

CNMV'S Technical Guide 4/2017 for the assessment of the knowledge and competence of staff giving information and advice to investors

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The present memorandum (memo) provides a key points summary of Technical Guide 4/2017 of the CNMV¹ (Spanish Securities Market Authority), dated 27 June 2017, with a focus on how financial institutions subject to its provisions should manage its staff training.

1. Introduction

Under Article 193 of the Securities Market (Recast) Act² - which implemented Article 13(2) of Directive 2004/39 (MiFID1) - and Instrument 1/2014 of the CNMV³, the legislator and the competent authority, respectively, have been requiring staff training within financial institutions to ensure that such staff acts honestly, impartially and professionally in the best interests of clients.

¹ *Guía Técnica 4/2017 sobre conocimientos y competencias del personal que informa y asesora.*

² *Texto refundido de la Ley de Mercado de Valores, aprobado por Real Decreto Legislativo 4/2015, de 23 de octubre.*

³ *Circular 1/2014, de 26 de febrero, de la Comisión Nacional del Mercado de Valores, sobre los requisitos de organización interna y de las funciones de control de las entidades que prestan servicios de inversión.*

This Technical Guide 4/2017 applies to Credit Institutions, Investment Firms, Collective Investment Scheme Managers and Alternative Investment Fund Managers providing investments services in Spain (all of them are referred to in the memo as “financial institutions”).

Although possession of appropriate knowledge by whoever gives information or advice to investors is not a guarantee of an adequate provision of the service, as from 1 January 2018 such knowledge will constitute an essential requirement.

2. The governing body

The governing body or a committee which, under the direct responsibility of the governing body, may be created for this purpose, comprising at least three (3) senior managers, should establish the criteria in relation to qualifications and experience of the relevant staff. For such purpose, they should determine, inter alia, the responsibilities of the staff, ensuring that there is a clear distinction in the description of responsibilities between the roles of giving advice and of giving information, and the external entities and/or the internal department of the financial institution or of its Group in charge of providing the necessary training.

They should also establish the control procedures to ensure the observance of the criteria set, including conducting a yearly review.

3. To provide information vs. To advise

The level and intensity of knowledge and competence of those providing investment advice should be of a higher standard than the one of those who only give information on investment products and services. Consequently, staff qualified to give advice would also be qualified to give information.

Staff giving information on investment products has to, among other things: (i) understand the total amount of costs and charges to be incurred by the client; (ii) understand the scope of investment services or ancillary services; and (iii) understand the impact of economic figures and national, regional and global events on financial markets.

In addition to the above obligations, staff giving investment advice must also: (i) understand any general tax implications; (ii) fulfil the obligations in relation to the suitability requirements of the MiFID; and (iii) understand the fundamentals of managing a portfolio, including the implications of diversification regarding individual investment alternatives.

4. Training time

The minimum period to obtain the appropriate experience will be six (6) months on a fulltime basis (or the equivalent on a part-time basis) providing the relevant service.

All relevant staff of the financial institutions should receive a minimum number of classroom hours: 80 in the case of staff that only provides information and 150 in the case of staff that gives advice. They should receive a minimum of ongoing training each year: 20 hours to give information and 30 to give advice. However, under the responsibility of the financial institution and stating the reasons, the number of hours may be lower.

5. Certificates and other ways to acquire the required knowledge

The CNMV will publish a list of qualifications or certificates of specialized entities in relation to the advisory and information services. Relevant staff that has any of the qualifications or certificates included will be deemed to have the appropriate qualification. Such qualifications or certificates may be issued by public or private universities or by certifying entities.

However, financial institutions may, under their own responsibility, consider appropriate qualifications or certificates other than those included on the list. The financial institution's compliance function should verify the equivalence. For such purposes, external training already acquired by staff members as well as that acquired in training courses which the institution has organised in the past may be taken into account.

For the accreditation of training activities conducted by the financial institution itself before July 2017, it will be sufficient to have a record of the training program, the date, the number of classroom hours, the attendees and the report of the Compliance Unit showing the equivalence to the subjects. To evidence in-house training thereafter, a certificate issued by both the person responsible for such training's assessment and by the head of the Compliance Unit shall be required and the examinations held should be available to the CNMV for at least five (5) years.

6. Unqualified staff

A staff member who has not acquired the appropriate qualification is allowed to work under supervision. The staff member supervising other staff will take responsibility for the provision of the services. The maximum period a staff member lacking the appropriate qualification or experience may provide the relevant services under supervision will be four (4) years.

To ensure that the relevant staff's knowledge is adequate, the CNMV may test such staff's knowledge whenever it sees fit.