

Milan, 9 July 2015  
LP/lp

To: ESMA

**Re: ESMA Consultation paper “*Draft guidelines for the assessment of knowledge and competence*” - Response to the Consultation paper on Draft guidelines for the assessment of knowledge and competence**

Assosim (Italian Association of Securities Intermediaries) is grateful to ESMA and is delighted to have the opportunity to give a contribution to the captioned consultation.

## General remarks

Investment firms operating in Italy are concerned with several issues arising from the April 23rd 2015 draft guidelines (the “draft guidelines”).

First of all our members fear that the criterion in paragraph 11 under chapter 2 could hinder the professional activity of the members – especially the youngest – of their Relevant Staff enrolled in the register of the financial salesmen (as such authorised to provide out-of-office services). As a matter of fact, under the Italian law enrolment is subject to:

- (i) the mere passing of a public exam (without having to prove a considerable previous experience); or
- (ii) the performance for one or more periods totaling at least three years of certain qualified activities (authorized stockbroker or trader; officer of a bank and/or firm and/or asset management company providing investment and/or financial and/or asset management services) so benefiting from the exoneration from taking the public exam.

Concerns also include the possible interpretation of the said criterion as requiring the five-year-permanence in the *same* firm and rejecting non-consecutive periods (thus paradoxically excluding Relevant Staff having served for a lot more than five years just because the latter may have been interrupted e.g. by different postings according to job rotation policies or even leaves!).

Relevant Staff with no degree pertinent to the professional activity performed would be negatively and unreasonably affected.

The envisaged training of Relevant Staff not satisfying the necessary knowledge and competence skills would require further assets that (especially minor) firms having small branch offices could not afford. In general, such increasing costs should be attentively considered at a time when banks and firms are facing demanding and burdensome capital, compliance and risk management requirements.

In addition, supervening training procedures could make senior people subject to leadership and coordination not planned by the existing organisation charts.

It is also to be noticed that the tutor – who should be “*present during all client meetings and communications*” – could be badly perceived by the client of a well established personal relation with the trainee (as it typically happens in certain business environments like private banking).

As far as the Organisational Requirements are concerned, the suggested “*clear distinction in the description of responsibilities between the roles of providing advice and providing information*” is unmanageable and unrealistic (all the more so should it lead to the introduction of incompatibilities, segregation structures, not to mention true “Chinese walls”) since the Relevant Staff is ordinary called to provide either advice or information according to the request and the needs put forward by the client.

To the extent that a distinction is considered necessary, the provision of information-only can be considered as the first step of the banking/financial career, a kind of entry-level, for which minor requirements of experience and competence are reasonably sufficient.

## **Comments on the specific questions**

**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.**

### **A1:**

- i) The minimum period required should match the three-year-one prescribed by the Italian model, which has stood the test of competence and knowledge up to now. Providers of information-only – to a large extent junior/early stage bankers and/or financial salesmen – should need no more than one year of service.
- ii) In the unfortunate event that the original position promoted by ESMA be held, the five years should not be consecutive and necessarily spent in the *same* firm. A total amount of five years, though made discontinuous by alternative postings, especially in the case of job rotation or legitimate leaves, should suffice. Providers of information-only should need no more than two years of service.
- iii) The provision of the same Relevant Service should not be necessary. Recalling the normal practice of asking the Relevant Staff to provide either advice or information according to the request and needs of the clients, the provision of the former and/or the latter services, also operated jointly, should suffice.
- iv) The investment firm’s assessment should take records of the services provided and the

job duties fulfilled, in addition to the courses offered by the firm and attended by the concerned member of the Relevant Staff.

**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?**

**A2:**

- v) The same Relevant Staff providing advice to clients requesting such service should legitimately serve other clients needing information only and vice versa. The introduction of organisational segregations or incompatibilities would entail costs and burdens unjustified and not sustainable by several (especially small) intermediaries. Thus all components of the Relevant Staff should possess a uniform level of knowledge and competence. To the extent that a distinction be considered necessary, it should be limited to the identification of junior profiles entrusted to the provision of information-only with a proportionate level of knowledge and competence.

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

**A3:**

- vi) In addition to the above, investment firms think that:
  - a) on going vocational training courses are sufficient and that a specific university degree, though obviously welcome, is not of the essence;  
furthermore, in order to mitigate costs and burdens for firms already dealing with heavy supervisory requirements,
  - b) firms should be free to opt for courses set up in-house, deploying to this end skilled senior people of commercial, compliance, audit, AML and legal departments of the same distributing firm and also of the issuer (as usually provided for by distribution agreements) or courses offered by reputable training centres, consultancy firms and associations (or to discretionally combine both – internal and external– types of training);
- vii) Tutorship and training should respect existing senior positions and should be flexible; the tutor, far from shadowing the trainee, should act as a point of reference meeting and debriefing him/her weekly.  
In any case, the new guide lines should not apply to existing Relevant Staff already authorised to provide investment services out-of-office, acting as financial salesmen.
- viii) As a whole, since commercial banking activities are quantitatively important if not

prevailing in the UE financial system, a holistic regulatory approach, rather than a sector-specific process, is advisable. As already said, Relevant Staff is asked to provide assistance in terms of advisory or “simple” information, but also in connection with pension, insurance and traditional banking products like deposits, mortgages and financing.

Along this path, also EIOPA and EBA could provide analogous guide lines on their areas and this would set up a complicated and unbearable framework of (fencing) rules.

**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?**

**A4**

Please see comments above

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

**A5**

N.A.

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

**A6**

N.A.

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Thank you in advance for the attention that will be devoted to the present response and please accept my best regards,

Il Segretario Generale  
Gianluigi Gugliotta

