



## **FOGAIN (INVESTMENT GUARANTEE FUND) CONFERENCE ON MIFID II AND MIFIR**

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Madrid, 5 May 2017

Allow me to begin by thanking FOGAIN, and especially Ignacio García Junceda (its chairman), for his invitation to inaugurate this conference.

There is no doubt that the matter before us today is a burning issue and is the subject of a great deal of attention from the sector and supervisors across Europe.

CNMV is also dedicating significant resources to the implementation of these regulations, which are so relevant for the industry and customers of financial products and services.

As you know, the MiFID II regulations are intense and extensive. They comprise a Directive, a Regulation, a Delegated Directive and various Implementing Regulations, no fewer than 28.

Although I consider that MIFID II is not a revolution but rather an evolution with respect to MIFID I, I would like to comment on some matters that entail significant changes which I believe may be of interest to you:

- product governance
- training of the sales network
- treatment of retrocessions

### **PRODUCT GOVERNANCE**

I shall start with product governance.

As you know, MIFID II attaches great importance to this issue and, in particular, to the appropriate design and distribution of financial products.

In relation to product design, investment services firms that design or decide to market financial instruments must identify the type of target customer, taking into account the risks that the product involves.

And in terms of distribution, reasonable measures must be taken to ensure that the instrument is distributed among the defined target customers when designing the product. That is to say, the product must reach the right people.

Furthermore, it is imperative to evaluate the compatibility of the product with the customer's needs. The aim is to ensure that the principle that the product should be

offered in the interests of the customer is always implemented, even in those cases where the assessment of its appropriateness or suitability is not warranted.

In my view, these requirements regarding how products are designed and marketed will reinforce investor protection. Entities should not be concerned with investor protection only when specifically marketing a product to an investor, but also when designing or planning its marketing.

I understand how these new requirements have given rise to certain doubts and even raised some concerns, in particular as to whether they fit into and are compatible with the assessment of appropriateness and suitability. However, the perspective is different, since it is a collective perspective rather than one of a specific customer, and I hope that the ESMA guidelines on this subject, which will be published shortly, will help dispel those doubts and concerns.

#### SALES NETWORK TRAINING

The second aspect that I consider to be especially relevant is the training of the sales network.

As you know, a few months ago ESMA published the document that contains guidelines on the knowledge and skills of financial sector professionals.

These ESMA guidelines clearly specify the knowledge that staff who inform and advise must have.

On the basis of these guidelines, CNMV has just submitted a Technical Guide proposal to public consultation.

The objective is for investors to understand the risks of the products in which they invest, for which it is necessary for whoever offers such products to them to have the necessary knowledge to understand them and know how to explain them to the investors, and to assess whether they are appropriate or suitable for each customer.

The approach that we propose to apply is flexible in terms of accessing this training. On the one hand, we have concluded that all possible formulas, applied seriously, can be valid to achieve the intended goal. On the other hand, we have taken into account that some entities had already been set up in this field due to the accumulated delay in the publication of the above-mentioned guidelines. We have no intention to interfere with or complicate these plans, which is an additional reason why we have opted for an open vision that allows for several possibilities, always within the framework established by ESMA.

The system chosen allows the training to be provided by the financial institutions themselves or through agreements with training institutions (universities or other certification bodies) in person or remotely.

To complete the system, we will publish a list of certificates of entities specializing in advisory and information services. Consequently, we consider that the personnel who have one or other of the certificates included in this list will have the appropriate qualifications to provide the services that the list itself indicates in each case.

At the same time, we wanted to be rigorous with regard to the necessary content of the required training and, therefore, we have included all the points considered by ESMA.

In addition, the employees must have received theoretical and practical training and devoted a minimum of 80 hours in the case of personnel who only provide information and 150 in the case of staff who advise. As for the minimum amount of ongoing training, our proposal is for it to involve a minimum of 20 or 30 hours per year depending on whether the staff only inform or also advise.

Finally, the guide also indicates the transitional period necessary for entities to have time to train their staff. As you know, the directive provides that an employee can work for a maximum of four years without the training required by MIFID II, provided he or she is supervised by another professional who can prove that he or she has received this training.

CNMV will apply the measures and criteria set out in the guide from January 2018 onwards. This guide will be available for consultation until this coming 10 May, and I would encourage you to send us any comments you may have in this regard.

As you can imagine, proper training of the sales network is not only beneficial for investors, but also for employees and for entities themselves.

On the one hand, it constitutes progress for investors, who will be attended by better qualified personnel. As for employees, they will act with more confidence in themselves and more certainty when informing or advising. And it will also be good for entities from the perspective of their potential responsibilities.

#### TREATMENT OF RETROCESSIONS

As a third issue related to MiFID II, I would like to refer to the treatment of retrocessions.

MIFID II has introduced important changes to the regime for incentives that entities can accept. And at CNMV we are aware that these changes are of concern to the Spanish industry because of the impact they can have on its business model.

As you will be aware, MIFID II prohibits entities from accepting or retaining monetary or non-monetary commissions or benefits from third parties, and in particular from issuers or suppliers of financial products when they provide independent advisory or portfolio management services. For these services, the Directive only allows the receipt of minor non-monetary benefits.

For other investment services, the Directive allows Member States to allow third party payments to be received by marketers (other than portfolio managers or independent advisers) provided certain conditions are met. These conditions are as follows:

- that payments be designed to increase the quality of service provided to the customer, and
- that they do not impede fulfilment of the entity's duty to act honestly, fairly and professionally in the best interests of the customer.

And, as you will already know, MIFID II refers, through an open list, to three cases in which it is considered for these purposes that the quality of the service improves:

- Incorporation into the provision of non-independent advice of an appropriate number of third-party products not linked to the entity.

- Combination of non-independent advice with some type of ongoing service that provides the customer with added value (such as tracking customer suitability or monitoring recommendations on customer portfolio composition).
- Incorporation of non-affiliated third-party products into the supplier's offering and tools to help customers make informed investment decisions and monitor their investments or periodic information on the performance, costs and expenses of their investments.

MIFID II has also reinforced customer information obligations; it is no longer allowed to simply provide prior summary information and the obligation to provide information a posteriori in the case of the receipt of ongoing incentives has been introduced.

The spirit of the regulation clearly seeks a restriction on the use of retrocessions. However, the Directive allows Member States a range of possibilities when transposing them into their respective national legal systems. Possibilities range from an extension of the prohibition of incentives to other investment services to determining additional cases of service quality improvement that could also be allowed.

The decision in this area depends essentially on the Ministry of Economy, with which we are working on the final formula for transposition. We are aware of the importance of concluding this debate as soon as possible so that the entities can prepare properly.

In any event, all these measures are taken with the intention of improving investor protection. As you can imagine, for CNMV investor protection is an objective that is part of our DNA and, therefore, the fundamental guiding principle of our action.

Having said that, we are sensitive to the concerns of the entities and we will try to ensure that European regulations are transposed in the most reasonable way without generating competitive disadvantages of some financial products vis-à-vis others or with respect to the industry of other European countries.

Thank you very much for your attention.