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ESMA 2015/736	ns	+49 (69) 660 550-10 Nina Schobner	Frankfurt, 10. Juli 2015

Comments on ESMA Consultation Paper – ESMA/2015/736 Draft guidelines for assessment of knowledge and competence

Dear Sirs,

the Verband unabhängiger Vermögensverwalter Deutschland e.V. is a german professional association representing 242 investment firms (independent portfolio managers). We support the objective and welcome the improvement of the quality of investment services. There are only some points we disagree.

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.

We consider a period of five consecutive years of appropriate experience as sufficient proof of the necessary knowledge and competence of the staff to fulfil the investment firms obligations under Article 24 and 25 of MiFID II.

In order for paragraph 11 to qualify as an effective grandfathering rule¹, however, if a staff is capable of meeting the criteria of appropriate experience, this should suffice and lead to the automatic recognition of the knowledge and competence of the staff without any additional requirements. Therefore, we disagree with ESMA's view in the draft guidelines that in addition to the criteria of appropriate experience the qualification of the staff shall be subject to the discretion of the NCA and to a specific assessment by the firm.

If the firm had to carry out an assessment of the staff despite of the appropriate experience, then, in principle, the firm would have the same duties or (at least) similar duties, namely to test the qualification of the staff as if the staff did not have the appropriate experience. The five year experience principle would not grant any additional benefit on the investment firms.

If ESMA wishes to remain with the requirement of the assessment of the qualification even if the staff is able to present appropriate experience we suggest that the firm shall only be under an obligation to deny the specific staff's qualification if there are specific and reasonable doubts with a view to the qualification of the member of the staff. For instance, if the firm receives complaints from customers regarding the quality of the services of a staff member in many cases the firm would have to check whether such staff member still has the necessary qualification to fulfil the investment firms obligations under Article 24 and 25 of MiFID II. On the other hand, aside from such specific circumstances the grandfathering rule shall apply. In this case, in particular, the firm shall have no obligation to (proactively) verify the necessary knowledge and competence of a staff member as set out in paragraphs 20-23 of Annex IV.

In consideration of the five consecutive years of experience we take the view that a staff member should have the right to collect the necessary experience in more than one firm. This is because, in our view, for the qualification of the staff it makes no difference if the staff member has collected the necessary experience in one firm or in more than one firm if only the experience is sufficient in the aggregate.

In addition to the above and as a general standpoint, we kindly request ESMA to reconsider the criteria of appropriate experience as such. In ESMA's view, the criteria of appropriate experience stands next to and in addition to the criteria of appropriate qualification (see paragraph 8). Where the staff member does not have the appropriate experience in the provision of the relevant services to the client, the inexperienced staff member shall be trained by another member of the staff until the inexperienced staff member is deemed to have gained the appropriate experience (paragraph 25 e) of Annex IV). Where a staff member is being trained, the person provid-

¹ That this is, supposedly, ESMA's objective, see paragraph 11 stating that this paragraph is to be seen as an exception to the previous paragraphs 8-10 i.e. to the "appropriate qualification"- and "appropriate experience"-test which is to be carried out by a firm if a staff fails to present five consecutive years of appropriate experience.

ing the training shall have the necessary knowledge and competence required by these guidelines and the necessary skills to act as a competent trainer (paragraph 25 f) of Annex IV). During such training period, the person providing the training shall be present during all client meetings and communications (paragraph 25 h) of Annex IV). Most investment firms will have a quantity of staff members who lack the necessary experience to carry out the relevant investment services. Others may have the necessary experience to carry out the investment services but have deficient experience when it comes to carrying out the training for the inexperienced staff members. Despite these practical difficulties in investment firms all inexperienced staff members must be accompanied by an experienced staff member in any client meetings. These meetings may commit a lot of personal resources of an investment firm. The personnel costs may increase to a great deal and may mean a threat to the business model of an investment firm. In a worst case scenario there may even be investment firms which have, to date, no experienced staff members at all or no competent training staff and would have to quit its business as soon as the ESMA guidelines come into force.

Besides our arguments above, we do not consider work experience to be the relevant factor which is necessary when assessing the qualification of a staff member. In fact, in Germany, the investment firm industry would be the first industry to ever adopt an experience requirement as a pre-requisite to practice a regular profession. In fact it is German tradition to acquire the qualification by special degrees and we recommend that also for the staff giving investment advice a certain university business degree (for example master in business) should be seen as a sufficient qualification beside a certain experience level.

Lastly, ESMA defines “Relevant services” as providing investment advice or information about financial instruments, structured deposits, investment services or ancillary services to clients. The converse conclusion can be drawn that staff members without any client contact shall not fall under the scope of these grandfathering-guidelines. Thus, in relation to staff members who carry out portfolio management services but who do not have contact with the firm’s clients regarding these portfolio management services should also be covered by the grandfathering-guidelines. So at least by assessment and decision of senior management.

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

We agree with the topics as listed in paragraph 21-23 of Annex IV to the extent these topics relate to the financial products and the investment services (applies to paragraphs 20 and 22 and 21 d) and f) and 23 d), f) and g) of Annex IV).

We take a different view with respect to the other issues as listed in paragraph 21 to 23 of Annex IV. This information mainly relates to the markets where the financial

products are traded (function, impact of economic figures and events on markets, market abuse, market structures).

The staff members shall have an understanding of the effect of economic indicators and the impact of national, regional and global events on the markets and on the price development of the financial instruments. Just the recent political developments show how difficult it is to foresee the impacts on the markets. As an example, this new requirement would mean nothing other than that the staff would have to assess the impact of the frequently occurring EU summits and derive meaningful conclusions for the development of e.g. currencies, bonds and indices. This sounds in theory understandable - but who really feels called, for example, to predict the price of gold after a failed EU summit rescue? If not even central bank officials agree, how can this be required from bank employees?

We have the same concerns regarding the demanded knowledge about market abuse. Certainly, every staff member should have the knowledge that insider trading and market abuse are punishable. However, in our mind, not every staff member must have expertise how front running, scalping, smurfing and other manipulation techniques work.

Kind regards

VuV Verband unabhängiger
Vermögensverwalter Deutschland e.V.

Dr. Nero Knapp
Geschäftsführender Verbandsjustiziar