



STATEMENT ON THE OBLIGATION INCUMBENT ON ENTITIES TO TAKE MEASURES AIMED AT ENSURING THE RELIABILITY OF INFORMATION OBTAINED FROM CLIENTS IN ORDER TO ASSESS THE APPROPRIATENESS AND SUITABILITY OF THEIR INVESTORS

5 February 2019

In the exercise of its supervisory functions, CNMV has identified cases in which information obtained by entities providing investment services (banks and investment firms), for the purpose of assessing the appropriateness and suitability of the transactions carried out by its retail clients, significantly overvalues their training, financial knowledge and investment experience. In some cases, this incidence affects a large number of clients.

CNMV is taking action, including enforcement actions, to correct this type of situation, and over the course of 2019 it plans to carry out a specific review in this area, which will affect a significant number of entities.

Additional considerations

CNMV considers it important, and this has been emphasised in recent years in its inspection activities, that entities adopt measures and take steps aimed at ensuring that the information they obtain from retail clients in order to assess the appropriateness and suitability of their transactions in accordance with the provisions of Articles 212, 213 and 214 of the Securities Market Act (*Ley del Mercado de Valores*) is consistent, accurate and up to date.

An inadequate assessment of the appropriateness and suitability of transactions as a result of deficiencies or errors in the information obtained may involve the sale or recommendation of products unsuitable for clients or the failure to issue or complete, as required by law, warnings or handwritten texts in which the client acknowledges that they have been informed that a certain product is not appropriate for them. This, logically, may unduly make it easier for the entity to place its own securities and financial instruments, as well as those of third parties.

Article 54(7) of Delegated Regulation (EU) 2017/565, of 25 April, on the assessment of appropriateness and suitability requires investment firms to take reasonable steps to ensure that information collected on their clients or potential clients is reliable, mentioning, without limitation, among those to be taken, *"appropriate measures to ensure the consistency of client information, such as by considering whether there are obvious inaccuracies in the information"* and *"ensuring that clients are aware of the importance of providing accurate and up-to-date information"*. Article 55 of the same Regulation provides that entities have the right to rely on information provided by their clients for the purposes of assessing appropriateness and suitability unless *"they are aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete"*.

Although assessments of appropriateness and suitability have to be made on a case-by-case basis, entities must also adopt measures and take reasonable action to ensure that the information gathered on clients is generally reliable.

In this respect, it is wise to analyse whether there are situations that a priori are atypical, which could be expected not to arise, or which only arise on a purely occasional or isolated basis. Aspects or indications such as the following may be considered for this purpose:

- Whether the overall data on the level of education of retail clients is reasonable, taking into account their sociological characteristics.
- Whether aggregate data for clients with a high degree of financial literacy is reasonable, in particular for groups of clients who do not have previous professional or investment experience or a commensurate level of academic training.
- Whether the global data on retail clients with prior investment experience in complex instruments infrequently distributed to the retail public is reasonable, in particular where the experience of the clients does not correspond to their transactions carried out in the entity.

For the adequate detection and correction of situations such as those mentioned above, the entities must have adequate procedures in place:

- Procedures applied during the provision of the service. It is appropriate to establish mechanisms that allow personnel collecting information to detect situations that a priori are atypical. The inclusion of automatic alerts in the computer applications used during the process of obtaining information may be very useful for these purposes.¹

-

¹In this regard, see also the Guidelines on certain aspects of the MiFID II suitability requirements of 6 November 2018, ESMA ref. 35-43-1163 (in particular, General Guideline No. 2 and its supplements) of which paragraph 32 should be noted: *"Firms should design their questionnaires so that they are able to gather the necessary information about their client. This may be particularly relevant for firms providing robo-advice services given the limited human interaction. In order to ensure their compliance with the requirements concerning that assessment, firms should take into account factors such as: (...) Whether steps have been taken to address inconsistent client responses (such as incorporating in the questionnaire design features to alert clients when their responses appear internally inconsistent and suggest them to reconsider such responses; or implementing systems to automatically flag apparently inconsistent information provided by a client for review or follow-up by the firm)."*

- Procedures for reviewing information aimed at periodically analysing whether the information is generally correct and consistent or whether, on the contrary, there are groups of clients in which it may not adequately reflect their general level of academic training, financial knowledge or experience, regardless of whether this data is derived from the formalised appropriateness and suitability questionnaires.
- Procedures for the correction of incidents. In the event of inconsistencies, discrepancies or a high volume of atypical situations (situations that may arise for different reasons, one of which may be that the information has not been gathered correctly from the client), appropriate work should be carried out to contrast and validate the data, using alternative means to merely verifying that the information corresponds to that reflected in the formalised questionnaires.²

² In this regard, see also the Guidelines relating to certain aspects of the MiFID II suitability requirements of 6 November 2018, ESMA ref. 35-43-1163, (in particular, General Guideline No. 4). Its paragraph 50 is noteworthy: *"In order to ensure the consistency of client information, firms should view the information collected as a whole. Firms should be alert to any relevant contradictions between different pieces of information collected, and contact the client in order to resolve any material potential inconsistencies or inaccuracies (...)"*.