



## CNMV ADOPTS ESMA'S GUIDELINES ON THE MIFID II SUITABILITY REQUIREMENTS

21 December 2018

The Spanish National Securities Market Commission (CNMV) notified the European Securities and Markets Authority (ESMA), on 21 December 2018, of its intention to comply with the [Guidelines on certain aspects of the MiFID II suitability requirements](#) and, therefore, CNMV will take into account their application by entities providing advice (whether independent or otherwise) or portfolio management when exercising its supervisory functions. These Guidelines will apply from 7 March 2019.

The Guidelines update the existing Suitability Guidelines (published by ESMA in 2012) in order to adapt them to the amendments introduced by MiFID II and to provide additional details. They also set out specific criteria regarding the **provision of an automated service**.

The main developments are specifically the following:

1. In relation to the suitability assessment:

- It has been made mandatory to assess whether equivalent financial instruments can be tailored to the client's profile, taking into account the cost and complexity of the products.

The Guidelines state that entities should adopt policies and procedures to ensure that, before recommending a product or acquiring it for the portfolio managed on behalf of the client, a broad assessment of possible investment alternatives is carried out, taking into account the cost and complexity of the products. When an entity offers a restricted **range of products or recommends only one type of product**, it is important that clients are fully aware of this situation and they should be **informed accordingly**.

If the entity chooses or recommends to the client a product that has a **higher cost or is more complex** than an equivalent product, **it should be able to justify this**. These types of decisions must be **documented** and **recorded** and must be paid special attention by the entity's monitoring function.

- It has also been made compulsory for entities to perform a **cost-benefit analysis** when they consider making **changes to investments** so that they are

reasonably able to demonstrate that the benefits of the change outweigh the costs.

The Guidelines state that entities should adopt policies and procedures to ensure that this cost-benefit analysis of investment changes is conducted and should establish **adequate controls** to prevent circumvention of compliance. It is pointed out that it is appropriate to gather all the necessary information to **evaluate the advantages and disadvantages** of the new investments under consideration.

When the advisory service is provided, the entity should include a clear explanation of why the benefits of the recommended change outweigh the costs.

2. The Guidelines apply to **structured deposits** insofar as MiFID II has extended the obligations on the suitability assessment of these products.
3. They also address for the first time, as a voluntary practice, the consideration of clients' environmental, social and governance preferences ('ESG preferences').
4. They stress the need for entities to adopt mechanisms to address the risk of clients tending to overestimate their knowledge and experience by including, for example, specific questions to test the client's level of knowledge about product characteristics and risks. Consideration of age as a relevant factor to be taken into account in the suitability assessment process has been maintained.