PORTUGUESE BANKING ASSOCIATION RESPONSE TO THE ESMA CONSULTATION PAPER ON DRAFT GUIDELINES FOR THE ASSESSMENT OF KNOWLEDGE AND COMPETENCE (ESMA/2015/753)

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*.**

In Portugal, there are already detailed obligations concerning the provision of investment advice by natural persons (mainly possession of professional qualifications and competency) and the provision of information about instruments and services on behalf of their investment firm.

We believe that the minimum period proposed in the ESMA's guidelines of not less than five consecutive years of experience – for existing relevant staff, which provide investment advice or information about financial instruments, investment services or ancillary services to clients – is excessive. We consider adequate a minimum period of three years of appropriate experience, so that existing relevant staff, which provides investment advice, may be considered to possess the necessary knowledge and competence to fulfil their obligations under Article 24 and 25 of MiFID II.

Furthermore, it is extremely relevant to make a clear distinction between employees having responsibilities in providing investment advice from those providing only investment information. In this regard, we believe more appropriate to set two different minimum periods of appropriate experience: one minimum period for staff providing investment advice and a second (shortest) minimum period for staff providing information about financial instruments, investment services or ancillary services to clients.

Finally, regarding the number of years of experience, in our opinion it should be taken into account the overall financial experience acquired by the employee, both in the same firm and in other previous investment firms. In this regard, past or current experience in asset management, financial advisory, in sales and trading departments and, in general, any other experience in similar functions, which involves knowledge of the financial markets, should be duly considered.

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?***

We agree with the ESMA's proposal, according to which higher standards are expected for employees that provide investment advice, than for those that provide information on financial instruments, structured deposits and services.

In addition, even though we agree on stronger requirements for staff in advisory roles than for those giving information, it is worth to notice that it is currently demanded more training and higher standard of competence and experience for employees providing investment advice than for staff providing asset management, portfolio management or insurance portfolio management services, which ultimately seems disproportionate.

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

We would like to suggest the following **amendments** regarding point No. 21 in the ESMA's draft guidelines. Amendments to the initial ESMA's proposal have been highlighted using strikethrough for deleted text and **bold** for new or amended text.

Firms should also ensure that staff giving information about investment products, investment services or ancillary services have the necessary knowledge and competence to:

a. *understand* ***the functioning of the market in general*** *~~how markets function~~ and* ***the overall relation with*** *~~how they affect the value and pricing of~~* ***the*** *investment products on which they provide information to clients;*

b. *understand the impact of* ***the main*** *economic figures, ~~national/regional/global~~* ***and*** *events on markets and on the ~~value of~~ investment products on which they provide information;*

c. *understand issues relating to market abuse, where relevant;*

d. ***describe the content of the relevant documentation distributed to clients associated with the investment products which is being presented*** *~~assess data relevant to the investment products on~~*

~~which they provide information to clients such as a prospectus, financial statements, or financial data~~;

e. *~~understand~~* ***give objective information regarding the*** *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;*

~~f. understand basic valuation principles for investment products.~~

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?***

The ESMA's guidelines do not set the minimum requirements regarding the type of professional qualifications, the courses, the exams and the topics against which an appropriate qualification and experience need to be assessed. This approach, although very flexible, may cause divergence between Member States and fragmentation for investment firms operating in several Member States.

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

Investment firms will face one-off costs associated with the need to assess and review compliance with the proposed guidelines and to adjust staff giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm.

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

Investment firms will face additional compliance costs due to the need to include a review of compliance with the proposed guidelines in the report to be provided to the management body on the implementation and effectiveness of the overall control environment for investment services and activities.

In addition, firms will face further ongoing costs to ensure that staff maintain and update their knowledge and competence by undertaking professional development or training in the appropriate qualifications.