof, such as Control or Compliance) as this maximises his/her authority and independence and facilitates his/her free access to this body, as provided for by the regulations.

For such entities it is also appropriate for the person discharging the compliance verification function to report hierarchically to the entity's Chairman or CEO (as these are the senior management members who hold the greatest executive powers), since with this position in the organisational chart, the necessary authority of the person discharging the compliance verification function could essentially be considered safeguarded as it is at least hierarchically equivalent to the rest of the entity's business and advisory areas.

Finally, also with regard to large and/or very complex entities, although the person discharging the compliance verification function may simultaneously exercise other functions that do not pose conflicts of interest, such functions may not include the business, internal audit or legal advisory areas.

In the case of smaller and less complex entities, the criteria of proportionality must be considered and, therefore, other approaches may be adopted (which should be assessed on a case-by-case basis), provided that the general regulatory principles are followed and any functions that are combined are appropriate.

In any case, the following regulatory provisions must be complied with: the person directly responsible for said function must be appointed and dismissed by the Board of Directors (or Delegated Committee of which the most senior executive to whom he/she reports is not a member). In addition, free access and direct reporting to this body by the person responsible for the regulatory compliance function must be ensured.

23. MiFID II Scope (Last update: 13 July 2018)

23.1 What are the MiFID obligations applicable to the CIS management companies in the marketing of CIS (own or third-party)? (Last update: 13 July 2018)

CNMV's reply

In accordance with the regulations in force, with respect to marketing of CIS (own or third-party), CISMC are only required to comply with the rules of conduct relating to the assessment of suitability and appropriateness.

This is because, although when CISMC market CIS, they simply manage the subscription order, a function which corresponds to the management company in accordance with Art. 40 of the CISL and 94 of the CISR (without marketing having RTO status, that is, reception or transmission of orders), Article 141 of the CISR establishes that the provisions of chapter III (assessment of suitability and appropriateness) of Title IV (rules of conduct) of DR 217/2008 are applicable.

However, since it is reasonable for the marketing of CIS by managers to be carried out in the same terms as that of IFs, it is normal to expect that MiFID II transposition regulations extend to management companies the regime to which IFs are subject in this respect.