The Investment Association: Response to Consultation Paper on draft guidelines for the assessment of knowledge and competence

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.

Requiring five consecutive years of appropriate experience seems excessive, particularly for those providing information rather than advice. We also believe that the test should be based on provision of the same <u>or similar</u> relevant services, rather than "the same relevant services", which may lead to an unnecessarily strict interpretation. Relevant experience in other firms should be taken into account, particularly as individuals frequently move between employers. Given that the firm will be required to assess knowledge and competence anyway, we believe a minimum of one years' appropriate experience providing the same or similar relevant services in one or more firms would be sufficient. But if longer than one year's experience is deemed necessary in respect of staff giving investment advice, the period for staff just giving information should be shorter.

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 in principle, but the language used is confusing and it does not help having a definition of "knowledge and competence" in the guidelines, rather than two definitions, one of "knowledge" and one of "competence". We are also unclear what is meant by the use of the word "intensity" in this context. Does ESMA perceive a difference between "level" of knowledge and "intensity" of knowledge? It seems to us that it would be better to talk about level of knowledge and areas of competence and we do not think referring to "intensity" is helpful at all. Talking about levels of competence normally implies a spectrum from fully competent to incompetent and it therefore looks very odd in a regulatory document to imply that those giving information should have a lower "level" of competence than those giving advice; their role may be different, but it does not follow that they should be less competent. The guidelines should refer to levels of knowledge and to the different competencies required, rather than levels of competence.

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

While it is very clear in the text of the Directive that these requirements are limited to natural persons giving investment advice or information to clients, the statement of scope at paragraph 2 in the draft guidelines confuses this point by implying a much wider ambit. We request that this is clarified in the document.

The question of who these guidelines apply to still seems to be very unclear. The definition of "information about financial instruments, structured deposits, investment services or ancillary services" is marginally helpful in clarifying that the information must be directly provided by staff to clients and provided in order to market a product or service. But what does "directly provided by staff to clients" mean? If one person writes a marketing communication and another person puts it in an envelope and puts it in the post, who is providing information to the client? We would assume that an individual just putting marketing material into an envelope would not be caught by the guidelines, as this would be a completely disproportionate outcome, but further clarification in the guidelines would be helpful. Without that clarification, it is not possible to say whether the requirements set out in paragraph 21 are reasonable or excessive.

The appropriate experience requirement creates a conundrum; how do you attain appropriate experience to carry out relevant services when you are not allowed to work in such a capacity unless you already have appropriate experience? The guidelines should make it clear that individuals may undertake relevant services prior to attaining appropriate experience, as long as they are always under supervision of someone with the necessary knowledge and competence during this phase of their career.

20.b. refers to "the investment products available through the firm", but individuals should be permitted to perform a role that involves giving information about a sub-set of the firm's entire product range, so this should refer to <u>some or all</u> of the investment products available, depending on the individual's role.

20.c. and e. – It will not always be possible for somebody providing product information to understand the total amount of costs to be incurred by the client. If the individual providing the information works for a product provider, he may be unaware of fees paid to an adviser or an investment platform provider.

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, we believe the proposals are comprehensive.

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

This will vary considerably from firm to firm. But the proposals in their current form could mean large numbers of additional staff (those providing information about products and services (in order to market) to both retail and professional investors) could be captured and it would therefore be necessary to ensure these staff are trained and competent, or under appropriate supervision, before the deadline. The practicalities of ensuring this happens could place a heavy burden on firms to ensure those staff have: the necessary exam passes; the necessary records in relation to their competence; or an assessment and record of experience in order to be grandfathered.

The figures below are based on a firm with 400 retail contact centre staff (calls, correspondence and email handling) being captured by these proposals, sitting the necessary exams, and also include the cost of additional staff to be hired to run training and competence schemes for these individuals. They also include the opportunity cost of new staff not being able to work without supervision prior to being deemed competent.

The captured staff and therefore the cost figures below may of course be reduced once we have clarity around some of the definitions, such as what "in order to market" actually means, although we caution that it would not be a good customer experience to have to transfer calls to 'qualified' individuals mid-call depending on the type of information a customer requires.

- Estimated one-off cost of £1.3m to bring existing retail facing teams up to standard by 2017
- Increase in cost of new staff achieving standard prior to first contact with customers estimated at £600,000, with annual cost of £500,000 from 2017
- Recruitment process to change from Jan 2016 to accommodate legislation

There is also the concern that additional costs from these new requirements would have to be passed on to customers in higher charges. Furthermore, the current cost benefit analysis from ESMA lacks sufficient detail and suggests to us that the necessary rigorous work has not been undertaken. We urge ESMA to conduct detailed cost benefit analysis regarding these proposed requirements.

Where staff are providing this type of information, we believe there would be merit in reviewing whether the following may be appropriate; an FCA style 'overseeing' regime (capturing only those staff overseeing captured activities on a day-to-day basis); consideration for reduced standards to apply where individuals are providing information to professional clients, perhaps using the FCA 'overseeing' model; consideration of transitional periods in order to more evenly spread over time these requirements.

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

For firms with large numbers of affected staff, there will be significant additional costs in terms of annual staff reviews, ensuring training and files are kept up to date etc. In the example above, we estimate ongoing annual costs (depending on the final requirements) could be £500,000.