



FINANCIAL
SERVICES
AND
MARKETS
AUTHORITY

Annex to Communication

FSMA_2017_10-3 of 28/06/2017

Fit and proper questionnaire regarding the collective expertise and suitability of members of the statutory governing body and senior management

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 (natural and legal persons);
Regulated real estate investment companies;
Bureaux de change (natural and legal persons);
Alternative finance platforms;
Self-managed public investment companies.

The Belgian supervisory laws that apply to the aforementioned institutions¹ 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 the relevant questionnaire at the time of their initial appointment or of the renewal of an appointment at one of the aforementioned institutions.

Moreover, the members of the statutory governing body must collectively possess adequate 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 this questionnaire for each new initial appointment or reappointment to the same position, 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.

¹ Law of 25 October 2016 on access to the activity of investment service provider and on the 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 services 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 for investment 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

This questionnaire is being submitted as part of:

- the initial appointment to a position within the statutory governing body or the senior management, or the management committee, of
.....
(identity of the person concerned)
- the renewal of an appointment to a position within the statutory governing body² or the senior management, or to the management committee, of
.....
(identity of the person concerned)
- of a material change in the distribution of tasks among members of the statutory governing body and among persons responsible for the day -to-day management, or among members of the management committee³.

1. Identification of the institution for which the application is being submitted

Name of the institution	
Company number	

² In that case, reference may be made where relevant to information that appears on the previously completed questionnaire.

³ In the event of a non-renewal, withdrawal or resignation of a director.

2. Please attach to this questionnaire⁴:

- an organization chart of the institution mentioning, where applicable, the position to which a new nomination is being made for an initial appointment or for renewal in the same position as currently held;
- a description of the composition of the governing bodies and committees; and
- a detailed description of the distribution of tasks among members of the statutory governing body and among persons responsible for the day -to-day management or, where applicable, among members of the management committee, in the event of a change to the latter⁵.

3. Evaluation of collective expertise and suitability

3.1 If this questionnaire is being completed for the replacement of a person within the institution, please provide the necessary details:

Identity of the person being replaced	Circumstances of the replacement

3.2 Please describe the distribution of tasks among members of the institution's, statutory governing body, the persons responsible for the day-to-day management and, where applicable, among members of the management committee.

Person's identity	Member of the statutory governing body (yes/no)	Member of the management committee (yes/no)	Functions

⁴ If you have already submitted these documents, and if they are still valid, you do not need to attach them to this questionnaire.

⁵ Or, where applicable, of the new initial appointment, non-renewal, withdrawal or resignation of a director.

3.3 Please list the skills and qualifications⁶ which the institution requires of the members of its statutory governing body, of the persons responsible for the day-to-day management and, where applicable, of the members of the management committee.

Functions performed within the statutory governing body	Skills and qualifications required

Functions performed within the management committee	Skills and qualifications required

Senior management functions outside the statutory governing body	Skills and qualifications required

⁶ Please consult to this effect the list of skills contained in Annex 2 of the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the statutory governing body and the persons responsible for key functions, published on 21 March 2018: transparency, linguistic knowledge, decision-making capacity, communication, judgement, leadership ability, professional ethics, independence of mind, negotiating skills, argumentation, strategic vision, business sense, etc.

3.4 Please explain the weaknesses the institution has identified in the composition of the statutory governing body, senior management and/or, where applicable, the management committee as regards the skills and qualifications identified in question 3.3.

3.5 If this questionnaire is being completed on the occasion of the nomination of a new member for appointment to the statutory governing body, senior management and/or, where applicable, the management committee, please explain how the candidate will help to remedy the weaknesses identified in question 3.4.

4. Declaration by the institution

I, the undersigned,

- confirm that the information provided in this questionnaire is accurate and complete;
- confirm that the institution will immediately notify the FSMA if there is a material change in the information provided;
- confirm that the institution has asked for all the information necessary to assess the collective expertise and suitability of the members of the statutory governing body and of senior management;
- 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 members of the statutory governing body and senior management have the necessary expertise and collective suitability;
- confirm that the institution has a prevention policy and a policy for managing any conflicts of interest that might arise in respect of the members of the statutory governing body and senior managers;
- 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: