|  |  |
| --- | --- |
| **CNMV** | Institution Authorisation and Registration Department |
|  |  |

|  |
| --- |
|  |
|  |

**FOR AUTHORISING A THIRD-COUNTRY IF TO PROVIDE INVESTMENT SERVICES AND ENGAGE IN INVESTMENT ACTIVITIES, WITH OR WITHOUT ANCILLARY SERVICES, IN SPAIN WITHOUT THE ESTABLISHMENT OF A BRANCH.**

**MANUAL**

Mr/Ms…………………………………… ……………………………………, holder of Tax Id. Number (NIF)/passport no./resident card no./Tax Id. Code (CIF) ………………………….., in the name and on behalf of (*Firm name)* ……………………………, with Tax Id. Code /identity no. ……………………… , with registered office at ………………………, in the capacity of …………………, HEREBY DECLARES:

* That his/her powers of attorney are sufficient and are not subject to conditions or limitations.

* That in the event of a significant modification of the conditions set out in this Manual, or of the conditions for the authorisation or supervision of (*Firm name*) by its competent national authority(ies), it shall report such modifications to the CNMV in writing.

## Firm's identification data

* Name of the Investment Firm (hereinafter, the Firm): ……………………………………………………….….
* Legal regime: ………………………………………….
* Registered office: ……………………………………..….
* Corporate purpose: ……………………………………..….
* Jurisdiction and date of incorporation: ……………………………………..….
* Members of the managing body:

|  |  |
| --- | --- |
| First name and surnames/firm name (\*) | **Position** |
|  |  |
|  |  |
|  |  |

(\*) in the case of Legal Persons, include: Represented by ………………………………….

* Indicate those shareholders of the firm who have a stake in its share capital that directly or indirectly represent more than 5%, by completing the following table:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| First Name and Surnames  (Firm name, in the case of legal person shareholders) | Tax Id. Number /Tax Id. Code | % of Direct Ownership | Indirect shareholding | | % total stake |
| Through | % Shareholding |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

* Main activities of the firm and its group, description of how they are organised in the different jurisdictions where they operate. Attach a current organisation chart of the group:

|  |
| --- |
|  |

* List of firms in the group of the firm subject to authorisation or supervision on an individual or consolidated basis, which, where appropriate, operate in Spain (if they do not exist, respond “Non-existent”):

|  |  |  |  |
| --- | --- | --- | --- |
| Firm name | Home State | Supervisory authority | Description of the activity in Spain |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

* Inform if the firm, or any company of its group, has been subject to any criminal conviction or civil or administrative penalty or measure for conduct failings, such as fraud, dishonesty, corruption, money laundering, terrorist financing or other financial crime or of failure to put in place adequate policies and procedures to prevent such events.

NO

YES   Provide details of such occurrences and inform of the measures taken to mitigate these risks in the future: …………………………………

## Authorisation and supervision in the third country

The provision of the services for which (*Firm name*) requests authorisation is subject to authorisation and supervision in (insert country) and (*Firm name*) has the appropriate authorisation, which has been granted by the competent authority, as described below, in accordance with the recommendations of the Financial Action Task Force as part of the fight against money laundering and terrorist financing:

* Name and main details of the authority responsible for authorisation and supervision in the third country …………………….…… *(Where the authorising and/or supervisory responsibilities are exercised by more than one authority, detailed information of their respective areas of competence shall be provided)*:
* Other relevant information regarding its authorisation and/or supervision: date of authorisation, scope of authorisation (services and activities authorised, instruments on which the investment services or activities[[1]](#footnote-1) will be provided, registration data, as well as any other data that may be of interest):
* *(Firm name)* hereby certifies that:

• It holds the legal status required in the home State for the provision of the services, under the intended terms and conditions for Spain, without the establishment of a branch:

• The provision of the intended services in Spain without the establishment of a branch is subject to authorisation by (*insert name of its competent authority(ies))* as the competent authority(ies) of (*Firm name)*:

NO   Submit the exception certificate

YES   Detail**[[2]](#footnote-2)**

|  |
| --- |
| * *(Firm name) obtained on XX/XX/XXXX the corresponding authorisation from its competent authority for the provision of investment services and engaging in investment activities, with or without ancillary services, without an establishment in Spain.* * *(Firm name) has not yet obtained the corresponding authorisation from its competent authority for the provision of investment services and engaging in investment activities, with or without ancillary services, without an establishment in Spain, but it filed the application on XX/XX/XXXX /intends to file the application in due course.* |

• The applicable statutory, regulatory and administrative provisions of the home State shall not prevent the CNMV from effectively exercising its inspection and supervisory functions with regard to the activity that the firm intends to carry on in the field of securities markets in Spain, and therefore, access by the CNMV to any type of information or documentation related to the carrying on of such activity is guaranteed:

The details of the contact person at (*Firm name*) are attached for the purpose of submitting the information and documentation indicated in the paragraph above:

First name and surnames:

Position held at the Firm:

Address:

Telephone No.:

Email:

*(Firm name)* also undertakes to report any significant changes to the rules and regulations of its home State that may limit the CNMV’s capacity to access the information required under the terms and conditions stated in this section:

## 3. Activity to be carried on in Spain by the Firm

* Attached is the list of investment services and activities, ancillary services and financial instruments detailing the investment and ancillary services, completed in accordance with *Annex I* to this Manual:
* Briefly explain the main reasons justifying the (*Firm name*) providing investment services and engaging in investment activities, with or without ancillary services, in Spain, without the establishment of a branch:

|  |
| --- |
|  |

* Describe the main characteristics of each of the services contained in the list of services and activities attached to this Manual as *Annex I*. The description shall include, inter alia, information on: (i) the types of financial instruments (including trading venues and OTC trading) and professional *per se* and eligible counterparty clients; (ii) whether they are linked or not with other services; (iii) whether the activity is new, or where appropriate, the firm is already carrying on the activity in Spain through branches of the group’s firms or through European firms of the group operating in Spain under the freedom to provide services regime (providing details of the firms and justifying, where appropriate, the reasonableness of relocating the business).

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Investment services and activities**  **/**  **Ancillary service** | **Description** | | | | | | |
| General description  /  particularities | Financial instruments | | Type (professional *per se* clients and eligible counterparties), Number and Location ( Spain, rest of EU and no EU) of clients | Link with other services or activities | Activity | |
| Type | Trading  venues    /  OTC | New | Carried on in Spain through other firms of the group |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |

## 4. Membership of an investor compensation scheme

* (*Firm name*) is part of (*Name of investor compensation scheme*), an investor compensation scheme authorised or recognised under Directive 97/9/EC.

YES ****Provide other relevant information on the investor compensation scheme: (e.g., clients and maximum amount covered): ……………………………….

* Would the Spanish clients qualify for the above guarantee scheme? Please provide additional details: ……………………………….

## 5. List the persons of the Firm who shall determine how to effectively direct the business to be carried on in Spain, and who will be directly responsible for its management. Eligibility requirements.

* The board of directors of (*Firm name*) shall have ultimate responsibility for managing the business that it intends to carry on in Spain, without the establishment of a branch, and shall establish the appropriate operating rules and procedures to enable all its members to always comply with their obligations and assume their responsibilities in accordance with the rules regulating the securities markets:

YES

* List the persons who shall determine how to effectively direct the business to be carried on in Spain, and who will be directly responsible for its management.

|  |  |  |  |
| --- | --- | --- | --- |
| **First name and surnames** | **HIQ** | **CRC** | **CV** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

Each of the persons listed in the table above must provide:

* Their honourability and integrity questionnaire (HIQ) according to the standard model prepared by the CNMV (See *Annex II* to this Manual).
* A current criminal record certificate (CRC) issued by the Spanish Ministry of Justice and/or the equivalent body in the home States where the candidate has worked in the last 10 years.

In the case of EU citizens with a nationality other than Spanish, the Central Register of Convicted Persons of the Ministry of Justice of Spain will request information on the background of the person making the request from the central authority of the State of nationality of the person making the request, in order to be included in the certificate provided.

* A photocopy of their valid Spanish national identity card (DNI), passport or resident card.
* Their curriculum vitae or academic and professional record (CV), in which they must provide the following information to demonstrate that they meet the requirements as regards knowledge, skills and experience:
  + Academic background (qualifications and other relevant training) of the candidate. In the case of a university degree, it will be indicated whether the degree corresponds to a Bachelor's or a Master's degree (university degrees lasting five years or more will be considered to have the status of a Master's). Other specialised courses taken by the candidate will also be stated.
  + Employment history. The current and previous positions held must be indicated, specifying full names and the nature and activity of all entities for which the person has worked (naming the supervisory body in the case of a financial institution), the countries in which the person has worked and the nature and duration of the duties performed, in particular in relation to any activities within the scope of the position for which the person is applying (financial and/or management experience); for positions held over the last ten years, the description of these activities must specify any delegated powers and competences in the internal decision-making process, as well as the areas of operations under their control.
* The CV must be submitted in accordance with the Europass CV model or similar (<http://europass.cedefop.europa.eu>; [www.coe.int/portfolio](http://www.coe.int/portfolio)).
* Both the CV and the HIQ must be dated and electronically signed by the person concerned.

## 6. The human and material resources, as well as control mechanisms that the Firm shall use for the activity in Spain

* (*Firm name*) shall maintain an appropriate and proportionate organisational structure in place in accordance with the nature, scale and complexity of the services that it intends to provide, with clearly defined, transparent and coherent lines of responsibility. To this end, the firm shall have staff with the qualifications and experience required to engage in and monitor the investment services and activities, and the ancillary services contained in the list attached to this Manual as *Annex 1*. Likewise, the firm shall undertake to keep an orderly and proper record of its activity and internal organisation, ensuring that the competent persons fulfil their various duties.

YES

* (*Firm name*) shall have robust security mechanisms in place to guarantee the security and authentication of systems and methods used for the transmission of information, minimising the risk of data corruption and unauthorised access and preventing information leaks, always maintaining the confidentiality of the data, with regard to the business that it intends to carry on in Spain without the establishment of a branch, and offer to its clients:

YES

* (*Firm name*) shall adopt reasonable measures to guarantee continuity and regularity in the provision of its services, having in place, in particular, efficient mechanisms to control and safeguard its computer systems and contingency plans in the event of damages or disasters:

YES

* (*Firm name*) shall have adequate and sufficient policies and procedures in place to ensure that the firm, including its managers and employees, can always comply with their obligations and assume their responsibilities in accordance with the rules regulating securities markets, which are applicable to engaging in investment services and activities, and ancillary services in Spain, without the establishment of a branch, including a body responsible for the compliance function:

YES

* *(Firm name)* shall keep a record of all the services, activities and transactions carried out in the field of securities markets. For such purpose, the firm shall, as a minimum, keep the records listed in *Annex I to Delegated Regulation (EU) 2017/565*, which are applicable to its activity:

YES

* *(Firm name)*, providing that the list of services and activities includes the provision of services related to these, undertakes, in respect of the assets entrusted to it by its clients, to adopt the appropriate measures and keep the appropriate internal records, under the terms and conditions laid down in *Article 41 of Spanish RD 217/2008*, in order to safeguard the property rights of such clients:

YES

The external auditors of (*Firm name*) shall submit, where appropriate, to the CNMV an annual report on the appropriateness of the measures adopted to protect the assets to be entrusted to it by its clients, under the terms and conditions laid down in *Article 47 of Spanish RD 217/2008*:

YES

* Does (*Firm name*) plan to provide investment advisory services independently?

NO

YES The firm will designate a person(s), department or area responsible for:

|  |
| --- |
| * Verifying that the firm will define and apply a selection process to assess and compare a sufficient range of financial instruments available on the market, in accordance with *Article 220 ter (1)(a) of TRLMV* and that such process will include the elements described in *Article 53(1) of Delegated Regulation (EU) 2017/565*:   YES □   * Ensuring that the firm meets the requirements set out in *Article 53(2) of Delegated Regulation (EU) 2017/565* when it provides investment advice on an independent basis and focuses on certain categories or a certain range of financial instruments:   YES □   * Verifying, in the event that the Firm provides both independent and non-independent investment advice, that the firm has established appropriate organisational and control requirements to ensure that both types of advisory services and advisers are clearly separated from each other and that clients cannot be confused as to the type of advice that they receive, and obtain the type of advice that is appropriate for them, and that the firm does not permit the same natural person to provide both independent and non-independent advice:   YES □ |

* (*Firm name)*, pursuant to the provisions of *Article 220 sexies of TRLMV*, will assess compliance by its key staff (understood to be the staff of the firm who provide information or advice to clients or potential clients, also considering those staff who provide service to clients under discretionary portfolio management contracts as staff giving advice), with the knowledge and skill requirements necessary for the performance of their duties, in accordance with the criteria, terms and conditions established in *Technical Guide 4/2017 of the CNMV*:

YES

* Custody of financial instruments (*Article 42 of Spanish RD 217/2008*); use of client financial instruments (*Article 44 of Spanish RD 217/2008*); surveillance and control mechanisms (*Article 46 of Spanish RD 217/2008*).

Does **(***Firm name***),** under the scope of the provision of services in Spain without the establishment of a branch, plan to provide the ancillary service of custody and administration of financial instruments, having indicated this in the list of services and activities attached to this Manual as *Annex I*?:

No activity planned

Yes  Detail:

|  |  |
| --- | --- |
| 1. Provide the name of the custodian(s) and describe the main characteristics of the agreements that it plans to sign, in particular those related to the adoption of the necessary measures to safeguard the property rights of its clients, especially in the case of insolvency, and to prevent the use of clients’ financial instruments for its own account, except where clients have given their express consent):  |  | | --- | |  |  1. (*Firm name*) undertakes to comply with the requirements set out in Article 41 of Spanish RD 217/2008 to protect its clients’ assets:   YES □   1. Whether (*Firm name*) intends to enter into arrangements for securities financing transactions in respect of financial instruments which it will hold on behalf of a client, complying with the requirements laid down in Article 44 of Spanish RD 217/2008:   YES □   1. (*Firm name*) shall have persons who shall be responsible for preparing, supervising and forwarding to the firm’s eligible counterparty clients and professional clients *per se* or potential clients the information related to the safeguarding of financial instruments or client funds, specified in *Article 49(2) to (7) of Delegated Regulation (EU) 2017/565*, as well as, where appropriate, to each client for whom it holds financial instruments or funds, a statement in a durable medium of those financial instruments or funds, under the terms and conditions set out in *Article 63 of Delegated Regulation (EU) 2017/565:*   YES □   1. (*Firm name*) shall, in compliance with the provisions of *Article 46 of Spanish RD 217/2008*, have a person who shall be designated as the sole responsible person in the firm for issues related to the firm's compliance with the obligations provided for in *Chapter II of Delegated Directive (EU) 2017/593*, regarding the safeguarding of clients' financial instruments and funds, also indicating whether the designated responsible person shall be dedicated only to that task, or if he/she will be able to perform his/her functions effectively while attending to other responsibilities:   YES □ |

* Holding of client funds (*Article 43 of Spanish RD 217/2008*)

Does (*Firm name*), under the scope of the provision of services in Spain without the establishment of a branch, plan to hold client funds, having indicated this in the list of services and activities attached to this Manual as *Annex I*?:

No activity planned

Yes  Detail:

|  |  |  |  |
| --- | --- | --- | --- |
| 1. Name of the credit institution where it plans to open accounts to place client funds:  |  | | --- | |  |  1. (*Firm name*) undertakes to exercise all due skill, care and diligence in the selection, designation and periodic review of such credit institutions, as well as of the mechanisms for the holding of such funds, considering the need for diversification of such funds as part of its obligation of due diligence:   YES □  Detail:   |  | | --- | | Will the credit institution in which the firm plans to deposit client funds belong to the group to which the Firm belongs?  NO  YES  ****(*Firm name*) undertakes to adopt the necessary measures to ensure that the amount of client funds deposited with such group firm or any combination of these firms does not exceed 20% of the total of such funds, unless it can demonstrate that such requirement is not proportionate (*Article 43(2) of Spanish RD 217/2008*). |  1. (*Firm name*) undertakes to adopt the necessary measures to ensure that client funds to be deposited with the credit institution are held in an account or accounts identified separately from those in which the funds belonging to the firm are held (*Article 41(d)(2) of Spanish RD 217/2008*):   YES □   1. Briefly describe the measures that (*Firm name*) plans to take to safeguard the rights of clients and prevent the use of client funds for its own account:  |  | | --- | |  | |

* (*Firm name*) shall have appropriate administrative and accounting procedures in place, as well as internal control mechanisms and effective techniques to assess risks that may be incurred when engaging in activities in the field of securities markets. For this purpose, it shall adopt, implement and have risk management procedures and policies in place to determine the risks arising from the activity, to be carried on without the establishment of a branch, in Spain, as well as from its processes and systems. It shall also implement the appropriate processes and mechanisms to limit them, according to the firm’s risk tolerance level. The firm shall also have a unit that guarantees the development of the risk management function:

YES

* (*Firm name*) shall define, implement and have an audit plan in place relating to the firm’s activity in the field of securities markets, to examine and assess the suitability and effectiveness of the systems, internal control mechanisms and arrangements of the firm, issuing recommendations on the work performed and verifying the implementation of such recommendations. It shall also have a unit in the firm that guarantees the development of the audit function:

YES

* Under the scope of (*Firm name*) engaging in investment services and activities aimed at clients in Spain, without the establishment of a branch, does the firm plan to carry out algorithmic trading or use algorithmic trading as a market-making strategy or to provide clients with direct electronic access to trading venues or to act as a general clearing member, under the terms and conditions laid down in *Articles 195 to 196 bis of TRLMV*, and in *Articles 33 and 34 of Spanish RD 217/2008*?

NO

YESDetail:

|  |  |
| --- | --- |
| 1. Techniques to be used and services/activities with which they shall be linked:  |  | | --- | |  |  1. Type of access (direct or sponsored) and trading venues: ……. 2. (*Firm name)* shall approve, implement and have effective administrative and organisational measures in place to comply with the specific internal organisational and operating requirements under the above-mentioned pieces of legislation:   YES □ |

* (*Firm name*), for the purpose of fulfilling its transaction reporting obligations (*Article 26 of Regulation (EU) 600/2014 and Delegated Regulation (EU) 2017/590*) which, in accordance with the activity envisaged, may be applicable, shall approve, implement and have effective administrative and organisational measures in place:

YES

* If (*Firm name*), intends to trade with OTC derivatives, it shall approve, implement and have effective administrative and organisational measures in place to fulfil the obligations under *Regulation (EU) 648/2012* of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories -EMIR- and the implementing regulations thereof:

No activity planned

YES

* If (*Firm name*), according with the provisions set for in *Article 28 (1) of Regulation (EU) 600/2014* and in its implementing regulations (*Commission Delegated Regulation (EU) 2017/2417*), intends to trade with OTC derivatives pertaining to a class of derivatives that has been declared subject to the trading obligation in accordance with the procedure set out in *Article 32* and listed in the register referred to in *Article 34 of Regulation (EU) 600/2014*, it undertakes to conclude transactions in these classes of derivatives on a trading venue (regulated market, a multilateral trading facility, an organised trading facility or an equivalent third-country trading venue) of the list included in the mentioned register.

No activity planned

YES

* (*Firm name*) shall approve, implement and have effective administrative and organisational measures in place to fulfil the obligations related to control laid down in *Rule one (b) of CNMV Circular 1/2014* (in particular with regard to the establishment of procedures aimed at preventing, detecting and reporting abusive practices or suspicious orders or transactions -STOR- that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation under Regulation (EU) No 596/2014) which are applicable to the activity envisaged:

YES

* *(Firm name)* shall have appropriate procedures in place for its employees to report real or potential infringements which guarantee the confidentiality of both the person reporting the infringement and the person allegedly responsible for the infringement.

YES

* Does (*Firm name*) plan to delegate the performance of services, functions and activities to third parties?

NO

YES ****Submit the following information:

|  |
| --- |
| * Briefly describe: * The firm undertakes to previously verify that the delegatee complies with the requirements laid down in TRLMV and its implementing regulations, and to adopt the necessary measures in order to ensure that operational risk does not increase unjustifiably, and this in turn, does not undermine its internal control capacity or the supervisory capacity of the competent supervisory body, guaranteeing the necessary access of the latter to the information that may be required:   YES **□** |

.

* Detail the planned organisational chart related to the organisational structure of the firm carrying on the activity in Spain, identifying those areas of the firm engaged in investment services and activities, and ancillary services, as well as those responsible for the control and supervision of operations (risk control, compliance and internal audit):

|  |
| --- |
|  |

* Specify the total number of people who will work at the Firm, dedicated to the activity in Spain: ....................
* Indicate which person(s) or department or area will perform the following functions related to the operations in Spain:

|  |
| --- |
| Head of department or customer service:  Person(s), department or area responsible for verifying that the firm has the applicable records: |

* Rules of conduct:

|  |
| --- |
| * (*Firm name*) shall adopt effective administrative and organisational measures with a view to adopting all the reasonable measures in order to prevent conflicts of interest from adversely affecting the interests of its clients. To such end, the firm shall approve, implement and maintain a conflict of interest management policy (*Article 208 bis of TRLMV and Article 61 of Spanish RD 217/2008*), which shall be set out in writing, and which will be effective and appropriate to its organisation, in order to prevent conflicts of interest from adversely affecting the interests of its clients:   YES **□**   * (*Firm name*) shall approve, implement and maintain a product governance policy (Article 208 ter of TRLMV and Articles 66 to 76 bis of Spanish RD 217/2008), which complies with the obligations set out in the regulations on the design and marketing of financial products, which are applicable to the activity envisaged:   YES **□**   * When (*Firm name*) intends to receive inducements, it shall have personnel within the firm responsible for ensuring that such inducements (*Article 220 quinquies of TRLMV and Articles 62 and 64 of Spanish RD 217/2008*) always comply with the provisions of the applicable regulations:   YES **□**   * (*Firm name*) shall comply with the rules of conduct applicable to the provision of investment services and activities, with or without ancillary services, in Spain, without the establishment of a branch, related to the reporting obligations of clients and potential clients, information on costs and associated charges, suitability and appropriateness assessment, contractual documents and policies on best execution and client order processing:   YES **□** |

## 7. Turnover: income and expenditure

* Provide a business plan for the first three years, which includes, for each service/activity planned, detailed information on the number and types of target eligible counterparty clients and professional clients *per se*, expected turnover/transaction volume, projected revenue (if no revenue is expected from a service, this must be indicated), the assumptions on which the business plan is based, and any other information deemed relevant to assess the volume of the activities to be carried on in Spain.

|  |
| --- |
|  |

## 8. Prevention of money laundering and terrorist financing

|  |  |
| --- | --- |
| * Indicate which person(s) or department or area will perform the following functions related to the operations in Spain: * Internal control body responsible for implementing procedures for the prevention of money laundering and terrorist financing: * Representative before the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (SEPBLAC), who will be responsible for compliance with the reporting obligations laid down in Spanish Law 10/2010: * Attached is a Manual describing the structure and operation of the control and communication body and the internal control procedures to prevent and deter transactions related to money laundering and terrorist financing, which will be sent by the CNMV to the SEPBLAC: * Indicate the person and contact details of such person from whom, where appropriate, the SEPBLAC can directly request any additional information that it requires:   First name and surnames:  Postal address:    Contact telephone number:  Email: |  |

## 9. Identity of the personal liable for the CNMV fee

* Name the persons liable for the CNMV fee (as established in Article 40 of [Spanish Law 16/2014](https://www.boe.es/buscar/act.php?id=BOE-A-2014-9895)):

1. Data to be provided if the person liable for the CNMV fee is a legal person:

Firm name:

Tax Id Code:

Postal address:

Contact telephone number:

Email:

Contact details of the natural person representing the legal person liable for the CNMV fee, for the purposes of the CNMV managing the settlement of the corresponding fee:

First name and surnames:

Tax Id Number:

Contact telephone number:

Email:

1. Data to be provided if the person liable for the CNMV fee is a natural person:

First name and surnames:

Tax Id Number:

Postal address:

Contact telephone number:

Email:

* If the applicant or applicants for the authorisation are non-residents (Article 6 of Spanish Law 16/2014), name, in each case, the persons or entities designated by each as their representative in Spain for the payment of fees to the CNMV:

|  |
| --- |
| Representative in Spain of the following applicant:  First name and surnames/firm name:  Tax Id. Number/passport no./resident card no./Tax Id. Code  Postal address:    Contact telephone number:  Email:  If the designated representative in Spain is, in turn, a legal person, please provide below the contact details of the natural person who represents it, for the purposes of the CNMV managing the settlement of the corresponding fee:  First name and surnames:  Tax Id Number:  Contact telephone number:  Email: |

OR INVESTMENT SERVICES AND ACTIVITIES, ANCILLARY SERVICES, FINANCIAL INSTRUMENTS

Honourability, Integrity and Good Governance Questionnaire

**1. COMMENTS**

**Purpose**

Collect data in relation to the requirements of:

* *Honourability, integrity and good governance* of the persons of third-country investment firms (IFs) that operate in Spain without the establishment of a branch, who shall be directly responsible for effectively directing the business to be carried on in Spain, and who will be directly responsible for its management.

**Who must fill in the questionnaire and in what procedures**

*Applications for authorisation of third-country IFs for the provision of services in Spain without the establishment of a branch,* must be filled in by:

* The persons who shall determine how to effectively direct the business to be carried on in Spain, and who will be directly responsible for its management.

In *subsequent procedures* it must be completed by the persons subject to assessment, in the event of:

* Appointment of new managers.

**Instructions for completion**

* A) The appropriate answer must be indicated with an “X” and all the pages of the questionnaire, as well as those attached thereto, must be digitally signed by the person to which the questionnaire refers.
* B) With the exception of those that relate to circumstances which may only affect natural persons, the questions must be answered on the basis of the individual activities (commercial or professional) of persons taking the questionnaire, such as those performed when discharging management functions at legal persons.

Management functions shall be taken to mean those corresponding to directors or members of collective management bodies, general managers or persons holding similar positions, the latter being those persons who perform senior management functions and report directly to the management bodies, executive committees or managing directors thereof.

Thus, for example, in relation to question 9, it must be taken into account whether insolvency proceedings have been initiated either against the person completing the questionnaire as a trader or sole practitioner, or against legal persons in which he/she has held a management position, as defined.

* C) In the case of affirmative answers, the information relating to the object of the question must be set out on a separate sheet. Particularly in the cases of sentences for criminal offences, minor offences and penalties for administrative infringements (questions 10, 11 and 12), the following must be indicated:

- The malicious or negligent nature of the criminal offence, minor offence or administrative infringement.

- If the sentence or penalty is not firm.

- The seriousness of the sentence or penalty imposed.

- The classification of the facts giving rise to the sentence or penalty, especially in the case of crimes against property, money laundering, crimes against socio-economic order and crimes against the Public Treasury and the Social Security, or in the case of the infringement of the legislation regulating the carrying on of banking, insurance and securities market activities, or money laundering or consumer protection activities.

- If the facts giving rise to the sentence or penalty were carried out for own benefit or to the detriment of the interests of third parties the administration or management of whose business was entrusted and, as the case may be, the relevance of the facts giving rise to the sentence or penalty in relation to the functions assigned or which were going to be assigned to the position in question at the firm.

- The limitation period of the unlawful acts of a criminal or administrative nature or the possible extinction of liability.

- The existence of mitigating or aggravating circumstances (including the recurrence of sentences or penalties for criminal offences, minor offences or infringements).

* D) The data obtained from this questionnaire shall be used exclusively as part of the procedure conducted to evaluate the suitability for the position to which the interested party has been assigned.
* E) In those cases where commercial or professional activities have been individually performed or management positions have been held outside Spain, the questions shall be understood to refer to both activities carried on in Spain and the legal circumstances of the interested party in the corresponding country similar to those that he/she has in Spain, which are the object of the questionnaire.

**2. IDENTIFICATION**

***DETAILS OF THE THIRD-COUNTRY IF PROVIDING SERVICES IN SPAIN WITHOUT THE ESTABLISHMENT OF A BRANCH, WHICH TRIGGERS THE OBLIGATION TO ASSESS***

Firm name of the THIRD-COUNTRY IF:

CNMV registration number (if any):

***DETAILS OF THE NATURAL PERSON (WHO SHALL DETERMINE HOW TO EFFECTIVELY DIRECT THE BUSINESS TO BE CARRIED ON IN SPAIN, AND WHO WILL BE DIRECTLY RESPONSIBLE FOR ITS MANAGEMENT)***

First name and surnames:

Tax Id. Number/passport no./resident card no.:

Nationality:

Date of birth:

Registered office:

Telephone No.:

Email:

**3. QUESTIONS**

**3.1. REPORTING PARTY**

1. Indicate the position you have been appointed to in respect of the business to be carried on by the third-country IF in Spain, without the establishment of a branch:

**3.2. HONOURABILITY**

1. Have you performed or do you currently perform professional or commercial activities outside Spain?

YES  NO

If so, specify in which countries:

1. In the context of your professional activities, have you previously had relations with regulatory or supervisory authorities, at national or international level, other than the CNMV?

YES  NO

If so, specify which authorities:

1. Have you been refused registration, authorisation, membership or a license to conduct a trade or business or to engage in a profession?

YES  NO

If so, please indicate the reasons and the authorities:

1. Once granted, has the registration, authorisation, membership or license to conduct a trade or business or to engage in a profession been withdrawn, revoked or terminated?

YES  NO

If so, please indicate the reasons and the authorities:

1. Has your person been expelled by a regulatory or governmental body or a professional body or association?

YES  NO

If so, please indicate the reasons and the authorities:

1. Have you been dismissed or removed from director and/or management or similar roles performed previously?

YES  NO

If so, specify the companies at which you were dismissed or removed and the grounds for dismissal or removal cited by such companies.

1. Have you held positions of responsibility at credit institutions or investment firms which have undergone restructuring or winding-up proceedings?

YES  NO

If so, name the entities:

1. Have insolvency proceedings been brought or are they currently being brought against you?

YES  NO

If so, please provide the essential data relating to the proceedings. In addition, if the processing of the same has already been completed, please indicate whether you were disqualified in accordance with Spanish Law 22/2003, of 9 July, on Bankruptcy, with the disqualification period established in the judgment on the insolvency proceedings not having ended, or whether you were declared an undischarged bankrupt trader and non-trader.

1. Have you been convicted of criminal offences or minor offences?

YES  NO

If so, please provide the information referred to in section 1(c) of this questionnaire:

1. Has a penalty ever been imposed on you for committing administrative infringement of the legislation regulating the carrying on of banking, insurance or market commission activities, or money laundering or consumer protection activities?

YES  NO

If so, please provide the information referred to in section 1(c) of this questionnaire:

1. Has a significant penalty ever been imposed on you for administrative infringements other than those mentioned in the previous question?

YES  NO

If so, please provide the information referred to in section 1(c) of this questionnaire:

1. Has an intervention or substitution measure ever been applied to you pursuant to the regulatory provisions for the financial system and the institutions that operate therein?

YES  NO

If so, please provide the essential data relating to the proceedings:

1. Have you been disqualified from or are you currently the subject of disqualification proceedings, in Spain or abroad, in relation to the exercising of public office or director or management positions at financial institutions or other types of companies?

YES  NO

If so, provide the essential data relating to the proceedings.

1. Have you ever been the defendant or party in breach in a declaratory court proceeding or a court proceeding for breach of contract for failure to comply with contractual obligations or failure to pay debt?

YES  NO

If so, provide the essential data relating to the proceedings.

1. Do you have a criminal record, either in Spain or abroad?

YES  NO

If so, specify the criminal offence or offences on the grounds of which you have a criminal record:

1. Are you the subject of criminal or administrative proceedings or investigations in relation to crimes against heritage, money laundering, crimes against socio-economic order and crimes against the Public Treasury and the Social Security, or for the infringement of the legislation regulating the carrying on of banking, insurance and market commission activities, or money laundering or consumer protection activities?

YES  NO

If so, specify the types of facts being investigated, the status of proceedings, the stage of the proceedings affecting the interested party, the criminal offence, minor offence or administrative infringement attributed (indicating its seriousness), the sanctions and penalties foreseen and the mitigating or aggravating circumstances which, as the case may be, affect the case.

**3.3. GOOD GOVERNANCE**

1. Are there circumstances or situations that generate potential conflicts of interest with the firm, which could impede or make it difficult to exercise good governance thereat, in terms of the operations envisaged in Spain, arising from:

* The functions discharged in the past or in the present at the same firm or at other private or public organisations?

YES  NO

If so, describe the aforementioned circumstances or situations in detail:

* Your relationships (professional or financial or, where appropriate, personal) with the firm itself, its parent or subsidiaries or with the members of their respective management bodies, as well as with the shareholders that control them?

YES  NO

If so, describe the aforementioned circumstances or situations in detail:

1. Are you in a position to dedicate the time required to appropriately discharge the functions which the position entails?

YES

**I HEREBY DECLARE, UNDER MY OWN RESPONSIBILITY, that the statements made in answering this questionnaire are true, and I authorise the Spanish National Securities Market Commission to consult public files in order to demonstrate this.**

**In .............................., on** ..................................... **20**........**.**

***Signed by:*** *..................................................*

***ASSESSMENT BY THE THIRD-COUNTRY IF OF THE SUITABILITY OF THE PROPOSED CANDIDATE FOR THE POSITION OF THE PERSON RESPONSIBLE FOR DETERMINING HOW TO EFFECTIVELY DIRECT THE BUSINESS TO BE CARRIED ON IN SPAIN BY THE THIRD-COUNTRY IF, AND FOR ITS MANAGEMENT***

Mr/Ms .........................................................................................................., in the name and on behalf of *(Name of the third-country IF)*, a firm that intends to provide services in Spain without the establishment of a branch, hereby **states** that:

 **1)** In accordance with the obligation provided for in *Article* *29 ter (1)(c) of Spanish Royal Decree 217/2008*, of 15 February (Spanish RD on IFs), **has verified that[[3]](#footnote-3)**......................................., in relation to the position of **[[4]](#footnote-4)** ...................................... which he/she is going to discharge at *(Firm name of the third-country IF)*, **meets** **the requirements** laid down in *Article 29 bis (1)(d) of the RD on IFs*, regarding:

**Honourability, honesty and integrity**

**Sufficient knowledge, skills and experience**

**Ability to exercise good governance**

in accordance with the definitions of: (i) honourability, honesty and integrity; (ii) knowledge, skills and experience; and (iii) ability to exercise good governance as established in *Articles 20, 20 bis and 21 of the Spanish RD on IFs*.

 **(2)** The candidate assessed has answered yes to some of the issues in questions 4 to 17 of his/her Honourability, Integrity and Good Governance Questionnaire:

NO

YES  ****In this case, details of the analysis carried out in this respect by the units or bodies of *(Name of the third-country IF)* responsible for applying the internal procedure relating to the selection and ongoing assessment of the suitability of the persons responsible for determining how to direct its business in Spain, and its management, as well as the reasons for the final conclusion that the candidate assessed meets the requirements of honourability, honesty and integrity in the terms established in the securities market regulations, must be attached on a separate sheet.

In .............................., on ...... ............................... 20.........

Signed by: ......................................................................

1. Identify the services and instruments in accordance with the terminology contained in Annex 1 *LIST OF SERVICES, ACTIVITIES AND FINANCIAL INSTRUMENTS* to Directive 2014/65/EU of the European Parliament and of the Council, of 15 May 2014 (MiFID II Directive). [↑](#footnote-ref-1)
2. If authorisation by the competent authority is required, it must be indicated whether or not such authorisation has already been obtained. [↑](#footnote-ref-2)
3. Name the assessed candidate. [↑](#footnote-ref-3)
4. Indicate the position to be held by the candidate in respect of the business to be carried on by the third-country IF in Spain, without the establishment of a branch. [↑](#footnote-ref-4)