

# Consultation response



10 July 2015

## ESMA Draft Guidelines for Assessment of Knowledge and Competence

### About the Chartered Insurance Institute

The CII is the world's leading professional organisation for insurance and financial services, with over 120,000 members in 150 countries. It includes the Personal Finance Society, the UK's largest professional organisation for financial advisers and those in related roles, with over 35,500 members. Our Charter remit is to secure and justify public trust and confidence in the profession, and therefore we operate on a public interest remit by being separate and independent of the insurance and financial services sector. We are committed to maintaining the highest standards of technical expertise and ethical conduct in the profession through research, education and accreditation.

We are a Competent Authority under Annex I of Directive 2005/36/EC on the Mutual Recognition of Professional Qualifications, and are also registered in the European Commission's *Register of Interest Representatives*.<sup>1</sup>

### Our overall views

We welcome the opportunity to respond to this consultation on the draft guidelines for MiFID II in relation to practitioner knowledge and competence. As a professional body for the sector that advises on many MiFID II products and instruments, we play a key role in setting and upholding the knowledge and ability standards to ensure behaviour meets the highest professional standards.

### Views towards the draft guidelines

We concur with the draft guidelines set out in this consultation. They are consistent with what is already done in the UK under the retail investment adviser regime. Our specific comments are as follows:

**Role of competent authorities in complying with guidelines:** we note that while the guidelines are for the compliance of firms, competent authorities through their supervisory activities have the role under the guidelines to review how firms meet their obligations under Article 25(1) of MiFID II. This is already done by the UK Financial Conduct Authority (FCA) under the retail investment adviser Training and Competence regime.

**Role of other bodies in overseeing ongoing learning:** we note that overseeing the guideline provision of "assessment, maintenance and updating of knowledge and competence" can be either "each [national competent authority] or another national body identified by the Member State". This is consistent with the Statement of Professional Standing (SPS) regime in the UK whereby the FCA has delegated accredited bodies including ourselves to issue SPSs to indicate that the retail investment financial adviser holder has met the required Continuing Professional

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<sup>1</sup> Our registration number is 6530 8695 205-17.

Development (CPD) and other professional including ethical standards. As of 31 May, we have over 21,500 active SPSs held by retail investment advisers, broadly two-thirds of all active SPSs in the UK market.

**Overall views on adviser requirements:** we note that the standards set out under Section 22 of the guidelines seem in our view consistent with what we require of our practitioners. We stress that our standards go into more detail than the broad descriptions listed here, and hence our required level of training in the UK in terms of both length of time spent learning and difficulty of the subject matter is probably more prescriptive. However we recognise that the current standards for financial adviser knowledge and competence vary significantly across the EU, so having these guidelines set to a benchmark level using these broad requirements is the right approach in our view.

Our one misgiving on the subject of the adviser guidelines is that there is no mention of the role of “other national bodies identified by the Member State” such as professional or examining bodies in delivering and overseeing practitioner knowledge and ability. For the same reason that your guidelines were correct in acknowledging the role of professional bodies for CPD, those bodies also provide an impartial approach to delivering other aspects of professionalism, including providing learning material in various formats and testing these objectively; and setting out, communicating and enforcing ethical standards. This is often the most effective way of driving a greater positive impact on raising standards beyond simple “regulatory compliance”.

We supported the way this was done by your sister body the European Insurance & Occupational Pensions Authority (EIOPA) in their good supervisory practices for insurance product distributor knowledge and ability requirements. The relevant section of their report finalised in November 2013 reads as follows:<sup>2</sup>

“Oversight of Knowledge & Ability

EIOPA also considers it good supervisory practice for a competent authority to ensure there is, generally, appropriate oversight of a distributor’s knowledge and ability (and not just in the context of continuous professional development (CPD – see section 4 below). For example:

- An external body can be used to assess whether a distributor possesses knowledge and ability which fulfils relevant legal and regulatory requirements.
- *This body may, for example, be in the form of a supervisory authority or a professional body not representing distributors.*
- Some supervisory authorities permit an insurance undertaking or insurance intermediary which has full responsibility for a natural or legal person conducting insurance mediation, to conduct oversight of that person’s knowledge & ability.”

We hope our contribution to this consultation has been helpful. If you have any further inquiries or require further detail, please do not hesitate to contact us.

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<sup>2</sup> European Insurance & Occupational Pensions Authority, *Report on Good Supervisory Practices regarding knowledge and ability requirements for distributors of insurance products*, 27 Nov 2013, Sect.3.4, p.19 [emphasis added]. [https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-13-172\\_Good-Supervisory-Practices-Report-on-Knowledge-\\_-Ability\\_01.pdf](https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-13-172_Good-Supervisory-Practices-Report-on-Knowledge-_-Ability_01.pdf)