

European Securities and Markets Authority

Consultation on draft guidelines for the assessment of competence and knowledge

FLEXIBLE REQUIREMENTS FOR KNOWLEDGE AND COMPETENCE

The Federation of Finnish Financial Services (FFI) sees that the proposed guidelines for the assessment of competence and knowledge of an investment firm staff should not interfere with current workable solutions in many Member States. Current flexible regime needs to be maintained and there cannot be binding requirements. As ESMA correctly states in paragraph three of the draft guidelines, plenty of Member States have already further detailed the obligations. The sufficient convergence of these should, of course, be guaranteed but with the flexibility that fits the purpose.

In Finland, the general investment advice exam (APV1) was certified in 2011. The FFI recommends that all member companies' employees who work in customer service roles related to investment services complete the authorized qualification and that they have the skills to perform their duties. It is the responsibility of each member company to assess whether a person's status or work duty requires the completion of an authorized qualification. APV1 is recommended for all staff members giving investment advice, whereas a more comprehensive exam (APV2) is recommended for anyone working in demanding investment advice duties. All members of the FFI have committed to having their staff in investment advice roles to have taken at least APV1. It should also be noted that the more demanding exam (APV 2) is targeted to special experts or supervisors and should not be set as a benchmark for a general investment advice exam. It should also be noted that mis-selling cases are very rare in Finland. The envisaged rules should not add requirements to the current regime of the basic exam.

It should be noted that the National Competent Authority is represented in the steering group of the APV Investment Examinations Ltd, in charge of the practical arrangement of the exams. The steering group decides the requirements for the exams. Universities and biggest investment advice providers are also represented in the steering group.

Q1: Do you think that not less than five consecutive years of appropriate experience of providing the same relevant services at the date of application of these guidelines would be sufficient to meet the requirement under knowledge and competence, provided that the firm has assessed their knowledge and competence? If yes, please explain what factors should be taken into account and what assessment should be performed by the investment firm. Please also specify whether five consecutive years of experience should be made in the same firm or whether documented experience in more than one firm could be considered.

It is important that the envisaged rules do not fix a certain amount of years. We think a more qualitative requirement of "relevant experience" (or similar) could be better.

Neither should the rules contain a set training period, i.e. require an investment advisor to train for five years before considered to fulfil the qualification. A supervisor is always responsible for a trainee or an investment advisor and the supervision is continuous. Flexible



training and provision of investment advice needs to be guaranteed. A trainee needs to be able to give investment advice also during the training period, for example gradually, by selling first only non-complex saving products under the supervision without having yet taken the exam. After taking the exam, he or she could move on to giving investment advice on more complex products. Studying, gaining work experience and getting a degree needs to be seen as a whole. Strict time periods do not benefit anyone.

It should, on the other hand, be taken into account that in Finland, if a staff member has not been providing the same relevant services for five consecutive years, he or she needs to retake the authorized exam.

The FFI deems that the possibility to meet the requirements for documented experience in more than one firm is absolutely essential. It may not even be in the staff member's discretion whether he or she provides the services in the same firm for five consecutive years.

In order to avoid discrimination, it should also be specified in the final guidelines that e.g. parental leaves are taken into account while defining the period of appropriate experience.

Q2:ESMA proposes that the level and intensity of the knowledge and competence requirements should be differentiated between investment advisors and other staff giving information on financial instruments, structured deposits and services to clients, taking into account their specific role and responsibilities. In particular, the level of knowledge and competence expected for those providing advice should be of a higher standard than that those providing information. Do you agree with the proposed approach?

This uncertain scope has also made it hard to evaluate ESMA's proposal and we believe that the distinction between "information staff" and advisors will be a big challenge for investment firms. The FFI would therefore welcome more clarity on this point. In our opinion, "staff providing information to clients" should be considered to include employees that actively *market* investment products to clients (without providing advice) and exclude e.g. staff which only hand over information such as a KIID at the client's request (see Section III item 6 e). Otherwise, the guidelines proposed by ESMA would be far too administratively burdensome and costly to implement.

Training by an investment firm itself needs to suffice for staff giving information. No certified exam requirements should be set for such staff. Staff giving information have completely different job descriptions from investment advisors and they guide the client to an advisor if a client asks for advice after receiving the information. Broadening the scope to staff giving information would be completely unnecessary.

Q3: What is your view on the knowledge and competence requirements proposed in the draft guidelines set out in Annex IV?

According to the draft guidelines, it is also important that standards of knowledge and competence are maintained on an on-going basis. It should be specified that gaining work experience is enough for maintaining the standards of knowledge and competence, together with the evaluation, without the need of retaking an exam.

Section III Definitions



In paragraph 6 h), the definition of "appropriate experience" needs to be revised. We do not understand what it means that the staff should "successfully" demonstrate its abilities. We also find the requirement that the work needs to have been performed full-time, to be discriminatory against staff that has been on e.g. sick or parental leave etc. The fact that time spent on breaks should be excluded from the time-count is not necessary to include in ES-MA guidelines and should be deleted

Section V.I General

We fully support the statement in paragraph 11 that the guidelines must be applied in a proportionate manner e.g. taking into account the specific activities carried out by staff. This principle needs to be included also in Sections V.II and V.III which in the current version give the impression that all staff must have knowledge of all items included in those sections, i.e. regardless of which services they perform. That would not be proportionate.

Word "intensity" in paragraph 12 should be removed or replaced, see our comment to question 2.

We believe that also relevant rules and regulations, including self-regulation should be included in the requirements in paragraph 14.

We take the view that monitoring of the guidelines and assessment of knowledge and experience in paragraph 18 could also be made by other functions than the compliance function e.g. human resources. The compliance function should have the role of "second line of defense".

Section V.II Requirements for staff giving information about investment products, investment services or ancillary services

As stated above, we find the category "staff giving information about investment products and services" difficult to define and would welcome more guidelines or examples from ES-MA. In our opinion, "staff providing information to clients" should be considered to include employees that actively market investment products to clients (without providing advice) and exclude e.g. staff which only hand over information such as a KIID at the client's request (see Section III paragraph 6 e). Otherwise, the guidelines proposed by ESMA would be far too administratively burdensome and costly to implement.

In many cases the requirements in the guidelines seem to cover any and all investment products and services and not only those provided by the investment firm in question or the employee in question. This needs to be re-drafted as it would be disproportionate to require that staff has such extensive knowledge. Moreover, it should be clarified that the requirements in paragraphs 20 and 21 apply "where relevant taking into account the specific activities carried out by staff" (cf. Section V.I paragraphs 12 and 16)

It is not proportionate in paragraph 20 b to require that a person understands the key characteristics, risks and features of all investment products available through the firm. The term "available" must be replaced by the term "relevant". Moreover, the guideline says that "particular care should be taken when giving information with respect to products characterized by higher levels of complexity". It should refer only to the case when giving information



to non-professional clients. Firms should be able to presume that professional clients have another degree of knowledge. The same applies to paragraph 22.

It should be specified in paragraph 20 c that the understanding of the total amount of costs to be incurred should be in relation to products on which information is provided. As the ESMA draft is written (“in an investment product”) it comprises any and all products, which seems to be disproportionate.

The same applies to paragraph 20 d and should be in relation to the information on services provided by the relevant person and to paragraph 20 e in relation to the costs for the services provided by the relevant person.

We deem paragraph 21 f redundant and covered by paragraph 21 a, which requires the persons to understand how markets function and how they affect the value and pricing of products on which they provide information. Moreover, same as above, the requirement should only apply where relevant in relation to the information and services provided.
 Section V.III Requirements for staff giving investment advice

Section V.V Assessment, maintenance and updating of knowledge and competence

As mentioned above, we find that there is a need for clarification what is meant by staff “providing information” in paragraph 24. In our opinion, “staff providing information to clients” should be considered to include employees that actively market investment products to clients (without providing advice) and exclude e.g. staff which only hand over information such as a KIID at the client’s request (see Section III paragraph 6 e). Otherwise, the guidelines proposed by ESMA would be far too administratively burdensome and costly to implement.

Please note that we interpret paragraph 25 b as an annual requirement to review staff’s need for e.g. further training in order to comply with the guidelines.

The example on page 19 goes further than the guideline in 25 e. The guideline mentions “deemed” experience whereas the example mentions a test.

It should be clarified in 25 f that there are no requirements for specific training for the person providing the training, i.e. that necessary knowledge and competence is sufficient.

We would like to remove the last part of paragraph 25 h (“and communications”). To include that wording would imply that a trainee would not be able to send the simplest e-mail to a client without involving the trainer. Presence at “all” meetings is too extensive requirement and should be changed into “relevant” meetings.

Q4: Are there, in your opinion, other knowledge or competence requirements that need to be covered in the draft guidelines set out in Annex IV?

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Q5: What additional one-off costs would firms encounter as a result of the proposed guide-



lines?

We have interpreted the draft guidelines as allowing Member States to keep existing national rules and self-regulation regarding competence and experience for advisors. As most advisors of Finnish investment firms already have an authorized license, we think that the one-off costs would mostly relate to “existing staff providing information”. However, as this category of staff is not clearly defined and no examples are given in the guidelines it is difficult to know which categories of employees that will actually be affected by these requirements. Hence, the one-off costs are very difficult to estimate.

Factors which could have an impact on the one-off costs are of course also which requirements regarding e.g. training and education that the national competent authority applies and if there will be an exemption rule for 3 - 5 years' work experience or not. If staff's competence and experience needs to be assessed by a test that would also incur costs for investment firms.

Q6: What additional ongoing costs will firms face a result of these proposed guidelines?

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FEDERATION OF FINNISH FINANCIAL SERVICES