

THE CNMV APPROVES THE TECHNICAL GUIDE FOR ASSESSING APPROPRIATENESS AND ADOPTS ESMA'S GUIDELINES ON CERTAIN ASPECTS OF THE MiFID II APPROPRIATENESS AND EXECUTION-ONLY REQUIREMENTS

19 April 2022

The CNMV has approved the [Technical Guide for assessing appropriateness](#) and has adopted [ESMA's Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements](#).

The publication of the technical guide has the twofold objective of increasing transparency of the practices and criteria followed by the CNMV in the exercise of its supervisory role, and to help firms understand what the CNMV considers appropriate for due compliance of regulations. The technical guide is fully consistent with ESMA's Guidelines and contains in-depth details of the criteria not covered under the guidelines, which the CNMV considers appropriate to comply with applicable regulations.

The following are some of the new features included in the technical guide:

- The relevance that should be given by firms to the information on clients' financial literacy and the need to gather this information, thereby ruling out the possibility of solely considering the client's prior investment experience as sufficient when assessing appropriateness. It also indicates that when assessing the appropriateness of complex instruments, specific questions on their nature, characteristics and key risks should be included. Guidelines are also included on how to ask questions about this matter.
- When assessing complex instruments, in general, it is not considered prudent to solely consider appropriateness based on the positive assessment of financial literacy, but rather a minimum level of education, prior investment experience, or a combination of both, should also be required from the client. The greater the complexity of the product the higher the required level of education and investment experience. The foregoing is without prejudice to exceptions to this general approach being accepted, providing that they are justified and based on objective data.

Furthermore, the technical guide indicates that firms must apply controls on the reliability, consistency and reasonableness of the information obtained from clients, in line with the [public statement issued by the CNMV on 5 February 2019](#).

The final text of the technical guide has been defined after analysing the comments and observations received during the public consultation period (from 27 July to 30 September 2021) as well as the report issued by the CNMV Advisory Committee. A document [containing the assessment of the comments received](#) has also been published. The technical guide was among the initiatives included in the Activity Plan for 2021 but its publication was slightly delayed to coincide with the adoption of ESMA's Guidelines on this same matter, thereby enabling regulated firms and investors to have a unique, consistent and updated body containing guidelines on this matter.

The updated technical guide updates and replaces the criteria contained in the Procedural Guide to Analyse Appropriateness and Suitability, dated 17 June 2010, when carrying out the appropriateness assessment, taking into account the regulatory developments made since then, the documents and guidelines published by ESMA, as well as the supervisory experience gained since its publication.

ESMA Guidelines

The publication of the technical guide coincides with the adoption of ESMA's Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements.

On 3 January 2022, the "Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements" were published in English on ESMA's website. The Guidelines will enter into force six months after they are published in all EU official languages.

The aim of these guidelines is to improve the clarity and to enhance convergence in the application of certain aspects of the appropriateness and execution-only requirements, following the amendments in MiFID II on this matter, and based on the results of the common supervisory action carried out by ESMA on the application of the MiFID II appropriateness assessment requirements.

The most relevant aspects of these guidelines are detailed below:

- Assessing the client's knowledge is considered a core element of the assessment. Details are provided on how this information is gathered. Firms should ensure that the questions are clear and comprehensible, avoiding directing clients in their replies, giving clients the possibility of replying that they do not know the answer. In particular, the guidelines indicate that the use of self-assessment questions with "yes/no" or "tick-the-box" answers should be avoided.
- The need to ensure the consistency and reliability of the answers provided by the clients when gathering the information on their knowledge and experience, without simply relying on the fact that clients are expected to provide correct, updated and complete information. Firms should be alert to any relevant contradictions and should contact the client to resolve any possible inconsistencies. If the information provided is not reliable, it should be considered that the firm does not have sufficient information to carry out the appropriateness assessment, and it must issue the corresponding warning.
- The conditions that warnings need to have to ensure their effectiveness are detailed.
- The registration requirements for assessing appropriateness are indicated. These must enable firms to carry out ex post monitoring of the entire appropriateness assessment process.

The CNMV has informed ESMA that it complies with the Guidelines. Therefore, it will take into account and focus its attention, within the scope of its supervisory powers, on their application by firms providing services other than advice or portfolio management.

The Guidelines have been issued under Article 16 of Regulation No. 1095/2010 of the European Parliament and of the Council, of 24 November 2010, regulating the creation of ESMA, which establishes that competent authorities and financial market participants will do everything possible to adhere to these guidelines. Additionally, the ESMA Regulation also establishes the obligation of competent authorities to inform ESMA, within two months of publishing the translated Guidelines, whether they intend to comply with the Guidelines published by ESMA.

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Note for editors:

Securities market rules of conduct establish that investment firms¹, when providing investment services other than discretionary portfolio management or investment advice², must assess whether they are appropriate for the client when such services refer to either financial instruments with a regulatory category of “complex” or to financial instruments with a regulatory category of “non-complex” if the initiative was made by the firm providing the service.

To this end, investment firms must ask clients to provide information regarding their knowledge and experience in the investment field relevant to the specific type of investment service or product offered or demanded, in order to assess whether such investment service or product is appropriate for the client.

When following the outcome of the assessment, the firm considers that the investment product or service is not appropriate for the client, the firm must issue the relevant warning to him. When the client does not provide the necessary information or it is insufficient to complete the assessment, the firm must warn the client that such decision does not enable it to determine whether the investment product or service is appropriate for him.

¹ Broker-dealers, securities brokers, portfolio management companies, financial advisory firms, as well as credit institutions, collective investment scheme management companies or closed-ended collective investment scheme management companies, when providing investment services.

² The appropriateness assessment applies to the distribution of financial instruments in different areas of discretionary portfolio management or advice. The suitability assessment must be carried out when these two services are provided. When assessing suitability, the client’s knowledge and experience must be assessed as in the case of the appropriateness assessment, as well as his financial situation, including his ability to bear losses, and his investment objectives, including his risk tolerance.

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