

Stockholm, 8 July 2015

Reply to ESMA's Consultation Paper regarding draft guidelines for the assessment of knowledge and competence (ESMA 2015/753)

1) Introduction

The Swedish Securities Dealers Association and SwedSec Licensiering AB welcome the opportunity to provide comments on ESMA's draft guidelines for the assessment of knowledge and competence.

The Swedish Securities Dealers Association (SSDA) is an association which represents the common interest of banks and investment services firms active on the securities market in Sweden. The mission of SSDA is sound, strong and efficient securities markets. SSDA promotes member's view in regards to regulatory, market and infrastructure-related issues. It also provides a neutral forum for discussing and exchanging views on matters which are of common interest to its members.

SwedSec Licensiering AB (SwedSec) is a wholly owned subsidiary of the SSDA which is responsible for licensing market professionals in Sweden. It currently has 181 affiliated companies and 23,100 active licence holders. Examples of employees who need the SwedSec licence can be investment advisors, brokers, managers, analysts, compliance officers, risk managers and management.

To get and keep a licence by SwedSec the licence holders must pass the licensing exam, be qualified to have a licence and must undertake to comply with the rules of the securities market. All licence holders must also undergo an annual knowledge update in areas that are determined by SwedSec's review board.

There are currently three different licensing exams; one for advisors giving advice about financial instruments and insurance products, one for specialists (e.g. brokers, fund managers, analysts) and one for management and control functions.

2) General comments

The SSDA and SwedSec generally welcome the more detailed MiFID II rules on the assessment of experience and competence and also ESMA guidelines related hereto, which we believe will foster convergence in how these new requirements are interpreted. In our opinion, a high level of competence and experience in staff providing information or advice to clients is essential both for investor protection purposes and in order to maintain a high level of confidence in the EU securities markets.

We support the fact that according to the draft guidelines, discretion is left to national competent authorities (NCAs) as regards which specific requirements on competence and experience that should apply in individual Member States. No Member State should, as a result of these new rules, be forced to lower their standards - regardless if such standards follow from national legislation or self-regulation. A self-regulatory organisation providing licensing etc. must also be able to set up other more restrictive rules. For the avoidance of doubt, this should be clarified in the guidelines. From the perspective of SSDA and SwedSec this point is particularly important since we believe that the current SwedSec requirements for advisors etc. in some respects are more stringent than the proposed ESMA guidelines. For advisors, it would for instance be highly unfortunate if the rules would force our NCA to consider 5 years work experience as equal to having a SwedSec licence.

For Member States such as Sweden where advisors are already covered by national licensing requirements, we believe that it will be the guidelines covering staff providing information that will have most impact on investment firms as these requirements are new. However, as this category of staff is not clearly defined and no examples are given in the guidelines it is difficult to know which categories of employees that will actually be affected by these requirements. The problem is further enhanced by the fact that ESMA proposes only minor differences in the requirements for staff providing information and advisors which seem to suggest that ESMA sees very small differences between the two categories. This uncertain scope has also made it hard to evaluate ESMA's proposal and we believe that the distinction between "information staff" and advisors will be a big challenge for investment firms in the upcoming implementation of the guidelines. The SSDA and SwedSec would therefore welcome more clarity on this point. In our opinion, "staff providing information to clients" should be considered to include employees that actively *market* investment products to clients (without providing advice) and exclude e.g. staff which only hand over information such as a KIID at the client's request (see Section III item 6 e). Otherwise, the guidelines proposed by ESMA would be far too administratively burdensome and costly to implement.

3) Replies to questions

Question 1 (part one) - 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.

For staff that provide investment advice, the SSDA and SwedSec do not support guidelines that would force competent authorities to accept work experience instead of tests where

such requirements follow from national rules/self-regulation. This applies for all advisors, i.e. staff that provide advice when the guidelines enter into force and for new advisors after 3 January 2017.

For existing staff that only provide information, we believe that it could be appropriate to have an exemption to the requirements on “appropriate experience”. However, we think that some amendments should be made to the guidelines. First of all, there is no need to have an assessment in form of both a test and a 5-year work experience rule. Moreover, we question whether it is appropriate to set out a fixed number of years in the guidelines. We think a more qualitative requirement of “relevant experience” (or similar) could be better. It is also a bit extensive to require 5 year experience for someone that only provides information to clients. Therefore, if ESMA persists on keeping a fixed number of years in the Guidelines, the time could be shortened to e.g. 3 years. We also take the view that a requirement of “consecutive time” could be discriminatory against certain categories of employees e.g. those that have been on parental or sick leave. (Please also note general comment regarding need for clarification which staff is considered to only provide information)

Question 1 (part two) - 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.

The SSDA and SwedSec see no reason why experience must be acquired in the same firm. Thus, in our opinion, documented experience from more than one firm should be considered.

Furthermore, we believe that assessment of the staff would normally be made in the form of a test, either by the investment firm or a third party. However please note that for advisors, our experience show that it is better to have a test developed by a third party rather e.g. than accepting a certain university degree or 5 year work experience. Where a test is conducted there should not be a rule on work experience.

Question 2 - 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?

The SSDA and SwedSec agree that the level of competence and knowledge should be of a higher standard for advisors than for those persons providing information. An advisory service carries a larger degree of responsibility than only providing information. However, as previously mentioned in this reply we do see some challenges in distinguishing between these two categories of staff and would welcome some guidelines from ESMA.

Also, we question the use of the notion of “intensity” in connection with knowledge and experience. It should either be taken out of the guidelines or replaced by another word/concept that fits more with the intention that a person should have a certain qualification. Alternative wording could be “sophistication”.

Question 3 - What is your view on the knowledge and competence requirements proposed in the draft guidelines set out in Annex IV?

Section III Definitions

Point 6 h. the definition of "appropriate experience" needs to be revised. We do not understand what it means that the staff should "successfully" demonstrate its abilities. We also find the requirement that the work needs to have been performed full time, to be discriminatory against staff that e.g. has been on sick- or parental leave etc. The fact that time spent on breaks should be excluded from the time-count is not necessary to include in ESMA guidelines and should be deleted.

Section V.I General

Point 11. We fully support the statement that the guidelines must be applied in a proportionate manner e.g. taking into account the specific activities carried out by staff. This principle needs to be included also in Sections V.II and V.III which in the current version give the impression that all staff must have knowledge of all items included in those sections, i.e. regardless of which services they perform. That would not be proportionate.

Point 12. Wording "intensity" should be removed or replace, ref. comment to question 2.

Point 14. We believe that it could be relevant to include also relevant rules and regulations, including self-regulation in the requirements.

Point 18. We take the view that monitoring of the guidelines and assessment of knowledge and experience could also be made by other functions than the compliance function e.g. Human Resources. The compliance function should have the role of "second line of defence".

Section V.II Requirements for staff giving information about investment products, investment services or ancillary services

As stated above, we find the category "staff giving information about investment products and services" difficult to define and would welcome more guidelines or examples from ESMA. In our opinion, "staff providing information to clients" should be considered to include employees that actively *market* investment products to clients (without providing advice) and exclude e.g. staff which only hand over information such as a KIID at the client's request (see Section III item 6 e). Otherwise, the guidelines proposed by ESMA would be far too administratively burdensome and costly to implement.

In many cases the requirements in the guidelines seem to cover any and all investment products and services and not only those provided by the investment firm /the employee in question. This needs to be re-drafted as it would be disproportionate to require that staff has such extensive knowledge. Moreover, it should be clarified that the requirements in points 20 and 21 apply "where relevant taking into account the specific activities carried out by staff" (Cf. Section V.I Points 12 and 16).

Point 20.

- b. It is not proportionate to require that a person understands the key characteristics, risks and features of all investment products available through the firm. The term “available” must be replaced by the term “relevant”. Moreover, the guideline says that “particular care should be taken when giving information with respect to products characterised by higher levels of complexity”. We would insert that it should refer to the case when giving information to non-professional clients. Firms should be able to presume that professional clients have another degree of knowledge.
- c. It should be specified that the understanding of the total amount of costs to be incurred should be in relation to products on which information is provided. As the ESMA draft is written (“in an investment product”) it comprises any and all products, which seems to be disproportionate.
- d. Same comment as for bullet c. The bullet d should be in relation to the information on services provided by the relevant person.
- e. Same comment as for bullet c and d. The bullet e should be in relation to the costs for the services provided by the relevant person.

Point 21.

- f. It seems like this bullet is redundant and covered by bullet (a), which requires the persons to understand how markets function and how they affect the value and pricing of products on which they provide information. Moreover, same as above, the requirement should only apply where relevant in relation to the information and services provided.

Section V.III Requirements for staff giving investment advice

Point 22.

- b. same comment as for point 20 bullet b.

Section V.V Assessment, maintenance and updating of knowledge and competence

Point 24. As mentioned above, we find that there is a need for more clarification what ESMA means by staff “providing information”. In our opinion, “staff providing information to clients” should be considered to include employees that actively *market* investment products to clients (without providing advice) and exclude e.g. staff which only hand over information such as a KIID at the client’s request (see Section III item 6 e). Otherwise, the guidelines proposed by ESMA would be far too administratively burdensome and costly to implement.

Point 25.

- a. See comments to Q 1.
- b. Please note that we interpret this as an annual requirement to review staff’s need for e.g. further training in order to comply with the guidelines. An annual update of the knowledge could also be relevant in some situations (e.g. SwedSec has an annual

knowledge update in areas determined by its review board) but could be a disproportionate requirement for staff that only provide information to clients.

- e. The example on page 19 goes further than the guideline in e). The guideline mentions “deemed” experience whereas the example mentions a test.
- f. It should be clarified in f) that there are no requirements for specific training for the person providing the training, i.e. that necessary knowledge and competence is sufficient.
- h. We would like to remove the last part of the bullet – “and communications”. To include that wording would imply that a trainee would not be able to send the simplest e-mail to a client without involving the trainer. Presence at “all” meetings is too extensive requirement and should be changed into “relevant” meetings.

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?

In the opinion of the SSDA and SwedSec, it is important to add also knowledge about ethical and moral standards and other relevant rules and regulations, including self-regulation.

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

The SSDA and SwedSec have interpreted the draft guidelines as allowing Member States to keep existing national rules and self-regulation regarding competence and experience for advisors. As most advisors of Swedish investment firms already have a SwedSec license we therefore think that the one-off costs would mostly relate to “existing staff providing information”. However, as this category of staff is not clearly defined and no examples are given in the guidelines it is difficult to know which categories of employees that will actually be affected by these requirements. Hence, the one-off costs are very difficult to estimate.

Factors which could have an impact on the one-off costs are of course also requirements regarding e.g. training and education that the national competent authority applies and if there will be an exemption rule for 3-5 years work experience or not. If staff’s competence and experience needs to be assessed by a test that would also incur costs for investment firms.

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

As regards the difficulties in assessing costs, we refer to comments under Q 5. In addition, ongoing costs would consist of training and lost work-time.

4) Other comments

Annex V – Illustrative Examples

Examples relating to 22-23: We think that the examples go beyond the guideline and also see big challenges to monitor this in practice.

Examples relating to paragraph 24: It seems strange that the person should sign a written statement that it has “complied with” the codes of ethics he or she has just read. That requirement should be deleted.

Example relating to paragraph 24: The example goes beyond the guideline which does not mention test but only “deemed experience”.
