



FINANCIAL  
SERVICES  
AND  
MARKETS  
AUTHORITY

## Annex to Communication

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FSMA\_2017\_10-1 of 28/06/2017

### Fit and proper questionnaire for an initial appointment

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#### **Scope**

Portfolio management and investment advice companies;  
Management companies of undertakings for collective investment;  
Management companies of alternative investment funds;  
Certain branches of the aforementioned companies;  
Independent financial planners (legal and natural persons);  
Regulated real estate investment companies;  
Bureaux de change (legal and natural persons);  
Alternative finance platforms;  
Public investment companies.

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The Belgian supervisory laws that apply to the aforementioned institutions<sup>1</sup> provide that the members of the statutory governing body, the persons responsible for the company's day-to-day management, and key independent function holders with the said companies, as applicable, must at all times have the requisite fitness and propriety to perform their functions. In order to allow the FSMA to assess whether that is the case, these persons are required to complete this questionnaire when they are nominated for an initial appointment to a position within one of the aforementioned institutions.

For reappointment to an identical position within one of these institutions, the persons in question must complete the questionnaire titled *Renewal of an appointment*.

Moreover, the members of the statutory governing body must possess adequate collective knowledge, skills and experience to be able to understand the institution's activities, including the main risks to which it is exposed. To allow the FSMA to assess whether that is the case, the institutions must complete a questionnaire for each new initial appointment or reappointment to the same position within the statutory governing body, as well as in the event of a material change in the distribution of tasks among the members of the statutory governing body and the persons responsible for the day-to-day management.

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<sup>1</sup> The Law of 25 October 2016 on access to the activity of investment service provider and on the legal status and supervision of portfolio management and investment advice companies (Articles 12, 13, 23, 35, 47 and 84).

Law of 3 August 2012 on undertakings for collective investment meeting the conditions of Directive 2009/65/EC and on undertakings for investment in receivables (Articles 39, 199, 211 and 227).

Law of 19 April 2014 on alternative investment funds and their managers (Articles 25, 102, 206, 317, 324, 334 and 335).

Law of 25 April 2014 on the legal status and supervision of independent financial planners and on the provision of financial planning advice by regulated firms, and amending the Companies Code and the Law of 2 August 2002 on the supervision of the financial sector and on financial services (Articles 12, 17 and 34).

Law of 12 May 2014 on regulated real estate investment companies (Article 14); Royal Decree of 27 December 1994 on bureaux de change and currency trading (Article 4).

Law of 18 December 2016 regulating the recognition and delineation of crowdfunding and containing various provisions on finance (Articles 10, 15 and 30).

Personal data submitted via this questionnaire and its attachments will be handled by the Financial Services and Markets Authority (FSMA), located at 12-14 rue du Congrès/Congresstraat, 1000 Brussels, in accordance with the Law of 8 December 1992 on the protection of privacy in relation to the processing of personal data.

The FSMA will process these data with a view to verifying compliance with:

- the Law of 25 October 2016 on access to the activity of investment service provider and on the legal status and supervision of portfolio management and investment advice companies;
- the Law of 3 August 2012 on undertakings for collective investment meeting the conditions of Directive 2009/65/EC and on undertakings investing in receivables;
- the Law of 19 April 2014 on alternative investment funds and their managers;
- the Law of 25 April 2014 on the legal status and supervision of independent financial planners and on the provision of financial planning advice by regulated firms, and amending the Companies' Code and the Law of 2 August 2002 on the supervision of the financial sector and on financial services;
- the Law of 12 May 2014 on regulated real estate investment companies;
- the Royal Decree of 27 December 1994 on bureaux de change and currency trading.
- the Law of 18 December 2016 regulating the recognition and delineation of crowdfunding and containing various provisions on finance.

It may also process the data in relation to other legal supervisory mandates defined in Article 45 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services.

Some data will be included in the public register maintained by the FSMA and made available on its website.

The processed data may be passed on to third parties under the conditions set out in Articles 74 and 75 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services.

Pursuant to Articles 10 and 12 of the aforementioned law of 8 December 1992 and the provisions of the Royal Decree of 29 April 2009 implementing Article 3, § 5, 3°, of the Law of 8 December 1992 as regards the FSMA, you have the right, under certain conditions, to access and rectify your personal data.

**PLEASE COMPLETE THIS QUESTIONNAIRE ELECTRONICALLY**

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- I undertake to provide complete and accurate information. I realize that failure to provide the relevant information, or its falsification, may have a negative impact on the FSMA's decision as to my fitness and propriety.

## 1. Attachments

Please attach to this questionnaire<sup>2</sup>:

- a legible copy of your identity card or passport
- a curriculum vitae
- a criminal record extract (or any equivalent document issued by a foreign authority) issued no more than three months ago. This period does not apply, however, if such a document has already been attached to a form submitted to the FSMA for the purpose of holding a position (which is the subject of this questionnaire), as long as no change has been made to the document since then.
- the job description drawn up by the institution
- the documents relating to your assessment by another supervisory authority of the Belgian or a foreign financial sector as referred to in section 4 of this questionnaire (where applicable)
- any judicial, administrative and/or disciplinary measures concerning you as referred to in section 7 of this questionnaire (where applicable)
- other (where applicable; please specify)

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<sup>2</sup> If you have already provided these documents to the FSMA, and if they are unchanged and still valid, you do not need to attach them to this questionnaire.

## 2. Identification of the institution(s) for which the application is submitted

<b>Name of the institution</b>	
<b>Company number</b>	

## 3. Identification of the candidate

<b>Family name</b>	
<b>Given name(s)</b>	
<b>National registry number<sup>3</sup></b>	
<b>Sex</b>	
<b>Domicile</b>	
<b>Place of residence (if different from domicile)</b>	
<b>Telephone/mobile phone number (professional)</b>	
<b>Email address (professional)</b>	

<sup>3</sup> For persons who do not have a Belgian national registry number: please provide the date and place of birth.

#### 4. Assessment by supervisory authorities of the financial sector

4.1 If you have already been through an assessment of your fitness and propriety, either personally or as a representative of a legal entity, **by the National Bank of Belgium (NBB) or a foreign supervisory authority of the financial sector**, or if you are currently undergoing such an assessment for purposes of another position, please complete the following table:

Competent authority	Institution involved	Position involved	Conclusion of the assessment <sup>4</sup>	Date of decision

4.2 If you have already been given conditional approval or if you have been refused approval, please explain the reasons for the decision.

4.3 If in the past you have ever withdrawn an application for a position after it was **submitted to the FSMA, the NBB or a foreign supervisory authority of the financial sector**, please provide details about that withdrawal.

<sup>4</sup> 1) Procedure in progress; 2) Approval; 3) Conditional approval; 4) Non-approval (including a situation in which a person who had previously been given approval or conditional approval was considered by the supervisory authority as no longer having the requisite fitness and/or propriety).

## 5. Information about the position

5.1 Please state below what position you wish to hold within the institution. Please check all boxes which apply.

### *Position of director:*

- Executive director
- Non-executive director
  - Independent director as defined in Article 526ter of the Companies Code<sup>5</sup>
  - Independent director as defined in Article 24 of Commission Delegated Regulation (EU) No 2016/438 (UCITS V)
  - In another capacity (please specify<sup>6</sup>):  
.....
- Chairperson of the statutory governing body

### *Committee membership:*

- Member of the management committee
- Chairperson of the management committee
- Chairperson of the audit committee
- Chairperson of the remuneration committee
- Chairperson of the nomination committee
- Chairperson of another committee: .....

### *Independent functions:*

- Head of the compliance function
- Head of the internal audit function
- Head of the risk management function

### *Other functions:*

- Senior manager (person performing key functions)<sup>7</sup>
- Senior manager of a branch
- Independent financial planner (natural person)
- Employee authorized to represent the independent financial planner when providing financial planning consultations
- Bureau de change (natural person)

<sup>5</sup> It should be remembered that it is up to the institution to check that all legal criteria stipulated in Article 526ter of the Companies Code are met.

<sup>6</sup> For applications to public investment companies: please specify if the candidate represents an entity to which tasks have been delegated.

<sup>7</sup> This refers to a person at a level immediately below the management committee, where such a committee exists, and who in this capacity has direct and decisive influence on the management of all or part of the institution's activities. Where no management committee exists, this refers to persons who participate in the institution's management at the highest level (Article 1, paragraph 1, 7° of the [FSMA] Regulation of 9 July 2002 on the exercise of external functions by managers of regulated companies. It also refers to a senior manager of a public investment company who is not a member of the company's board.

5.2 Official title of the position within the institution: .....

5.3 Please provide the most detailed description possible of the main tasks, competencies and responsibilities linked to the position in question within the institution. Please specify as well, where applicable, the committees on which you sit other than those already mentioned in question 5.1 (investment committee, product approval committee, etc.). Please indicate as well, where applicable, the number of subordinates who report to the position in question.

<b>The main tasks, competencies and responsibilities associated with the position in question within the institution</b>
<b>The committees on which you would sit</b>
<b>The number of subordinates</b>

5.4 Planned start date for the position

5.5 Planned end date for the position

5.6 If this questionnaire applies to positions to be held within several entities, please specify the start and end dates for each of them.



## 6. Information on appropriate expertise

6.1 Please complete the table below with the information about your education, starting with the most recent.

Name of educational institution	Start date		End date		Degree/diploma obtained
	Month	Year	Month	Year	

6.2 Please complete the table below with the information about other training you have received that is relevant to the position concerned, starting with the most recent.

Name of training organisation	Start date		End date		Objective of the training
	Month	Year	Month	Year	

6.3 Please complete the table below with the information about your professional or managerial experience over the past eight years within companies in the financial sector:

Sector <sup>8</sup>	Company name and number	Description and title of the position held <sup>9</sup>	Number of subordinates	Start date		End date		Reason for termination of the position held <sup>10</sup>
				Month	Year	Month	Year	

6.4 Please complete the table below with the information about any professional or managerial experience over the past eight years that was not mentioned in the preceding tables

Company name and number	Description and title of the position held <sup>9</sup>	Number of subordinates	Start date		End date		Reason for termination of the position held <sup>10</sup>
			Month	Year	Month	Year	

6.5 Please indicate if you are bound by non-competition clauses or any other commitments under the terms of the positions you previously held.

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<sup>8</sup> (1) Investment firm, (2) Credit institution, (3) Management company of UCIs or AIFs, (4) Intermediary in banking and investment services or insurance intermediary, (5) Regulated real estate investment company, (6) Other.

<sup>9</sup> Please take account, in this description, of the relevant criteria for determining the level of experience, including: the nature of the position held and its hierarchical level, nature and complexity of the business where the position was held, including its organizational structure, scope of competencies, decision-making powers and responsibilities.

<sup>10</sup> (1) New position within the enterprise; (2) Voluntary departure from the enterprise by the candidate; (3) Departure from the enterprise at the latter's request.

6.6 If, within the course of your career, there was one or more period of at least twelve months in the course of which you did not engage in any professional activity, please provide details about the periods of inactivity.

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6.7 In the table below, please provide the contact information of at least two people willing to serve as referees<sup>11</sup>. One of these should represent a previous employer. By mentioning a person as referee, you explicitly authorize the FSMA to contact the person, after having first informed you of its intention to do so.

	<b>1</b>	<b>2</b>
<b>Family name and given name</b>		
<b>Telephone/Mobile phone number</b>		
<b>Email address</b>		
<b>Position</b>		
<b>Relationship to the candidate</b>		

<sup>11</sup> The following may not be given as referees: parents or relatives by blood or marriage to the third degree, the spouse or partner (cohabitee).

## 7. Information about the candidate's professional integrity

7.1 If information on your professional integrity, as referred to in part 7 of this questionnaire, has previously been provided to the FSMA via an identical questionnaire in conjunction with a different position in the same or another financial institution, please indicate as precisely as possible when and in what context (institution/position) that information was provided.

I hereby declare that there are no changes to be made to the information provided previously regarding my professional integrity and therefore I am not completing section 7.2.

### 7.2 Reputation

*For purposes of this section and unless otherwise indicated, the term "you" is understood to mean:*

- *you personally;*
- *any company/institution/body<sup>12</sup> in which you hold or held a position or otherwise exercised significant influence on its policy or in which you hold or held a significant interest.*

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<sup>12</sup> In that case, please identify it precisely, indicating its official name and company number.

7.2.1 If you have ever been convicted or to your knowledge have ever been/are currently the subject of an investigation, **in Belgium or abroad**, in respect of one or more offences, please provide the necessary details, carefully distinguishing between past convictions and pending proceedings.

Type of offence <sup>13</sup>	Nature of the charges	Period of the charges	Type of decision <sup>14</sup>	Date of decision

7.2.2 If you have been subject, in the course of your professional activities, to a penalty or administrative or disciplinary measure handed down by an authority or a professional organization, please provide the necessary details.

Author of the decision (authority, professional organization, etc.)	Nature of the charges	Period of the charges	Type of decision <sup>15</sup>	Date of decision

7.2.3 If you are aware of any pending proceedings against you that could lead to one of the decisions referred to in the previous question, please provide the necessary details.

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<sup>13</sup> (1) Offences as referred to in Article 20 of the Law of 25 April 2014 on the legal status and supervision of credit institutions or for a similar offence; (2) Offences under social security legislation; (3) tax offences.

<sup>14</sup> (1) Dismissal; (2) Settlement; (3) Preclusion of further prosecution; (4) Acquittal; (5) Simple admission of guilt; (6) Suspended sentence; (7) Conviction.

<sup>15</sup> (1) Warning; (2) Reprimand; (3) Penalty; (4) Suspension; (5) Exclusion; (6) Other.

7.2.4 If you are aware of any offences that you may be charged with by a supervisory authority of the financial sector, please provide the necessary details.

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7.2.5 If you have been the subject

- of dismissal for gross professional misconduct, and/or
- of the termination, for gross professional misconduct, of a contract under which you carry on a professional activity on a self-employed basis, please provide the necessary details.

Person involved	Professional activity	Status <sup>16</sup>	Employer or co-contractor in question	Reasons for dismissal or termination of contract for gross professional misconduct	Date of decision

7.2.6 If you have been, or are considering being party to an out-of-court settlement<sup>17</sup> with a view to putting an end to proceedings for an offence against the financial or other legislation, please provide the necessary details.

Person concerned	The facts of the case	Period of the facts of the case	Date of the out-of-court settlement	Has the out-of-court settlement been fully executed?

<sup>16</sup> (1) Employee; (2) Self-employed.

<sup>17</sup> The following (non-exhaustive) list includes: agreed settlement, compromise, agreement to pay an outstanding amount, arbitration, mediation, settlement, etc.

7.2.7 If

- you have been, or are considering being party to an out-of-court settlement or judicial proceedings relating to a restructuring and/or discharge of personal debts, or
- you have been registered on a list of debtors in default such as the Central Individual Credit Register, please provide the necessary details.

7.2.8 Are you the beneficiary of any foreign bank accounts not reported to the Belgian tax authorities that ought to have been reported?

- Yes     No

7.2.9 If a company on whose policy you have exercised significant influence has been declared bankrupt, please provide the necessary details.

Name of the company	Candidate's connection to the company and the time period	Date of bankruptcy	Comments

7.2.10 If you are aware of any bankruptcy proceedings under way at a company on whose policy you exercise significant influence, please provide the necessary details.

Name of the company	Candidate's connection to the company	Date when bankruptcy proceedings were initiated	Comments

7.2.11 If you are aware of any other facts that, whatever their legal classification, are such as to call into question your professional integrity, please provide the necessary details.

## 8. Conflicts of interest

For purposes of this section and unless otherwise indicated,

- *the term "you" means:*
  - *you personally; as well as*
  - *a spouse, legal or de facto cohabitant, a child, parent or any other relative with whom you live under the same roof; or*
  - *any legal entity where you are or have been a member of the statutory governing body.*
  
- *the term "institution" means:*
  - *the institution itself; as well as*
  - *the institution's parent company; or*
  - *the institution's subsidiaries.*

8.1 If you have a **personal relationship** with a member or members of the statutory governing body, key function holders or persons holding a qualifying holding in the institution, please provide the necessary details.

Institution	Person's identity	Person's position	Link between you and that person	Comments



8.2 If you have a **financial interest (loans, shares, etc.)** or any other interest in respect of members of the governing body, key function holders or persons who have a qualifying holding in the institution, please provide the necessary details.

Institution	Person's identity	Person's position	Nature of the interest linking you to that person	Comments

8.3 If you (via a company, where applicable) have a **financial interest (loans, shares, etc.) or any other interest** in respect of the institution or of a competitor of the institution<sup>18</sup>, please provide the necessary details.

Institution (competitor )	Nature of the interest	Comments

8.4 If you have a **financial obligation** toward the institution, please provide the necessary details.

Institution	Nature of the obligation	Comments

8.5 If you **represent** a shareholder of the institution in any capacity, please provide the necessary details.

Name of the shareholder	Percentage of the share (in percentage of the capital and voting rights)	Nature of the representation

<sup>18</sup> Another UCI is not considered a competitor to the institution.

8.6 If you (via a company, where applicable) are currently or have over the past 2 years been in a **business, professional or commercial relationship** with the institution or with a competitor of the institution<sup>19</sup>, its parent company or subsidiaries, please provide the necessary details.

Institution	Nature of the business relationship	Nature of the obligations arising from that business relationship	Period	Financial value of the business relationship to the candidate	Comments

8.7 If you are currently involved in any **legal proceedings** against the institution, please provide the necessary details.

Institution	Subject of the legal proceedings	Period of the facts of the case	Comments

8.8 If you currently have or have had other **relationships, positions or involvements** to which the above questions do not apply and that could affect the interests of the institution, please provide the necessary details.

<sup>19</sup> Another UCI is not considered a competitor to the institution.

8.9 If you are currently an executive director, non-executive director or employee of the **depository(aries) of the institution**<sup>20</sup>, please provide the necessary details.

Identity of the depository	Nature of the position held with the depository

## 9. Time devoted to that position

9.1 How much time do you have to devote to the position(s) concerned?

Title and positions concerned	Time devoted per week (hours)	Time devoted per year (days)	Number of meetings per year

9.2 If in parallel with the position for which this questionnaire is being completed, you intend to continue or start

- other duties involving participation in the board or management of another company; or
- other professional activities;

please provide the necessary details.

Company name	Country	Title and duties performed	Time devoted per week (hours)	Time devoted per year (days)	Number of meetings per year

<sup>20</sup> For purposes of the above question, you may limit your answer to the institution itself.

## 10. Additional information

If you consider that you should provide us with any other information that may be useful for the assessment of your application, please mention it below.

**A. Declaration by the candidate**

"I, the undersigned ..... (family name and first name), hereby confirm that I have answered the above questions accurately and in good faith.

I undertake to notify the institution concerned and the FSMA immediately of any fact or element that may require a change in the information provided at the time of my nomination and that may have an impact on the fitness and propriety necessary for holding the position concerned.

I declare that I will personally carry out the duties associated with the position."

Date, name and signature of the candidate

## B. Declaration by the institution

I, the undersigned,

- confirm that the information provided in this questionnaire is accurate and complete to the best of my knowledge;
- confirm that the institution will immediately notify the FSMA if there is a material change in the information provided;
- confirm that the institution has sought all the information necessary to assess the fitness and propriety of the candidate and that it has duly taken into consideration that information with a view to assessing his or her fitness and propriety;
- confirm that the description of the position for which a positive assessment is requested corresponds exactly to the aspects of the institution's activity for which the candidate will be responsible;
- confirm that the institution considers, based on a diligent and reasonable enquiry and in the light of fit-and-proper criteria as defined in the relevant Belgian supervisory laws, that the candidate has the necessary professional integrity and expertise to hold the position as described in this questionnaire;
- confirm that the institution has informed the candidate of the regulatory responsibilities associated with the position in accordance with the description in this questionnaire;
- confirm that the institution has a prevention policy and a policy for managing any conflicts of interest that might arise in respect of the candidate;
- confirm that I am authorized to make this notification/application, to provide the declarations made by the institution and to sign this questionnaire on the latter's behalf.

Name of the institution:

Name:

Title:

Signature: