Methodological Guideline
No 2/2014
of the Financial Market Supervision Unit of Národná banka Slovenska
of 30 September 2014
on complaints-handling for investment firms and management companies in accordance with requirements of the European Supervisory Authority
(European Securities and Markets Authority)

The Financial Market Supervision Unit of Národná banka Slovenska, with regard to the guidelines[1)] of the European Supervisory Authority (European Securities and Markets Authority) in connection to the provisions of Article 71e of Act No 566/2001 Coll. on Securities and Investment Services and on amendments to certain laws (the Securities Act), as amended, and Article 38 of Act No 203/2011 Coll. on Collective Investment, as amended, and in line with Article 2(9) of Act No 747/2004 Coll. on Supervision of the Financial Market and on amendments to certain laws, as amended, has issued this methodological guideline:

Article 1
Purpose

The aim of this methodological guideline is to ensure the adequate protection of complainants / consumers and of other clients of supervised entities, in particular to:
(a) clarify expectations relating to a supervised entity's organisation in relation to complaints-handling;
(b) provide guidance on the provision of information to complainants;
(c) provide guidance on procedures for responding to complaints;
(d) harmonise supervised entities' arrangements for handling all complaints they receive; and
(e) ensure that supervised entities' arrangements for complaints-handling are subject to the minimum level of supervisory convergence across the European Union.

Article 2
Definitions

(1) Unless stated otherwise in this methodological guideline (paragraph 2), the terms used in the acts and generally binding legal regulations issued in respect thereof shall take the same meaning in the guidelines referred to in this methodological guideline. These acts are as follows:
(a) Act No 566/2001 Coll. on Securities and Investment Services and on amendments to certain laws (the Securities Act), as amended (hereinafter the "Securities Act"),
(b) Act No 203/2011 Coll. on Collective Investment, as amended (hereinafter the "Collective Investment Act").

(2) For the purposes of this methodological guideline, besides the terms used in the acts and the generally binding legal regulations issued in respect thereof referred to in (1), the following terms shall mean:
(a) *Supervised entity*: an investment firm and management company;

[1)] Guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors of 25 August 2014 (JC 2014 43).

(b) *Complaint*: a statement of dissatisfaction addressed to a supervised entity by a natural or legal person relating to the provision of services or performance of activities which are subject to supervision performed by Národná banka Slovenska under the Securities Act or the Collective Investment Act;
(c) *Complainant*: a natural or legal person who is presumed to be eligible to have a complaint considered by a supervised entity and who has already lodged a complaint.

Article 3
Scope

The guidelines under Article 4 shall not apply to cases where a supervised entity receives a complaint regarding services provided and activities performed other than those which are subject to supervision performed by Národná banka Slovenska, or regarding the services and activities of another entity for which the supervised entity has no responsibility (and where those activities form the substance of the complaint). However, the supervised entity should respond to each complaint where possible, explaining its position to the complainant, even where the complaint does not expressly concern the supervised entity's services and activities (for example the supervised entity should, where appropriate, give the complainant information on the entity responsible for handling the complaint).

Article 4
Guidelines on complaints-handling

Guideline 1 – Complaints management policy

(1) Supervised entity should put in place a complaints management policy (hereinafter "the policy"), which should be defined and endorsed by the supervised entity's statutory body; the statutory body should also be responsible for implementation of the policy and for monitoring compliance with it.

(2) This policy should be set out in the form of a written document, for example as part of the supervised entity's general (fair) treatment policy within the framework of its internal regulations.

(3) This policy should be made available to all relevant staff of the supervised entity.

Guideline 2 – Complaints management function

Supervised entity should create and maintain a working complaints management function that enables complaints to be investigated fairly and possible conflicts of interest to be identified and mitigated.

Guideline 3 – Complaint registration

Supervised entity should internally register all received complaints in an appropriate manner (for example, through a secure electronic register) and in accordance with deadlines for complaint registration.

Guideline 4 – Reporting information on complaints and complaints-handling

Supervised entity should, upon request, provide information on complaints and on complaints-handling to the relevant national authorities. This data should cover the number of complaints received, differentiated according to the national criteria, criteria required by the competent national authority or the supervised entity's own criteria where there are no national criteria or where no criteria have been defined by the competent national authority.

Guideline 5 – Internal follow-up and assessment of complaints-handling

Supervised entity should on an on-going basis analyse complaints-handling data to ensure that it identifies and addresses any recurring or systemic problems and potential legal and operational risks, for example, by

(a) analysing the causes of individual complaints so as to identify root causes common to types of complaint;
(b) considering whether such root causes may also affect other processes or products, including those not directly complained of; and
(c) correcting, where reasonable to do so, such root causes.

Guideline 6 – Provision of information to complainants and the public

Supervised entity should

(a) upon request or when acknowledging receipt of a complaint, provide the complainant with written information regarding the supervised entity's complaints-handling process;
(b) publish details of the supervised entity's complaints-handling process in an easily accessible manner, for example, in brochures, pamphlets, contractual documents or via its website;
(c) provide complainants with clear, accurate and up-to-date information about the complaints-handling process, which includes
    1. details on how to complain (e.g. the type of information to be provided by the complainant, the identity and contact details of the person or department of the supervised entity to whom the complaint should be directed);
    2. a description of the process that will be followed when handling a complaint (e.g. when the complaint will be acknowledged in writing, indicative handling timelines, the availability of the competent national authority or alternative dispute resolution (ADR) mechanism, etc.);
(d) keep the complainant informed about all important facts related to handling of his complaint.

Guideline 7 – Procedures for responding to complaints

Supervised entity should

(a) gather and investigate all relevant evidence and information regarding the complaint;
(b) communicate in plain language that is easily understood;
(c) provide a response to the complainant without unnecessary delay or at least within the time limits set at the national level, or by the supervised entity; when an answer cannot be provided within the expected time limits, the supervised entity should inform the complainant about the causes of the delay and indicate when the investigation is likely to be completed;
(d) when providing a final decision in respect of the complaint that does not fully satisfy the complainant's demand, include a thorough explanation of the supervised entity's position and inform him of other options to pursue the complaint, e.g. the availability of an ADR mechanism or national competent authorities, etc.

Article 5
Final provision

This methodological guideline shall become applicable on the day of its approval by the Executive Director of the Financial Market Supervision Unit of Národná banka Slovenska. Legislation related to the subject-matter of this methodological guideline is available on the website of Národná banka Slovenska (www.nbs.sk).

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