**COMISIÓN NACIONAL DEL MERCADO DE VALORES (CNMV)**

**ADVISORY COMMITTEE**

The CNMV's Advisory Committee has been set by the Spanish Securities Market Law as the consultative body of the CNMV. This Committee is composed by market participants (members of secondary markets, issuers, retail investors, intermediaries, the collective investment industry, etc) and its opinions are independent from those of the CNMV.

**CONTRIBUTION TO ESMA CONSULTATION PAPER ON DRAFT GUIDELINES FOR THE ASSESSMENT OF KNOWLEDGE AND COMPETENCE**

CNMV Advisory Committee welcomes ESMA consultation paper on draft guidelines for the assessment of knowledge and competence (hereinafter the proposed guidelines), as a contribution aimed to strengthen investor protection and establish a consistent level of regulation across Member States.

**GENERAL COMMENTS**

As mentioned in the proposed guidelines, they should be applied in a proportionate manner, taking into account the nature, scale and complexity of a firm's business and the nature and range of financial services and activities undertaken in the course of its business. The Advisory Committee considers this to be a key aspect for a balanced implementation of the proposed guidelines. However, it also believes it should be further clarified how this principle will operate in practice and with what precise implications. The proposed guidelines could identify specific contents or rules that would be exempted or adapted for not complex firms (according to a definition of complexity to be included).

In relation with the publication by Member States of the criteria to be used for assessing knowledge and competence, it should be taken into account that firms should carry out such assessments before MiFID II entries into force (mid 2016). In order to give entities the necessary time to carry out such evaluations, the Advisory Committee considers that national competent authorities (NCAs) should be encouraged to publish such criteria on time and no later than the first quarter of 2016.

Regarding the general approach, the Advisory Committee believes that the draft guidelines establish a too rigid connection between “competence” and “experience”, and that this premise may be questionable. Competence is not equivalent to experience, since there may be competent staff members without the required experience (in terms of number of years), and “experienced” staff members that may not be considered competent. In fact, MiFID II requires “competence”, and makes no reference to “experience”. Consequently, it is possible to conclude that it is not in MiFID II aim to require a minimum period of experience,

The Advisory Committee acknowledges that experience may give an indication of competence, but ESMA guidelines should expressly clarify that competence may be shown by other means different than a minimum period of “appropriate experience”.

The Advisory Committee deems that the cost-benefit analysis included in annex III should be further developed. The Advisory Committee shares that the costs associated with complying with these obligations will result in greater standards of services to clients, a higher degree of investor protection and an overall reduction in client detriment, and that these benefits could outweigh associated costs in respect of these guidelines. Nevertheless, and taking into account the significant implications, in terms of costs, of implementing the proposed guidelines, the Advisory Committee considers that the analysis in this regard should be deepen in terms of costs, as it will be helpful for ESMA in order to balance the final guidelines.

Finally, the CNMV Advisory Committee considers that the structure of the consultative paper needs some clarification. The first part of the document (chapter 2) contains the background, the key principles and the questions. However, the guidelines are included in annex IV, with no clear relation with the contents of chapter 2. As a consequence, it is not clear what ESMA considers as guidelines and will be published as such (chapter 2, annex IV or both).

**QUESTIONNAIRE**

**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.**

The Advisory Committee believes that a five consecutive years experience providing the same relevant services at the date of application of the guidelines should be considered enough to meet the requirement of knowledge and competence.

The Advisory Committee also considers that a shorter period of experience (i.e. three years) may be sufficient to meet the requirements if additional skills are also proven. In this regard, a Degree in Economics or in Financial Markets, or any equivalent and recognized qualifications, plus a shorter experience period, should also be consider sufficient to meet the compulsory requirements (to some extent this option is considered in paragraph 6.h of the draft guidelines). Moreover it will be helpful if the NCAs publish a list of the types of qualifications, courses or tests that they consider meet the requirements posed by the final guidelines.

According to the draft guidelines, the implementation of the five consecutive years of appropriate experience rule would be subject to a specific assessment by the investment firm on the sufficiency of the knowledge and competence of the concerned staff members. The Advisory Committee's view is that the five years threshold is a strong evidence of sufficient knowledge and experience, and that no further assessment should be necessary. In any case, and if a "specific assessment" is finally to be required, it could be performed as follows:

* a "one off" assessment (for the relevant staff member overtaking the five years threshold). The investment firm could analyze several factors (specially the level of compliance by the staff member with regulations, internal policies and procedures, but also the learning needs that the staff member could have identified for himself/herself). If a learning gap is detected, the investment firm should deploy the necessary gap-filling process. A record of evidence on how the activity filled that gap would be useful.
* an "on going" assessment, in order to identify relevant regulatory and market developments and ensure that staff members knowledge and competence are maintained and updated.

The Advisory Committee also considers that a five consecutive years of documented experience in more than one firm should also be considered in order to meet the requirement of knowledge and competence.

**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?**

Yes. The Advisory Committee agrees with the proposed approach. Those providing investments advice should posses a higher level o knowledge and competence.

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

Chapters V.II and V.III of Annex IV set out the knowledge and competence requirements for relevant staff members. Chapter V.II contains two paragraphs: according to the first one (20) investment firms should ensure that staff giving information on financial instruments, structured deposits or ancillary services meet a certain set of requirements in terms of knowledge and experience; according to the second paragraph (21) investment firms should "also" ensure that the same staff meets a second set of requirements.

It is not clear if there is any kind of difference between both sets of requirements (par. 20 vs. 21) in terms of regulatory implications. The Advisory Committee considers that defining two sets of rules may be useful but only if there is a different regulatory treatment.

The Advisory Committee believes that the requirements imposed to staff members who just give information about investment products, investments services or ancillary services in paragraph 21 of the proposed guidelines could be reconsidered.

It is uncertain that requirements like those included in points b (understand the impact of economic figures, national/regional/global events on markets and on the value of investment products on which they provide information) or e (understand market structures for the investment products on which they provide information to clients and, where relevant, their trading venues or the existence of any secondary markets) are necessary in the context of an information-only relation with the client. In this sense, requirements set out in par. 21 could be subject to the proportionality principle in a precise manner (implications of these principles should be clearly explained in the draft guidelines).

**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?**

No.

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

Significant one-off costs to be faced by investment firms could be classified as follows:

* Assessment costs covering all employees providing investment services to retail investors.
* Costs resulting from training and other actions implemented to fill the learning gaps identified for a potential high number of relevant staff members.

Due to the fact that the final regime on knowledge and competence is to be completed by NCA at national level, it is not possible to estimate now the costs associated to this kind of requirements.

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

The following additional ongoing costs will be faced by firms as a result of the proposed guidelines:

* On going assessment and training. As mentioned in the proposed guidelines, firms should review, on at least an annual basis, staff development and experience needs, and regulatory developments. Firms should also ensure that staff maintain and update their knowledge and competence by undertaking professional development or training in the appropriate qualification. It is unquestionable that this will imply further costs for the entities that should be faced on an annual basis.
* Supervision costs. The compliance function should monitor the implementation of the guidelines and report to the board on its main findings.
* Other costs associated to the commercial process. The implementation of the draft guidelines may imply (temporary or definitive) restructuring actions for relevant staff members resulting from the outcome of the learning gap filling process. The potential impact of these actions may be high in terms of costs.

Madrid, June 8th 2015.