



TECHNICAL GUIDE 2/2022 ON APPROPRIATENESS ASSESSMENT

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Introduction.

On 17 June 2010, the CNMV published its [Procedural Guide to Assessing Appropriateness and Suitability](#), the objectives of which were, in the context of the approval of Directive 2004/39/EC (MiFID), to identify the main aspects that financial institutions active in the securities market should consider when assessing appropriateness or suitability in providing investment services to its retail clients, to convey to the sector the CNMV's interpretation of various regulatory precepts relating to these aspects and to publicise a series of procedural guidelines to operate as recommendations within the flexibility deriving from the regulations while allowing institutions to adapt to their particular circumstances and the complexity of some of the issues analysed.

In recent years, the CNMV, in its supervisory actions, has been emphasising to entities the importance of the information they use to assess the appropriateness of their retail clients' transactions, especially when these relate to complex products. Specifically, we have insisted that they must ensure that the information they have available is adequate, consistent, accurate and up-to-date, and that they use prudent criteria that avoid over-estimating clients' knowledge and experience and in particular their real level of financial literacy. In the supervisory actions conducted, certain aspects of the 2010 guide were detected that require adjustment or clarification.

Furthermore, the CNMV has participated (in 2020-2021), together with other European supervisors, in the joint action coordinated by ESMA dedicated to appropriateness assessment. The conclusions of this review, together with other data sources, have been used by ESMA to prepare the new Guidelines on this matter.

Therefore, in order to update the content of the aforementioned Guide as regards the appropriateness assessment, taking into account the regulations that have emerged since then, particularly from [Directive 2014/65/EU](#) (MiFID II), the documents and guides published by ESMA, and with the supervisory experience gained since its publication, we have drawn up this Technical Guide to the appropriateness assessment that entities must carry out when providing investment services. Notwithstanding the foregoing, it should be noted that much of its content essentially coincides with the [Guide published by the CNMV in 2010](#). The guidelines relating to the assessment of suitability in the 2010 Guide are to be considered valid insofar as they do not conflict with subsequent regulatory developments or ESMA Guidelines, or what is indicated in this Technical Guide.

To facilitate proper monitoring, a reference has been included in the various sections of the Technical Guide to the corresponding sections of the ESMA Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements, and additionally, we have **highlighted in bold** those aspects that, together with the examples included in its Annex,

develop, with a higher level of precision, some general criteria present in the ESMA Guidelines. Some of these aspects highlighted in bold were already present in the 2010 CNMV Guide and others in supervisory practice. To facilitate its correct reading, and ensure the internal coherence of the Technical Guide, it includes some descriptive paragraphs (not highlighted in bold), which do not always conform exactly to the literal text of the ESMA Guidelines, although it is not the intention that they should introduce nuances or criteria different from them. An Annex contains some examples illustrating the criteria set forth in the Technical Guide, including both situations in which the criteria are not met and others in which they are, in order to serve as a reference.

This Technical Guide is intended for supervised entities and contains the criteria, practices, methodologies and procedures that the CNMV considers appropriate for compliance with the applicable regulations in the area of appropriateness assessment, as well as the criteria that it will follow in the exercise of its supervisory function. Any entities deviating from these criteria must be able to prove in any case that they comply adequately with legal obligations and explain the reasons for deviating from the CNMV criteria.

The CNMV will continue to carry out its supervisory actions, verifying compliance with the obligations in relation to the appropriateness assessment in accordance with the provisions of national and community regulations and plans to apply the criteria contained in this Technical Guide, as well as those of the ESMA Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements which will apply six months after the publication of their translation into the official languages of the EU.

By virtue of the provisions of [Article 21.3 of the Consolidated Text of the Securities Market Act](#) (hereinafter TRLMV), the CNMV approved this Technical Guide on 30 March 2022, following a report from its Advisory Committee.

First. Scope of application and purpose.

1. This Technical Guide will apply to entities that provide investment services relating to financial instruments and/or structured deposits (hereinafter referred to as products).
2. The purpose of the Technical Guide is to establish criteria on how entities must assess the knowledge and experience of retail clients when providing them with the investment services that require it.
3. The assessment of investment knowledge and experience in the field of suitability presents differences with their assessment in the field of appropriateness, and the provisions of paragraph 38 of the [ESMA guidelines on certain aspects of the MiFID II suitability requirements \(ESMA35-43-1163\)](#) must be followed.

Second. Purpose of the appropriateness assessment ([Article 214 of the TRLMV](#)).

(Guideline 1 and Guideline 2, paragraph 30 of the ESMA Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements).

4. The appropriateness assessment is not intended to assess the degree of alignment of the client's investment objectives with the level of risk of the product, nor whether the client's financial situation allows the investment risks to be taken. For these purposes, it must be borne in mind that the degree of complexity¹ of a product is not fully correlated with its higher or lower level of potential risk.
5. [Example 1](#) in the Annex to this Technical Guide illustrates the difference between complexity and risk.

Third. Situations in which appropriateness assessment is not required ("execution-only" regime) ([Art.216 TRLMV](#)).

(Guideline 12 of the ESMA Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements).

6. Entities must have procedures to detect situations in which, in general, **it is unlikely that the initiative has come from the client, so that they can verify that the execution-only regime is not being applied incorrectly:**
 - a) According to the CNMV's supervisory experience, in distribution channels such as the branch network or, in some cases, the telephone (specifically when it is the telephone operator who has called the client), it is more likely that personalised communications² can be conveyed to clients since there is personal contact with the client, whereas in other channels such as online channels, where there is generally no personal contact with the client, they are much less frequent. In the event that during the personal contact with the client, various alternatives are presented to him, it should not be considered that there is a personalised communication.
 - b) When internal sales campaigns are carried out for a specific product through a branch network or by telephone (without the support of advertising campaigns aimed at the general public in the media), for a short period, it is not reasonable to consider that in most cases, or in many of them, the initiative has corresponded to the clients.
7. [Example 2](#) of the Annex to this Technical Guide analyses different situations to illustrate this criterion regarding the initiative for a transaction.

¹ See [Article 25.4 of Directive 2014/65/EU](#)

² See Recital 85 of [Directive 2014/65/EU](#).

Fourth. Requirement to act in the best interests of the client in the field of appropriateness.

(Guideline 8, paragraph 66 of the ESMA Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements).

8. The information available to the entity is significant in relation to its obligation to act in the interest of its clients, especially when it actively addresses them to offer or market financial products. In order to adequately comply with the provisions of articles [208.ter](#) and [214 of the TRLMV](#), as well as with [Rule 5 of CNMV Circular 3/2013](#) of 12 June, entities must ensure that those products which in principle they consider inappropriate for certain investors based on all the information they have about the clients, are not actively marketed to said investors, especially in the case of complex products. In other words, in these cases, entities must avoid contacting clients and offering them. If they were to do so, even if they informed the client of the inappropriateness of the transaction, they would be in breach of the rules of conduct of the securities market. However, sales communications aimed at the general public, in themselves (that is, if they are not supported by other more specific actions, aimed at specific clients), should not be considered as active marketing of a product.

Fifth. Origin of the data used in the appropriateness assessment ([Article 55 of Commission Delegated Regulation \(EU\) 2017/565](#)).

(Guideline 2, paragraph 21, and Guideline 4, paragraph 42 of the ESMA Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements).

9. When assessing appropriateness, the entity can base itself on information that it already has or ask the client when it does not have such data. In general, the mechanism established by the entities to obtain the necessary data from the client, when the information cannot be obtained internally, is to ask the client to complete an appropriateness questionnaire or test.
10. The information provided by clients must be considered together so that the result of the assessment is consistent, the client's actual level of financial knowledge being essential, particularly with products of special complexity. **In general, it is not considered acceptable for the acquisition of a certain product to be assessed as appropriate for a client who does not adequately answer the corresponding knowledge questions asked to him.**
11. In the event that the same client information is collected by different means, the appropriate procedures must be established to ensure that the information considered is consistent and unique, before using it to assess appropriateness.

12. [Example 3](#) in the Annex to this Technical Guide details cases in which the consistency of the same information obtained by different means must be considered.

Sixth. Client's familiarity with financial products, their characteristics and risks ([Article 55.1\(a\) of Commission Delegated Regulation \(EU\) 2017/565](#)).

(Guideline 2, Guideline 3, and Guideline 8, paragraph 65 of the ESMA guidelines on certain aspects of the MiFID appropriateness and execution-only requirements)

13. Assessing this aspect can be difficult and the questions and answers in this regard can often be ambiguous, as has been observed in the supervisory practice of the CNMV. For this reason, the mechanisms used to obtain the information related to this factor must always be robust and be aimed at preventing the risk of overestimating the client's real level of financial literacy, so that all available information on the client is considered together and the result of the assessment is consistent.
14. **In application of the principle of proportionality contained in Article 55.1 of Commission Delegated Regulation (EU) 2017/565, the extent and depth of the information to be collected may vary depending on the characteristics, complexity and risks of the products analysed, but entities must not assume appropriateness without first having verified with sufficient precision that the client has an adequate level of financial knowledge. In other words, entities must always ask the client about this aspect (it could be said that it is a necessary but not a sufficient condition) regardless of whether the client may have previous investment experience or a certain level of education. The only exception to this general criterion is detailed in [paragraph 26](#) (finance professionals) of this Technical Guide.**
15. **In general, in the case of complex products, it is not prudent to assume appropriateness based exclusively on the positive assessment of this factor.** [Example 4](#) in the Annex to this Technical Guide analyses some situations in which to assume appropriateness could be not prudent enough, since it is made solely on the basis of the assessment of knowledge.
16. **In the case of complex financial products, the entity must obtain information on the client's knowledge regarding the nature, characteristics and main risks of the products or families of products assessed. It is not enough to simply assess the client's general financial literacy.** Information must be collected with a greater degree of depth the more complex the product on which the assessment is carried out.
17. **The guidelines that are considered appropriate when asking questions about the client's general financial literacy are the following:**

- a) **Present response options in increasing order of difficulty to allow the entity to assess the indicative level of the client's general financial literacy.**
 - b) Allow the client to state openly that he has no financial knowledge at all.
 - c) Preferably ask the client multiple-choice questions.
18. **The guidelines considered appropriate when asking questions about the client's knowledge of the nature, characteristics or risks of products or families of financial products, are the following:**
- a) **It is not acceptable to ask questions about a certain characteristic or risk of a product in which it is easy for the investor to assume the correct answer to the question posed, or in which the answer is provided in the question itself,** especially when clients are presented with binary answers, usually with the YES/NO option. Supervisory experience indicates that these approaches generally do not allow for an adequate assessment of the actual level of client knowledge of the products, as the client may not pay adequate attention when responding or may wish to appear to have a higher level of familiarity than is really the case, so that the risks of overestimating it are increased.
 - b) Nor is it enough to include a list of financial products for the client to indicate which ones he thinks he understands or about which he thinks he has knowledge.
 - c) **Questions can be asked to the client, to verify whether he considers a statement regarding the product or family of products in question to be true or false, but taking care that the correct answer is not easily predictable,** and provided that, in addition, a third (“don’t know”) response option is included.
 - d) Another valid way of assessing this aspect is through questions with multiple response options (not limited to the client’s indicating true, false or “don’t know”). In this case, likewise, care must be taken that the correct answer option or options are not easily predictable and always include, among the answer options, one that allows the client to state freely that he does not know the answer.
 - e) To ensure that no consistent pattern can be deduced from the structure of the questions, **the order and sense of the correct answers should be varied (e.g. the correct answer is not always true or always false, and in the case of multiple-choice, it is not always in the same position and not identifiable by other characteristics such as always being the longest answer option, etc.).**
 - f) How responses are scored is also important so that there is no bias in determining the actual level of specific product knowledge. **In this sense, in general, when a small number of questions with precise content are asked, only if the client answers all of**

them correctly should it be concluded that he is sufficiently familiar with the product assessed.

19. [Example 5](#) in the Annex to this Technical Guide includes some guidance on how to collect information on the client's familiarity with and knowledge of financial products.

Seventh. Nature, volume and frequency of the client's transactions in financial products and the period over which they have been carried out ([Article 55.1\(b\) of Commission Delegated Regulation \(EU\) 2017/565](#)).

(Guideline 2, paragraphs 18 to 20 and 28, Guideline 7, and Guideline 8, paragraph 65 of the ESMA Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements).

20. In order to adequately assess the client's investment experience when assessing appropriateness, it is essential that entities previously carry out a correct classification of the different products marketed in homogeneous groups. A family of financial products (a concept used by most entities, as has been verified in supervisory actions) is a set of products that are similar in terms of their nature and risks. [Example 6](#) in the Annex to this Technical Guide analyses situations that illustrate groupings of products in homogeneous families.

21. **When assessing the client's investment experience, only such experience as may have influenced his ability to understand the nature and risks of the financial products must be considered. To this end, previous investment experience must also meet all the requirements detailed below:**

- a) That the outstanding positions or previous transactions refer to exactly the same financial products or to others that are different but similar to those in terms of their nature and risks (see [paragraph 20](#)).
- b) That previous experience is based on a series of transactions and not on one isolated transaction. It may be considered sufficient that the client maintains at least two active positions in the product or family of products or has maintained them in the period analysed, as a result of carrying out two or more previous transactions. In the event that the client no longer has outstanding positions, the time elapsed since the last transaction (the sale) and therefore since he ceased to have positions in the product or family of products must not be prolonged (see following letter).
- c) The analysis must refer to the time at which the new transaction is being processed, and consider only such previous transactions as have been carried out within a reasonable past period, disregarding those where the time elapsed has been too long. It is considered that the degree of complexity and the risks inherent in the financial

product in question are key aspects in establishing this period. In general, for non-complex products, a period not exceeding five years is considered reasonable, while for complex products a period not exceeding three years is considered reasonable.

- d) The context in which these transactions were processed must also be considered, assessing whether the investment decision was made by the client or, on the contrary, by a manager under a discretionary portfolio management mandate. For these purposes, it is not reasonable to consider previous transactions processed under a discretionary portfolio management mandate, when assessing the appropriateness of complex products. It is also necessary to consider this aspect, when the client is asked to confirm his previous investment experience, based on the transactions processed with the entity.
 - e) That the entity is unaware of certain circumstances that could reveal that the previous transactions did not allow the client to acquire the necessary experience.
22. Assuming appropriateness based on the mere existence of prior investment experience, without collecting information and analysing other aspects that must be considered when assessing appropriateness (level of financial knowledge, level of education and professional experience) is not appropriate. The CNMV's supervisory experience indicates that it is common to observe clients with investment experience in certain financial products who, at the same time, state that they do not have sufficient knowledge of said products to understand their characteristics and risks.
23. [Example 4](#) in the Annex to this Technical Guide analyses some situations relating to the joint assessment of this element together with familiarity and level of education.
24. When the previous investment experience declared by the client on complex products in other entities does not correspond to the types of products usually acquired by him in the entity, enhanced contrasting mechanisms must be established that allow the consistency and accuracy of this information to be reasonably verified. [Example 7](#) in the Annex to this Technical Guide details some of these possible **contrasting** mechanisms.

Eighth. Level of education and occupation ([Article 55.1\(c\) of Commission Delegated Regulation \(EU\) 2017/565](#)).

(Guideline 8, paragraph 65 of the ESMA Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements).

25. The information that the entity obtains in relation to the client's general level of studies or other training or his occupation, can only provide a general idea of his financial knowledge, so it would only allow general presumptions to be made. The way in which the level of education is grouped and the weight given to this aspect in the final

assessment is important so that biases do not occur in the assessment. [Example 8](#) in the Annex to this Technical Guide illustrates this.

26. **In the case of finance professionals** (understanding this to mean persons who hold or have held for at least one year a professional position in the financial sector that requires knowledge of financial transactions or services, and who therefore have a very high level of knowledge of these matters), it is **reasonable to assume appropriateness, even in the case of complex products, exclusively on the basis of their professional experience, without collecting other information.** However, for this, the entity must be certain that the client has adequate professional experience directly related to the securities markets, their products and their risks, particularly and specifically, when it comes to complex derivative products, products with a high credit risk and unsecured structured products. The information available from the client must be considered jointly, so that the result of the assessment is consistent and prudently weighs his real level of financial knowledge, so that in no case would it be reasonable for the entity to consider that the client is a finance professional if it has other information according to which the client does not have a high general level of financial knowledge.
27. With the exception indicated in the foregoing paragraph, when the transaction to be assessed refers to complex products, in general, it should not be presumed that they are appropriate without the client's having a minimum level of education, in addition to the necessary level of corresponding financial knowledge and, where appropriate, adequate prior investment experience. [Example 4](#) in the Annex to this Technical Guide analyses some situations relating to the joint assessment of this element together with familiarity and previous investment experience, and gives some indications as to the level of education that could be appropriate.

Ninth. The entity must provide the client with a copy of the document containing the assessment performed.

28. Entities must be able to prove compliance with the provisions of [Article 214.3 of the TRLMV](#). For these purposes, it is considered necessary that the document containing the assessment carried out be delivered to the client, detailing the questions asked and the answers given by the client. In the event that the assessment carried out refers to different products or families of products, the result of the assessment for each one must be clearly communicated to the client.

Tenth. Records of the appropriateness assessments carried out. Analysis of the information collected and controls of its consistency ([Article 215 of the TRLMV](#) and [Articles 55.3, 56.2](#) and [72 of Commission Delegated Regulation \(EU\) 2017/565](#)).

(Guideline 2, paragraph 27, Guideline 4, Guideline 11, and Guideline 13 of the ESMA Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements).

29. In order for the records of the appropriateness assessments carried out to enable the internal control bodies of the entities and the CNMV to properly carry out their supervisory functions, they must be susceptible of computerised processing and include all the information necessary to be able to reproduce the assessment carried out and the result obtained, including the answers given by clients.
30. These records must allow identification of the appropriateness assessments carried out on clients who in the end did not actually execute the transaction assessed. It is considered that this information must be included in the updated records of assessed clients and non-appropriate products referred to in [Rule 5 of CNMV Circular 3/2013 of 12 June](#).
31. Entities must adopt measures and take reasonable actions to verify that the information provided by clients is reliable, accurate and consistent in general terms. To that end, **entities must consider whether there are *a priori* atypical situations that could be expected not to arise or to do so only occasionally or sporadically, with the purpose of identifying client groups for which the available information may not adequately reflect their general level of education, financial knowledge or experience, irrespective of whether this can be deduced from the formalised appropriateness questionnaires.**
32. **These measures must include adequate procedures allowing the personnel collecting the information from clients to detect situations that are *a priori* atypical, at the time of collecting it.** [Example 9](#) in the Annex to this Technical Guide provides some examples. The inclusion of automatic alerts in the computer applications used during the process of obtaining information can be very useful for these purposes.
33. **Likewise, these measures must include a periodic ex post assessment (for example, annually) of the reasonableness at a global or aggregate level of the information used to assess appropriateness, considering, at least:**
 - a) **whether the aggregated information on the level of education of retail clients as a whole is reasonable, taking into account their objective characteristics such as age or other data that may be available;**
 - b) **whether the aggregated information on clients with a high degree of financial knowledge is reasonable, particularly for groups of clients that do not have prior professional or investment experience or a level of education consistent with said high degree of financial knowledge;**

- c) whether the aggregated information on retail clients claiming to have previous investment experience in complex products that are infrequently distributed to the retail market is reasonable, particularly when the experience claimed by these clients does not tally with the transactions they conduct with the entity;
- d) and whether the aggregated number of clients who are finance professionals seems reasonable.

Eleventh. Validity period of previous appropriateness assessments ([Article 55.3 of Commission Delegated Regulation \(EU\) 2017/565](#)).

(Guideline 5 of the ESMA Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements).

- 34. The entity must assess each transaction in terms of its appropriateness. This does not mean that a full assessment must be carried out for each transaction that is processed. It may be reasonable to consider that a transaction is appropriate on the basis of a previous assessment which deemed it to be appropriate, providing it was not carried out a long time beforehand. The degree of complexity and risk inherent in the financial instrument concerned are key to establishing the period immediately prior to the new transaction during which previous appropriateness assessments may be taken into account. **In general, for non-complex products, a period not exceeding five years is considered reasonable, while for complex products a period not exceeding three years is considered reasonable.**
- 35. Once an appropriateness questionnaire or assessment expires, it is considered reasonable for the entity to wait to carry out a new assessment until the client wishes to carry out a new transaction that requires it.
- 36. It is considered that in the event of a significant change to the questionnaires (to the questions, answers, or algorithms for calculating the result), entities must collect information from clients using the new questionnaire before carrying out the next transaction.

Twelfth. Warnings regarding non-appropriateness, the absence or insufficiency of data to carry out the assessment, or the non-obligation to carry it out. ([Articles 214.4 and 5](#) and [Article 216.c of the TRLMV](#)).

(Guideline 9 of the ESMA Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements).

37. In the event that the warnings are given in documents separate from the order, the appropriate procedures must be established so that they refer unequivocally to the transaction in question.
38. In the event of no-obligation to assess appropriateness (“execution-only”), [Circular 3/2013](#) does not determine a regulated text of the warning, but it must clearly indicate that the entity is not obliged to assess the appropriateness of the transaction and that, therefore, the client lacks the protections provided in this case. The following standard warning is considered appropriate: *“We inform you that this entity is not obliged to assess the appropriateness of (the transaction to be carried out by the client must be specified) since the product in which you propose to trade is classified as “non-complex” and the transaction to be carried out is on your initiative and not that of this entity. By not making this assessment, the entity cannot form an opinion as to whether or not this transaction is appropriate for you and, therefore, should the transaction prove non-appropriate for you, it will not be able to warn you of this.”*
39. Exceptionally, in the case of brokerage clients that are very active in listed shares, it is not necessary to warn them about “execution-only”, in each transaction they carry out. After having given this warning on several occasions (for example, after the first four warnings), it would not be necessary to warn them again as long as the clients carry out, from that time on, at least two transactions every six months.

Thirteenth. Assessment of clients operating jointly ([Article 214.1 of the TRLMV](#)).

(Guideline 6 of the ESMA Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements).

40. It is considered that given the great diversity of cases that may arise regarding co-ownership, authorised persons, representatives, types of powers of attorney, etc., each entity must decide the ideal way to solve the various possible situations based on different variables (natural vs. legal persons; groups of entities; joint and several vs. joint powers; the existence of different portfolios/accounts associated with the same client, etc.).
41. However, in general, where a natural or legal person appoints a holder of power of attorney/representative, it is considered reasonable that, for the purposes of the appropriateness questionnaire, the knowledge and experience of the holder of the power of attorney/representative be considered, when it is this person that carries out the transactions.
42. In cases where there are several co-holders or several representatives are appointed, it is considered reasonable that the appropriateness assessment be carried out on the holder/representative agreed upon by the clients. In the absence of client agreement, in

accordance with the ESMA Guidelines, prudent judgement should be applied and the knowledge and experience of the holder/representative with the least experience and knowledge should be taken into account.

43. Likewise, where several co-holders or joint representatives are appointed, it is considered reasonable that, in the absence of a more specific agreement from the clients, the assessment be carried out considering the knowledge and experience of the holder/representative giving the order, since it is that client who is acting on behalf of the others in that transaction.
44. In any case, it is necessary for the parties involved to be informed prior to the provision of the service as to which regime the entity is going to apply.

Fourteenth. Other.

45. This Technical Guide replaces the [Procedural Guide to Assessing Appropriateness and Suitability of 17 June 2010](#), as regards appropriateness assessment.
46. The guidelines that the CNMV published in its Procedural Guide to Assessing Appropriateness and Suitability of 17 June 2010, as they relate to the assessment of suitability, must be considered as remaining in force, insofar as they do not conflict with subsequent regulatory developments or ESMA Guidelines, or with the indications of this Technical Guide.

ANNEX

Example 1. (See second section, [paragraph 5](#)). *From the perspective of standards of conduct, is the degree of complexity of a product correlated with its higher or lower level of potential risk?*

Not entirely. For example, the shares of the companies that make up the IBEX 35 are relatively easy to understand products, but they can include high levels of risk, while a structured bond with a maturity of one year that guarantees the return of the principal at maturity and references its yield to the evolution of an underlying, despite incorporating a relatively low level of risk if the issuer has a high credit quality, is a difficult product to understand.

Example 2. (See third section, [paragraph 7](#)). *When a campaign is carried out for the sale of a product, should it be considered that the initiative comes from the entity?*

In cases where entities carry out advertising campaigns through communication media aimed at the general public, related to financial products, it is reasonable to consider that some of the transactions with them are carried out at the initiative of the clients.

However, if the entity reinforces the advertising campaign with some kind of active internal marketing campaign, by any means, in order to promote the acquisition of the financial product, it should be considered that there is a greater probability that the initiative is from the entity. The same applies when only an internal campaign is carried out, without the support of advertising campaigns through the media, for example, if the entity selects a large group of clients to be contacted by telephone, or by salespersons, to promote the product. Thus, it does not seem likely that in these circumstances a large majority of investors will act on their own initiative, when a product is being marketed massively for a short period of time, especially if the entity has sent messages to the personnel of its distribution network reinforcing the product launch or campaign.

Example 3. (See fifth section, [paragraph 12](#)). *Can different questionnaires be used to assess different investment services provided to the same client? Could an appropriateness questionnaire and also a suitability questionnaire be carried out for the same client?*

Yes, different questionnaires can be used with the same client, providing the consistency of the information to be used when assessing appropriateness is ensured. These situations could arise, for example, in the case of a client for whom the appropriateness of a transaction has initially been assessed and to whom a portfolio management or advisory service is subsequently provided, the suitability of which it has been necessary to assess.

In these cases, whenever the client is asked for information that is already available and is considered valid (in the above example, if information is available regarding the client's level of education, his occupation or his familiarity with a certain family of products, obtained by

means of the appropriateness questionnaire and he is asked again about any of these aspects in the context of the suitability questionnaire), validation and contrast mechanisms must be established to ensure due consistency, such that only one version of each item of information is considered valid and current, irrespective of the context or service in which it is used.

It would not be reasonable for a client to be considered to have one level of education or financial knowledge when assessing the appropriateness of some transactions (because the data obtained from the appropriateness questionnaire are used) and a different level of education or financial knowledge when assessing suitability (because the data obtained from the suitability questionnaire are used). All assessments must use consistent information and consider the most up-to-date information available, regardless of the way in which said information was obtained.

Example 4. (See sixth section, [paragraph 15](#), seventh section, [paragraph 23](#) and eighth section, [paragraph 27](#)). *How should the level of education and previous investment experience be considered, together with the level of financial knowledge expressed by the client when assessing appropriateness?*

The information available on the client must be considered together, so that the result of the assessment is consistent, particularly with the real level of financial knowledge and familiarity with the products, carefully assessing the reasonableness of the conclusions that can be obtained, especially in the case of complex products.

Precisely in the case of complex products, it is not prudent to presume appropriateness based solely on the financial knowledge declared by the client, and it must be verified that, in addition, the client has a level of education or investment experience consistent with said level of financial knowledge. This means that the more complex the product or family of products, the more demanding the requirements must be. There may be some clients who do not have minimum regulated studies but do have a high level of financial knowledge, but in our experience as supervisors these are very rare cases. In general, when clients lack investment and professional experience and certain regulated studies, their level of financial knowledge is not high.

For example, when it comes to assessing products with a higher level of complexity (such as especially complex products that, in general, are not suitable for retail clients, in accordance with [CNMV Circular 1/2018](#), or others such as, for example, unsecured structured products, hedge funds, venture capital, convertible debt, perpetual debt, hybrid instruments, instruments that in accordance with the solvency regulations are computable as own resources or that are subordinated with respect to senior or ordinary debt and derivative products), it is generally appropriate, before presuming the appropriateness of the transaction, to verify that, in addition to having adequate financial knowledge, the client:

- a) has a minimum level of education (equal to or higher than baccalaureate) and demonstrable prior investment experience,
- b) or has university studies with a high technical or mathematical component or related to economics and finance.

Although exceptions to this general approach may be accepted, they must be justified and based on objective data (for example, if more precise information is collected on the client's training outside of the regulated studies and investment experience initially declared) that allow a reasonable understanding of how this level of financial knowledge has been acquired.

If a client, despite having a high level of education and previous investment experience in products similar to the product under assessment, shows through the answers to the questions related to the level of general financial knowledge that this is not high or, in response to questions related to familiarity or the characteristics and risks of the product, that he has doubts regarding its adequate understanding, appropriateness must not be presumed. This is particularly important in the case of especially complex products.

Example 5. (See sixth section, [paragraph 19](#)). *How can information be obtained from clients regarding their financial knowledge (familiarity), avoiding relying on the client's own self-assessment and the risk of overestimating their real level of knowledge?*

There is no single correct way to assess this aspect, and different approaches may be adopted. Logically, in the case of non-complex or simpler products, the questions and answers posed to clients may be simpler and more general.

In the case of complex products, it is necessary to gather more information and to focus on the client's knowledge or lack of knowledge of the nature of these products and the main risks inherent in them. Therefore, for complex products, it will be necessary to increase the number of questions to ask the client, especially as the complexity of the product or family to be assessed increases.

When asking the client about the risks of a specific product, it is not acceptable to ask:

- whether the product entails a certain risk and ask the client to answer YES or NO: *Do you understand that this type of product carries a risk of losing part or all of the investment? Answer: YES/NO;*
- whether or not it has a certain characteristic and request an affirmative or negative response: *Do you know that the profitability of this product depends on underlying assets? Answer YES/NO;*
- Nor is it acceptable to enunciate a risk, describe it and ask the client to confirm whether or not he has understood it: *Credit Risk: Do you know that there is a possibility that the issuer will not return the invested capital? Answer YES/NO.*

Conversely:

- it is necessary always to include the possibility of the client's responding to any of the questions by saying that he does not know the answer;
- it is considered appropriate to ask the client about the specific characteristics and risks of the product that the entity considers most significant, making sure that the client cannot deduce the correct answer from the way the questions and answers are formulated.

For example, multiple-choice questions would be appropriate, so that the client selects the correct one or ones: *Which of the following answers is correct in relation to this type of financial product? (one or more of the answers may be correct) Answers: a) I don't know; b) this type of product entails a possible total loss of the investment made; c) the result depends on the evolution of a basket of underlying assets; d) etc.*

Only if the client answers all the questions showing the appropriate level of knowledge should it be concluded that he is sufficiently familiar with the product being assessed.

In this regard, it must be taken into account that scoring the client's responses and establishing a minimum number of points as the only requirement for considering a product appropriate could lead to appropriateness being wrongly presumed. This would be the case, for example, of questionnaires or algorithms in which points are awarded based on the client's academic background or previous investment experience and the resulting total score exceeds the number established as the only requirement, even though the client has expressed his lack of knowledge of the product, or has not correctly answered the questions designed to assess this aspect. To presume appropriateness in situations such as that described would be inadequate. The valuation algorithm must ensure that in all cases in which a client shows lack of knowledge of the product, the result "not-appropriate" is assigned, regardless of the client's level of education or professional or investment experience.

Example 6 (See seventh section, [paragraph 20](#)). *Is it possible to classify different products in the same family of products? When assessing the previous investment experience of the client, can only transactions in exactly the same product be considered?*

When assessing the previous investment experience, the transactions do not necessarily have to refer to exactly the same financial products, those referring to other products that are different but similar to those, in terms of their nature and risks can also be considered. In other words, transactions with a type of product which, if not the same, has characteristics and risks similar to the product in question.

The greater the complexity and the potential risks, the more difficult it will be to identify other products similar to that being considered. In other words, the number of products in the families will decline as the level of risk and complexity of these products increases.

Therefore, it is difficult to classify the most specific and sophisticated products with a high level of complexity into families of products.

For example, when analysing the appropriateness of a purchase transaction of a structured bond referenced to the evolution of different equity securities, where the amount to be received at maturity depends on their evolution and the result of the investment may be significant gains but also significant losses of the principal invested, it is difficult to find another type of product of a similar nature and with the same types of risks.

When assessing experience, it must also be taken into account that scoring the client's responses and establishing a minimum number of points as the only requirement for considering a product appropriate could lead to appropriateness being wrongly presumed. This would be the case, for example, of questionnaires or algorithms in which points are awarded when the client has investment experience regardless of the family or the type of product in question (for example if points are awarded for the client's experience in treasury bills or listed equities when what is being assessed is the appropriateness of a complex product such as an OTC derivative with quite different characteristics and risks.) The assessment algorithm must ensure that only such of the client's previous experience as may have influenced his ability to understand the nature and risks of the financial products being assessed is taken into account, that is to say experience with financial products similar to that being assessed in terms of their nature and risks.

Example 7 (See seventh section, [paragraph 24](#)) *When the previous investment experience declared by the client on complex instruments in other entities does not tally with the types of instruments usually acquired by him in the entity, what enhanced mechanisms can be applied to reasonably verify the consistency and accuracy of such information?*

When the previous investment experience declared by the client on complex instruments in other entities does not tally with the types of instruments habitually acquired by him in the entity, the mere initial declaration of the client is not considered sufficient and the declaration must be verified in some way. The provision of an extract or other supporting documentation of these transactions offers the greatest guarantees, but it is not the only possibility. It could also be decided to ask the client for some details of these transactions (name of the instruments, entities with which he has carried out transactions) and reflect it in the questionnaire that is collected signed by the client. In the absence of other measures, it should at the very least be possible to prove that the client has been informed that the investment experience with third parties that he has declared does not correspond to the types of complex instruments usually acquired in the entity and that he has been required to reaffirm the existence of this experience.

Example 8 (See eighth section, [paragraph 25](#)) *Professional experience and level of education.*

The way in which the information on the level of education is grouped and its use in the appropriateness assessment is important. For example, in the case of a client with postgraduate studies in finance, who works in the portfolio management department of a financial institution, it is reasonable to presume that he or she has a high level of financial knowledge.

In the case of another client with postgraduate studies in labour law, who works in the same financial institution but in the human resources department, it is not appropriate to presume a high level of financial knowledge considering only these two pieces of information.

If an excessively generic assessment of their level of education and professional experience is carried out, it could be difficult to distinguish one case from the other (if asked about their level of education, both would answer postgraduate studies and if asked whether they work in a financial institution, both would answer affirmatively).

Likewise, grouping university studies generically offers more generic information than if those in economic branches or with a high mathematical component are grouped separately from other university studies. The same applies to primary, secondary or high school education.

Therefore, the way in which questions about level of education and professional experience are asked is very important when carrying out appropriateness assessments.

Example 9. (See tenth section, [paragraph 32](#)). *What examples might there be of situations that are a priori atypical and that should be detected when collecting information from clients?*

Some examples of these situations could be the following:

- Clients with a low level of education and little or no investment experience who declare a high degree of financial knowledge;
- Clients who declare investment experience with complex products in other entities that does not correspond to the types of products usually acquired in the entity;
- Clients who state that they hold or have held a professional position in the financial sector with an academic background that does not correspond to said professional experience, or who show little knowledge of the financial markets;
- Clients who show a low general level of financial literacy, but who state that they are aware of the characteristics and risks of specific highly complex products.