

To: European Securities and Markets Authority (ESMA), Paris

Fr: European Financial Planning Association (EFPA), Brussels

Subject: Reply to the consultation Paper of the draft Guidelines for the assessment of knowledge and competence.

July 10, 2015

Dear Sirs,

The European Financial Planning Association (EFPA), and its affiliate members, greatly appreciates the opportunity to respond to the Consultation Paper of the draft guidelines for the assessment of knowledge and competence of the investment firm's personnel giving investment advice or information about financial instruments, financial services or ancillary services to clients under article 24 and article 25 of MiFID II.

These guidelines and the ESMA's consultation paper are timely and necessary for the purpose of improving investor protection. An aim, which is fully shared by EFPA.

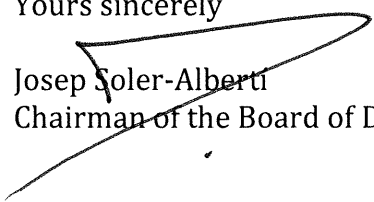
The European Financial Planning Association (EFPA) is the largest and most respected independent standards' setting, accrediting qualifications and certification body for financial advisors and financial planners in Europe. It was created both in the interest of financial services professionals and their users. It aims to disseminate the discipline of personal financial advising and planning among sector professionals and society in general, counting on the legal acknowledgement and back-up of regulatory bodies, financial entities and professionals. By improving the professional training and promoting the observance of the association's code of ethics by its members, EFPA aims to care for ethical and professional conduct. For more information, please visit: www.efpa-eu.org

These responses and opinions are submitted on behalf of EFPA aisbl, registered in Belgium (Entreprise number 0600853533) and by the following affiliate's member's organizations:

- EFPA Austria
- EFPA Czech republic
- EFPA France
- EFPA Germany
- EFPA Ireland
- EFPA Italy
- EFPA Poland
- EFPA Spain
- EFPA UK

EFPA would like to express its gratitude to ESMA in having the opportunity to contribute in this important task.

Yours sincerely



Josep Soler-Alberti
Chairman of the Board of Directors

Reply from EFPA (European Financial Planning Association) to the ESMA Consultation Paper of the Draft Guidelines for the assessment of knowledge and competence.

CONSIDERATIONS:

Before going into detail to the answers to each question, it is important to define the framework of the EFPA understanding of the Consultation Paper.

It is important to highlight that for the first time the regulation seeks, at European level, to include specific knowledge and competence requirements for staff providing investment advice or investment information to clients, considering that both activities have to be clearly differentiated. This should be welcomed by all those aiming to strengthen and improve financial services' distribution following the banking and financial crisis of recent years, the need for better investor protection, and the necessary restoration of trust and reputation of all firms and professionals in the industry.

Keeping in mind that EFPA has always promoted self-regulation and the highest standards for the financial advisor profession, this Consultation Paper is a unique opportunity to reinforce our views and to communicate to all stakeholders the EFPA's approach to the necessary level of knowledge and skills that any customer should expect from his/her advisor.

For this reason, the EFPA's interpretation and responses to the Consultation Paper aim to push the standards of the industry in a proportionate manner as high as possible, although recognizing that some stakeholders would probably not be fully aligned with this position.

EFPA, as an independent professional standards setting and certification organization for financial services' professionals in Europe, has always strived for high level requirements on knowledge and competence for financial advisors. Our 15 years experience has shown us and the market that high level requirements have usually resulted in better professionalism, compliance and customer service and investor protection.

With this in mind, our reading and answers to the Consultation Paper should be oriented and interpreted in a higher (strengthened) way.

As instructed by ESMA, EFPA is going to comment on this Consultation Paper by mainly responding to the questions stated and adjusting to the terms and rationale of these draft guidelines.

Nevertheless, EFPA would firstly like to consider two previous main points in relation to certain aspects of this draft:

1. We miss clear definitions and distinctions between the professional tasks of providing investment product information and providing investment advice.

These two functions are often confused, overlapped and mixed in investment firms, and even more so in the eyes of the customers. We believe they should be better defined by these ESMA guidelines. EFPA would suggest at least drawing a distinction between:

- Those professionals just providing information on non-complex products (but with the capacity to sell products).
 - Those providing information on complex products which inevitably mean that they will also need to provide at least limited scope financial advice.
 - Those providing full holistic financial advice centered on each client interest.
 - Those providing holistic financial advice and, additionally, a financial planning solution for each customer.
2. Since the objective of these Guidelines is to establish a knowledge and competence framework (which also includes experience) for those individuals providing advice and those providing investment information in investment firms, EFPA would like to clarify that we believe the following should be included as requirements of this knowledge and competence framework:
 - A solid and applied education based in terms of learning outcomes.
 - An independent assessment of candidate knowledge and competences, managed by a professional certification body.
 - Continuous professional development to ensure permanent updating of the required education.
 - Assessment of qualified and relevant experience.
 - Adherence to a Code of conduct/ethics.
 - An overall assessment by independent professional certification bodies, which implies being included in a professional public register.

These two points should be considered as an overall umbrella for all our comments and answers to this Consultation Paper.

RESPONSES TO SPECIFIC QUESTIONS IN THE ESMA CONSULTATION PAPER:

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.

- a. EFPA understands that paragraphs 11 and 12 (pages 5 and 6 of the Consultation Paper) states an exception to the general requirements of “appropriate qualification” and “appropriate experience” specified in paragraphs 8 and 9, being a sort of *grandfathering rule* for existing relevant staff in firms who have been providing investment advice or information about financial instruments, investment services or ancillary services, for not less than five consecutive years at the date of the application of the guidelines. Thus, said staff could be considered to possess the necessary knowledge and competence, provided that the investment firm has assessed and continues to assess that they have sufficient knowledge and competence to fulfil the firm’s obligations under Article 24 and 25 of MiFID II.
- b. We agree that, by way of exception, the proposed five consecutive years of appropriate experience have to be considered sufficient to meet the requirement under knowledge and competence for existing staff providing advice at the date (and just for once at the initial period of implementation of the new regulation) of the application of these guidelines. Moreover, for staff providing information on financial instruments, and considering their less demanding but also important role, we suggest that a period of three years would be, again by way of exception, enough to meet the requirements under knowledge and competence at the initial period of the application of these guidelines.
- c. We understand and support the idea that the criteria of applying this grandfathering rule by way of considering five consecutive years (three for those providing information) as sufficient to meet the knowledge and competence requested under *Articles 24 and 25 of MiFID II*, “...should be applied in a proportionate manner,...” (page 13, paragraph 11th). The assessment of these requirements should take into account the nature, scale

and complexity of a firm's business and the nature and range of the financial services and activities undertaken.

- d. In accordance with *paragraph 11 and 12 of the background and principles for the guidelines (pages 5 and 6)*, the exceptional criteria of assessing the necessary knowledge and competence through adequate previous experience, should not be applied automatically. These criteria should only be applicable when the investment firm is continuously assessing whether the staff in question have sufficient knowledge and competence to fulfil the firm's obligations. For instance, for the sake of investor protection, it is expected that any investment advisor should be able to explain all the characteristics (return, risk, costs, taxation, etc) of the financial products suggested or offered to a client, and to understand and have the ability to assess the client's goals, needs and financial situation. An "experienced" professional could have been working for a long time, without being aware of the key aspects behind the advisory tasks, for example, the ability to conduct the suitability test. This is equally relevant for those professionals "just" providing information on the appropriateness and suitability test. For this reason, EFPA emphasises the idea of a "qualified" and "relevant" experience, in order to ask for and implement the grandfathering exception. When applying the grandfathering rule, strict qualified experience requirements must be fulfilled. As included in the CP, experience should not just be understood as "having worked" but needs to conclusively and reliably demonstrate the *"...ability to perform the relevant services through recent work."* (page 12, h)
- e. This "relevant" or "qualified" experience means that providing financial advice should have been the core activity of the person asking for the exceptional grandfathering. If this is not the case, the grandfathering should not be applied. We highlight the sentence *"...provided that the firm has assessed their knowledge and competence"* included in the question. Such requirements may include:
- I. The person should have received continuous training during the last five years of their stated experience. This continuous training should be fully supported either through external certificates or in-house training certificates/documents but ideally assessed by an independent professional certification body.
 - II. The "quality assurance" of the experience may be optimally certified by an external entity. Other professionals, customers, independent companies, etc. could also adequately validate and confirm the experience indicated to the NCA, but ideally, the training and continuous education should have been assessed through tests by the professional certification body.
 - III. It would be necessary to limit the spectrum of professional tasks performed, which could be acceptable for this "qualified experience".

Otherwise, the grandfathering rule could become a pure formality to comply with requirements.

- f. Experience could be gained in different firms, but at least one full year must be requested in the same firm.
- g. These additional or complementary requirements on “qualified experience” have been detailed for the implementation, by way of exception, for existing relevant staff seeking the grandfathering of the necessary qualification. On the other hand, each NCA should implement the same criteria when evaluates the appropriate experience required to all professionals according with *paragraphs 8 and 10 of the Background and principles for guidelines, page 5*. Each NCA should, for this purpose, seek the cooperation of an independent professional certification body.
- h. Some local experiences should be also taken into account. For instance, in Italy, there is already a public exam (run by Albo dei promotori finanziari), which assesses the knowledge required to be admitted in the public register as a tied agent (without having to prove a considerable previous experience). The enrolment on this public register of tied agents is considered by the Italian regulator (Consob) as prerequisite in Italy to offer financial advice. For a professional who spent one or more period (totalling at least 3 years) of qualified experience (like authorized trader or broker, officer in a bank and/or financial intermediary and/or asset management company) the public exam is not required.

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?

- a. Yes, EFPA believes that there should be a differentiation between the level and intensity of the knowledge and competence requirements expected for staff providing investment advice to clients, and those that restricts their activity to providing information on financial instruments. And furthermore, among the more detailed professional profiles that we have indicated in the initial “Considerations” of this response.
- b. These higher requirements for financial advisors should be specified in more detail (see Q3).

- c. The required CPD (Continuous professional development) to maintain over the time the standards of knowledge and competence of the appropriate qualifications should also differ between investment advisors and other staff providing information on financial products, both for non complex and complex products. This differentiation should not be only in terms of amount of continuous training, but also on the topics covered by the CPD. The CPD requirements for advisors should logically be more demanding, accordingly to their higher customer protection responsibility.
- d. Both to determine the level and intensity of knowledge and competence requirements, and to set the CPD requirements, in all professional profiles, it is important to note the different “duty of care” required.

For investment information (sales) professionals, the emphasis should be on product suitability and, therefore, a solid knowledge of products’ characteristics and the most suitable customers for each product.

For advisors (or all those professionals providing informing on complex products leading to advice), the emphasis should be on a very demanding standard of care, centred on customers’ interests through fiduciary duties. It implies a solid knowledge and competence of clients’ goals, needs, and their financial situation; and in the analysis of financial processes even beyond pure investment, covering areas such as taxation, real estate, insurance, pensions and retirement, credit and, of course, ethics and compliance.

- e. Additionally EFPA would like to emphasize that in practical terms, and in many cases, the “border line” is too easily crossed between both main activities. Consciously or unconsciously, a person whom main role is limited to providing information may end up giving investment advice. This is why, for the sake of customers’ protection, the requirement for those theoretically just providing information should not be neglected at all. ESMA guidelines should clearly include the distinction between knowledge and competence requirements for financial advisors and staff providing information. The difference is not only in terms of quantity but also in terms of quality. These differences should be made clear to consumers. For instance by referring to each professional with a title or professional role, in accordance to the duties expected from this professional.

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

- a. Although we agree with the general terms of the requirements proposed in the draft guidelines (*Annex IV, V.II and V.III; pages 14 to 16*), we believe that the learning outcomes for each role and for each knowledge and competence requirement should be specified in more detail. By doing that,

it would help identify and select the adequate qualifications to comply with the regulation; and it would help differentiate between the requirements of those staff providing information and those staff providing advice; and perhaps also between the different types in each profile. An approach to detailed specifications is described in a final annex to these responses to the questions of the Guidelines.

- b. A suggested approach to the necessary and more specified differentiation could be made through a taxonomic level that is required for each activity¹. EFPA understands that people providing advice requires not only a good *understanding* of the subjects included in paragraph 23 (a. to g.), but they should also be able to *analyse* and technically *explain* all those concepts to clients, and how this advice will meet the client's profile. This is a cornerstone of investor protection. The relevance of a stricter requirement for advisors is that it is expected that they should be able to explain in more detail and understandably to their clients, the suitability of the products and all other different aspects that affects their financial decisions.
- c. This goal can also be obtained by specifying or linking the level of qualifications accepted by each role (providing advice or giving information) to the European Qualification Framework (EQF). In this respect, as explained in our annex, EFPA understands that the qualifications valid for the advisory activity should be at least at EQF levels 4/5; and the qualifications valid for information activity at EQF Levels 3/4. The appropriate level should reflect the focus, scope and degree of the relevant services provided.
- d. It should be considered that compliance with articles 24 and 25 of MiFID II is already in itself a comprehensive and demanding requirement for inclusion in both roles (advice and information). EFPA fully supports their inclusion highlighting that those articles must be observed to fulfil the knowledge and competence requirement, and that includes, for instance: product governance, communication to clients, explaining costs, charges and fees, conflict of interest, etc.
- e. At this point, EFPA would like to draw the attention to the potential risks that these new requirements for knowledge and competence might turn into a formality and end up "down-averaging", to become just another checkbox in the entity's compliance policy. Therefore, it is fundamental that the minimum requirements are precisely defined and implemented, using existing solutions and market best practices as much as possible through the support of independent professional certification bodies.

¹ For instance: knowledge (understanding), analysis (assessing) and application (practical implementation)

- f. EFPA has standards for these two “functions” stated in our draft Guidelines. The EFA (European Financial Advisor) standards are a very appropriate benchmark for those providing advice, and is already tested and accepted in different European countries. The European Investment Advisor (EIA) is also an appropriate benchmark for those providing information and occasionally, providing limited scope of advice.

Notwithstanding that the level of knowledge and competence requirements should be in accordance with the *“scope and degree of the relevant services provided (No. 16, page 14)”*.

We include, as an annex, the list of EFPA’s certificates with its EQF level, and its adjustment to each of the profiles we suggested in the initial “Considerations”.

- g. This link (http://www.efpa-eu.org/our_standards/efa) includes the Core Competence Framework (CCF) for the EFPA European Financial Advisor qualification (EQF level 5). Divided in ten modules and described in terms of learning outcomes, the EFPA CCF for the EFA includes all the knowledge and competences required to perform the advisory activity with all guarantees.

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?

- a. As mentioned in Q.3, it is essential to detail the learning outcomes in each knowledge and competence requirement and specify the taxonomic level of each learning objective for both, in the requirements for staff giving advice and for staff giving information. This is the only simple but accurate and understandable way of establishing these requirements.
- b. EFPA believes in the holistic approach of providing financial advice. We strongly support CP proposal ensuring that staff providing relevant services possess the necessary knowledge and competence to meet all business and ethics standards. Furthermore, each client is a complex and unique entity and it is not realistic to expect to have a different advisor dealing with each financial objective such as his/her retirement and pension plan, insurances’ needs or their investments. For instance, a good pensions advice needs to include an assessment of life insurance provisions, and an analysis of the investments made for other goals. To restrict the requirements of Annex IV just to understanding investment products (being aware that MiFID deals with investment products), would be to limit the professional activity to a restricted view of the actual financial circumstances of each investor, and

subsequently to inadequate advice or information, not fully in the interest of the client with an adequate standard of care

- c. Thus, in terms of knowledge for instance, both for staff providing advice and for staff giving information, we believe that insurance financial products (maybe excluding risk insurance), pension funds characteristics and any other retirement advice features should be added to the requirements.
- d. Although mentioned in paragraphs *b. of both V.II. 20) and in V.III. 22)*; the tax implications of each investment product should be fully known and mastered by both the investment advisor and the investment professional providing information. This should not be enough. For advisors, the main tax implications to be known and mastered should also be linked to the overall financial situation of a customer, and to their overall portfolio of investments. Thus, it should refer to the analysis and implementation of taxes for a particular customer.
- e. EFPA understands, -but it would be better to clarify-, that all investment advisors and staff providing information on financial products, should also have an appropriate knowledge on fundamental investment maths and time value of money in order to understand and explain concepts such as yield, return, performance, volatility, and other indicators of risk and reward.
- f. On competence requirements, the staff providing investment advice need, probably above all else, to have the ability to understand and to analyse the customer, and possess adequate skills to draft and recommend personal investment plans, being the basis of sound advice.
- g. Above all, and understood as an essential competence, all those professionals informing, selling and advising to customers, should be subject to an Ethical and Conduct Code. To administer this submission and to link it to the rest of competences' requirements, it would be advisable to do it through an independent professional certification body and its professional and public register. To belong to the register, should be subject to the adherence and submission to the Code of Ethics and to the permanent recertification (CPD) of the qualification.

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

- a. The main one-off cost for firms would be the assessment cost that, as previously mentioned, before should be performed guaranteeing independence and thus, by a recognized external body. Ultimately, some firms should strengthen its compliance by favouring the training of their employees. In those cases that might be also an important one-off cost.

- b. In any case, considering the acute and exceptional need for the recovery of trust in the sector, any investment (more than cost) in professional qualification should be prioritized.

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

- a. The main additional ongoing costs could be linked to the necessary implementation of CPD (Continuing Professional Development), required to keep the professional updated and maintain their knowledge and competence level, as per paragraph 25. A) of V. of the Draft Guidelines. Having said that, the final responsibility of maintaining and updating the appropriate qualification should only fall on each professional, albeit overseen by the firm.

ANNEX

The European Financial Planning Association – EFPA – as a certification body specialized only in financial planning and financial advice, with more than 15 years of experience dealing with candidates, financial institutions and training centres and around 25.000 certificate holders in Europe and overseas, describes below the qualifications that cover the requirements on knowledge and competence as included in article 25 (1) of MiFID II.

All qualifications are described in terms of learning outcomes and are linked to a level of the European Qualifications Framework (EQF).

Also, each qualification should meet the specific level of knowledge and competence required in accordance with the “scope and degree of the relevant services provided by the natural person subject to the new regulation.

European Financial Planner (EFP) EQF level 6. *

Highest standard. Integrated practice of financial planning including estate planning, international taxation, retirement and insurance needs, in addition to a holistic financial advice.

European Financial Advisor (EFA) EQF level 5. *

Full (comprehensive) practice of financial advice. Refers to professionals who offer a rigorous service of assessing clients needs and developing financial solutions, particularly concerning investments (at portfolio level), but also including insurance/retirement/credit/financing solutions.

European Investment Advisor (EIA) EQF level 4. */**

Full practice on providing information on financial products (including complex products) and a non sophisticated/occasional advice by assessing clients needs and developing a financial solution.

European Investment Products Assistant (EIPA) EQF level 3. **

Assistance to other professionals and provision of information to costumers on non-complex products.

* Addressed to professionals providing financial advice.

** Addressed to professionals providing information.

EUROPEAN FINANCIAL PLANNER (EQF 6)

[illegible]

