CFA Institute

915 East High Street
Charlottesville, VA
22902-4868 USA

+1 (434) 951 5499 tel
+1 (434) 951 5262 fax
info@cfainstitute.org
www.cfainstitute.org

Steven Maijoor
Chair of the European Securities and Markets Authority (ESMA)
103 Rue de Grenelle
75345 Paris Cedex 07
France

Laurent Degabriel
European Securities and Markets Authority (ESMA)
Head of Division
Investment and Reporting
103 Rue de Grenelle
75345 Paris Cedex 07
France

10 July 2015

Re: ESMA Consultation Paper on Draft Guidelines for the Assessment of Knowledge and Competence

Dear Mr. Maijoor and Mr. Degabriel,

CFA Institute appreciates the opportunity to comment on the European Securities and Markets Authority's ("ESMA") consultation paper 2015/753 ("the Notice") pertaining to draft guidelines for the assessment of knowledge and competence of individuals working in MiFID firms that provide investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm. CFA Institute represents the views of investment professionals before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues that affect the integrity and accountability of global financial markets.

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The ESMA paper published on April 23, 2015 introduces a set of guidelines that specify the criteria for the assessment of knowledge and competence required under paragraph 1 of article 25 under the MiFID II Directive and seeks input from various stakeholders, from national competent authorities (NCAs) to MiFID firms (investment firms and credit institutions), investors and professional associations.

CFA Institute believes this consultation is timely, relevant, and in the best interests of investors, MiFID firms and finance professionals across the European Union. At CFA Institute, we share ESMA's view of the positive influence that high standards of proficiency can have on ensuring investor protection and the integrity and efficiency of capital markets. The establishment of these guidelines will not only help restore confidence in the industry but also bring a greater level of consistency and uniformity in the level of regulation and supervision across Member States. Accordingly, we support ESMA's efforts to establish a clear set of guidelines for determining competence of investment professionals to ensure the highest levels of professionalism in the industry.

Background on CFA Institute and the CFA Charter

CFA Institute is the leading global association of investment professionals with more than 133,000 members in more than 147 countries. Approximately 220,000 candidates sit for the CFA exams each year. Our mission is to lead the investment profession globally by promoting the highest standards of ethics, education, and professional excellence for the ultimate benefit of society. We aspire to serve all finance professionals seeking education, knowledge, and professional development. CFA Institute also seeks to lead the investment profession's thinking in the areas of ethics, capital market integrity, and excellence of practice.

As part of its portfolio of educational programs, CFA Institute offers the Chartered Financial Analyst® (CFA®) charter, which is a global, a challenging and widely respected graduate-level investment management credential. Earning the CFA charter requires passing its three challenging levels. Successfully doing so demonstrates a commitment to the highest ethical and professional standards as well as a mastery of a comprehensive range of advanced investment principles needed to successfully practice in the investment industry.

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The CFA program curriculum is grounded in the practice of the investment profession. CFA Institute, through the oversight of the Educational Advisory Committee, regularly conducts a practice analysis survey of investment professionals around the world to determine the knowledge, skills, and abilities (competencies) that are relevant to the profession. The results of the practice analysis define the Global Body of Investment Knowledge and the CFA program Candidate Body of Knowledge. The topic areas covered by the CFA program range from ethical and professional standards, investment tools, all asset classes, and portfolio management.

In addition to the CFA charter, CFA Institute also offers the Claritas Investment Certificate and the Certificate in Investment Performance Measurement (CIPM). The Claritas Investment Certificate is intended for those working in support roles in the financial industry and who need to have a clear understanding of how the financial industry works. Finally the CIPM is focused on performance attribution and manager selection.

CFA Membership and Candidate Pool in the European Union

In the European Union, CFA Institute has more than 16,000 members and about 34,000 candidates sat for the exams in the most recently completed exam cycle in June 2015. The CFA Program is currently delivered in 24 European Union Member States.

There are 24 CFA Societies in the EU and EEA: CFA Austria, CFA Belgium, CFA Bulgaria, CFA Cyprus, CFA Czech Republic, CFA Denmark, CFA Finland, CFA France, CFA Germany, CFA Greece, CFA Hungary, CFA Ireland, CFA Italy, CFA Liechtenstein, CFA Luxembourg, CFA Netherlands, CFA Norway, CFA Poland, CFA Portugal, CFA Romania, CFA Slovenia, CFA Spain, CFA Sweden, and CFA United Kingdom. Most societies offer ongoing professional education, volunteer opportunities, and networking events.

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CFA Program Recognition by National Competent Authorities in the European Union

In Europe, the CFA Program is recognized by national competent authorities in:

- *Germany:* The Deutsche Börse AG accepts the passage of Level III as fulfillment of the professional requirement necessary to be an exchange trader.

- *Greece:* To those who have passed level III, Capital Market Commission (CMC) grants waivers for licensing requirements for analysts, portfolio managers, investment advisers, brokers, and registered representatives.

- *Ireland:* The Qualified Financial Adviser (QFA) Board exempts charterholders from two of the six modules needed to earn the Professional Diploma in Financial Advice. The Institute of Bankers School of Professional Finance exempts those who have passed the CFA Level I exam from the Securities and Market module required to earn the Professional Certificate in Stockbroking.

- *Netherlands:* Passing the CFA Level I exam qualifies for exemptions on becoming a senior investment adviser, fund manager, or financial analyst. Earning the CFA charter qualifies charterholders for exemptions on becoming a senior fund manager, or senior analyst.

- *Portugal:* The Comissão do Mercado de Valores Mobiliários (CMVM) recognizes the CFA charter as fulfillment of the qualifications needed as an investment adviser or financial analyst.

- *United Kingdom:* Based on its Retail Distribution Review (RDR), the Financial Conduct Authority (FCA) has new requirements for private wealth advisors. The FCA recognizes two CFA-related RDR compliant routes in conjunction with the Investment Management Certificate (IMC): CFA I + or CFA + IMC Unit I.

Overall, the CFA Program is recognized by regulators in 29 countries/territories around the world.

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CFA Institute Proposal to ESMA

In the consultation ESMA states that the specification of the criteria for assessment of the qualifications and experience required to comply with the proposed guidelines has to be made at the national level. ESMA considers that the national competent authorities (NCAs) or another national body identified in the Member State should set out the "appropriate qualifications" that they consider to meet the requirements of the guidelines.

Although CFA Institute understands the rationale behind ESMA's approach, **we would encourage ESMA to consider providing national competent authorities with some guidance in the specification of the criteria, especially as it applies for the assessment of qualifications**.

We agree that in the European Union there are vastly differing education and qualification systems at the national level. As a result, we are concerned that it is possible that each of the NCAs may specify very different criteria which could have the unintended effect of hampering mobility across Member States. Consequently, we believe that if ESMA were to provide guidance on acceptable qualifications this would not only simplify the task for NCAs but also go a long way in terms of helping define a uniform European standard as it pertains to qualifications. The definition of such a standard would allow professionals working in different Member States to passport their qualifications seamlessly.

For this reason, **CFA Institute would like to propose that ESMA consider compiling a list of qualifications and providing it in a separate Annex as part of these guidelines**. Such a list would provide the basis for a set of qualifications which all NCA's could recognize. In so doing, investment professionals would know which qualifications would allow them to practice in any country within the EU, thereby enhancing professional mobility.

To help in compiling such a list, CFA Institute would like to recommend that ESMA considers qualifications that meet the criteria listed below. The qualification should:

- Be designed for practioners and represent a high professional standard of knowledge and competence.

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- Offer a uniform standard across the Member States. (The CFA program, for example, is administered identically in every country in which it is delivered and independently assessed globally).
- Allow for professional mobility. Designations, such as the CFA Charter, may already be recognised by firms and across national borders by regulators.
- Have experience requirements. Designations such as the CFA Charter already impose a rigorous minimum relevant experience criterion before the designation is bestowed.
- Have formal monitoring of professional conduct. CFA Institute's Professional Conduct Program monitors compliance, conducts disciplinary proceedings, and imposes sanctions if necessary.

We believe that the CFA Charter meets all the above criteria for a professional qualification that combines an appropriate level of knowledge and experience. A CFA Charter in France has identical value as it does in Germany, the Netherlands, Italy or the United Kingdom. Moreover, the high level of professional knowledge, competence, and experience that go along with the CFA Charter applies to all professionals who hold the designation no matter in which Member State they do business. Because of the above and the recognition it has accomplished in Europe that charterholders can move across Member States to practice. The CFA charter, with its average of 900 hours of study, three-six hour examinations, and four years of professional work experience requirement establishes the level of achievement that all investment professionals responsible for the prudent management of client assets should aspire to. Our hope is that the CFA Charter will be considered in this process of defining an adequate uniform standard for qualifications and experience in Europe. Finally CFA Institute has put in place a rigorous professional conduct program to monitor compliance of its member's with the Code of Standards.

Although ESMA mentions in the paper that it does not intend to nominate specific programmes, we encourage ESMA to consider doing so. In the end we are only asking if a certain category of qualifications that meet or exceed the requirements in these Guidelines and would help in defining a uniform standard across Member States (exemplifying the objectives of this initiative) might be deemed as "Appropriate Qualifications".

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Question 1: 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.

CFA Institute understands the rationale behind ESMA's proposal of exempting professionals with not less than five years of consecutive experience from the knowledge and competence requirements. We would suggest that the exemption provision could be expanded to include those professionals who hold a qualification that combines an appropriate level of knowledge and experience, such as the CFA Charter.

Essentially, we are proposing expanding the exemption as follows:

"[…] having not less than five consecutive years of appropriate experience of providing the same relevant services at the date of application of these guidelines ***or having a professional qualification that combines an appropriate level of knowledge and experience*** would be sufficient to meet the requirement under knowledge and competence, provided that the firm has assessed their knowledge and competence."

The CFA charter, which is held by investment professionals across all Member States, already exemplifies the objectives of the guidelines and is a high (masters' degree comparable) designation which includes a similar four year work experience requirement. Accordingly, we would encourage ESMA to include in the exemption proposal those professionals who have already attained a professional qualification that combines an appropriate level of knowledge and experience, such as the CFA Charter.

To identify the list of professional qualifications that combine an appropriate level of knowledge and experience, ESMA could consider using the criteria we specified in the prior section. The list of qualifications could be provided as a separate Annex as part of these guidelines. Therefore, professionals who have not less than five consecutive years of appropriate experience or who have attained a professional qualification would be exempt from the guidelines.

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Firm assessment and factors to be taken into account

CFA Institute would like to offer some suggestions with respect to what factors firms could take into account in assessing their employees' knowledge and competence. Specifically, we propose the following recommendations:

Firm Assessment

We believe it is important that firms conduct assessments of competence of each individual for all job roles and functions, especially for employees that fall under a possible experience exemption. In order for firms to conduct these assessments, a firm-wide competence framework is required.

The framework would need to define key competencies in regards to skills, knowledge, and attributes.

For those who may qualify for a waiver for an experience requirement, we suggest that ESMA consider the following kinds of attributes for those providing either advice or information:

a. *Possessing a qualification or relevant education:* having completed an international qualification or degree is a factor that should be considered.
b. *Have met the firm's annual compliance requirements:* Firms maintain annual compliance trainings internally. Those who have completed the tests diligently and are in good standing should be considered for any possible exemptions.
c. *History of violations or client complaints:* it should be a necessary condition for professionals to have demonstrated compliance with internal policies and not had any material client related complaints before being considered for an exemption.
d. *Adherence to a code of ethics:* from an affirmative standpoint, another attribute to be considered would be adherence to a code of ethics which requires an annual pledge to abide by it.

We believe that these factors, when taken into consideration, will help firms make informed decisions that will be in the best interests of investors and society as a whole.

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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?

1. Providing Advice

CFA Institute broadly believes that it is appropriate that investment professionals who provide investment advice to clients should be held to a higher level and intensity of knowledge and competence requirements than staff whose role it is to provide information. Advisors who hold themselves out as providing investment advice to their clients owe their clients the highest standard of care. This means that they must put their clients' interests first by providing unconflicted advice.

Advisors with a duty to meet relevant professional standards are obliged to act with prudence, loyalty, and care towards their clients. This is why CFA Institute considers that investment advisors with such an obligation to their clients should be held to the highest standards of knowledge and professional competence.

In terms of establishing an adequate standard for investment advisors, CFA Institute's view is that CFA Charter (along with its experience requirement) represents the body of knowledge that an investment advisor should possess after four years working in the financial industry. We think the CFA Charter represents the appropriate level of knowledge for those providing investment advice to aspire to and for regulators to expect.

2. Providing Information

With respect to staff providing investment information on financial instruments, structured deposits, and other services to clients, in the interests of raising the standards of the investment industry overall, CFA Institute would encourage such staff to endeavor to meet high knowledge and competence requirements as well. However, as a general principle, CFA Institute believes it is appropriate that the level and intensity of knowledge and competence requirements be consistent with a position's roles and responsibilities.

Nevertheless, CFA Institute would argue that for staff whose role it is to provide information, but who are not involved in the management and origination of investments, it is important to obtain a level of knowledge and professional competence sufficient to meet a suitability standard. (In this context, a suitability standard would require that staff providing information might reasonably be expected to determine the extent to which the investments on which they are providing information are an appropriate fit for the client's individual situation.) We would consider CFA Level 1 to be an adequate level of knowledge to ensure that the suitability standards are met.

For less experienced staff charged with providing information, a carefully worded set of disclaimers could be developed which make it clear to clients that, in their role of providing information, such staff are not qualified to provide investment advice. With respect to these disclaimers, CFA Institute would encourage as much uniformity as possible with respect to the disclosures to be given by information providers when interacting with clients. Similarly, CFA Institute believes it might be advantageous to all to attempt to create a reasonably standardized set of job definitions in a way that makes it clear which jobs are staffed by individuals not qualified to give investment advice. CFA Institute also believes that these steps are advisable because the distinction between investment advisors on the one hand, and other staff who give information on financial instruments on the other, is a far more difficult distinction to make in practice than it would be in theory. Accordingly, we believe that one way to overcome this problem is to encourage as high a degree of uniformity as possible with respect to the use of disclaimers and the definitions of job roles.

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

CFA Institute has reviewed the proposed guidelines on knowledge and competence requirements set out in Annex IV in relation to the provision of the investment services and activities listed in Section A, and the ancillary services listed in Section B of Annex I of MiFID II. Our view is that the criteria specified in the guidelines is rigorous and will help promote greater convergence in the knowledge and competence of staff providing investment advice and information about financial instruments, structured deposits, investment services or ancillary services to clients. We agree with ESMA that implementing these standards will assist firms in meeting their obligations to act in the best interest of their clients.

Although the guidelines are thorough, we do have some recommendations for ESMA's consideration:

I. Scope:

Points 1.1 and 1.2: Even though ESMA has made clear which services and activities are within scope of the guidelines, it might be helpful if the definition of 'client' is more explicitly defined. Article 4 of the MiFID II Directive provides a definition of 'client' (paragraph 9) and then further differentiates 'professional clients' (paragraph 10) and 'retail clients' (paragraph 11). Annex II of the Directive further defines professional clients.

As a result, it would be beneficial to clarify if the guidelines imply differentiation between retail and professional clients, or is specifically using the more generic term 'client' defined in Article 4 paragraph 9. Clarifying the term client would also be helpful to understand if the ESMA proposal that the 'level and intensity of knowledge and competence expected for those providing advice should be of a higher standard than those that only give information on financial instruments, structured deposits and services' (2.13) refers to all and any clients or if there is an additional dimension relating to the differences drawn in the Directive between retail and professional clients.

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III. Definitions

Point 6f: As noted in question 1, CFA Institute recommends that those professionals who already hold higher level qualifications (with relevant experience) should also qualify for the exemption. CFA Institute believes ESMA's focus on raising standards of less competent and inexperienced practioners – setting a rigorous foundation of knowledge and competence and an ethical orientation for new entrants to the profession – is critical to enhancing investor protection.

However, requiring highly qualified and experienced staff members to duplicate prior learning would not be a productive use of time and resources.

Point 6g: CFA Institute welcomes flexibility in the definition of 'appropriate qualification' potentially to include training courses. Assessment programmes with qualifications based on a formal examination can provide rigorous standards and independent benchmarking across wide geographies and sectors. These features are invaluable. However, it can be difficult for formal testing programmes to react swiftly to changes in certain content – in particular regional taxation and regulatory developments. Training programmes can be arranged more quickly to react to changes in taxation and regulation, they can be tailored to individual regions and industry sub-sectors and can address smaller volumes of trainees with niche content.

For this reason we would urge ESMA to allow for a blend of both formal assessment and training courses (to cover the remaining localized or faster moving content) as a sensible approach that introduces both rigor and flexibility.

Point 6h: A possible unintended consequence of specific experience requirements is that newer entrants to a profession struggle to obtain job roles that provide the experience needed to develop competence. CFA Institute welcomes ESMA's definition of appropriate experience differentiating the period of time required to meet this requirement depending on an appropriate qualification being attained.

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IV Compliance and reporting

Point 8: CFA Institute understands ESMA's preference that the NCAs publish a list of appropriate qualifications. However we are concerned this may result in very different criteria across Member States. Publishing an Annex to these draft guidelines providing a list of reputable "benchmark" qualifications that could be used by NCAs in setting the criteria for knowledge and competence might help ensure some level of uniformity across Member States and promote mobility of staff. ESMA has commented that there are vastly differing education and qualification systems at the national level across the Member States. ESMA's guidance on qualifications could play a role in setting uniform standards across the European Union.

Another way to help ensure uniformity could be to encourage reciprocity amongst NCAs. Mutual recognition among the NCAs would further the mission of the European Union and bring a level consistency of knowledge and competence requirements for investment advisors and those providing information. Specifically, if a particular qualification or combination of qualifications establishes a suitable level of knowledge and competence for one NCA, then that set of qualifications should be sufficient to establish professional competence for that particular role throughout the European Union.

Finally, we believe that only those education providers able to ensure the most rigorous standards and fairness and who can demonstrate a long-term commitment to supporting the investment industry should be included in any list of appropriate qualifications. Where possible the list should reflect a range of the highest quality programmes and avoid a one-size-fits-all solution from a single provider. It is important the list does not become static or outdated. Therefore, we recommend that ESMA and the NCAs consider establishing an ongoing and transparent process for adding, removing, and amending qualifications on the list.

The CFA Program is already included by regulators in many countries as an appropriate qualification for a range of investment-related roles.

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V. MiFID II

V.I General

Point 11: CFA Institute recognizes the importance of a proportionate approach 'taking into account the nature, scale and complexity of a firm's business' (V.I paragraph 11). For this reason we would recommend the use of rigorous core qualifications with flexibility to complete the requirements by combining appropriate programmes. This may be in the form of a list of approved 'units' that can be combined to complete the requirements in a way that is most suitable for a particular role in a particular firm. For example a rigorous core qualification may cover the majority of the appropriate content and provide an independent and benchmarked standard across firms and Member States. Smaller individual units (which may include specially created training programmes) could complete the requirements by covering faster moving, more specialized, more job-specific, or more regionally specific content (such as the current tax treatment of particular investments or the specifics of regulation in a particular jurisdiction).

CFA Institute would also like to comment on the language of delivery for appropriate qualifications. NCAs should be encouraged to create a qualification regime that promotes the natural mobility of talented professionals between Member States. Whilst it is important that appropriate qualifications are offered in the predominant working language in each country, it could be advantageous to consider appropriate qualifications offered in other languages. As we have noted earlier in this response, professional mobility and migration should be encouraged. Certain languages (in particular English) are used in finance across Member States. Avoiding restrictions on the language of delivery would provide investment professionals with the ability to choose to study and qualify in the language most appropriate for their current and future working context.

In summary, a flexible and proportionate approach, as proposed in paragraph 11, may not be realized by a one-size-fits-all qualification provided by one provider. We support the completion of requirements by appropriate combinations of programmes so that qualifications can be combined with localized and specialized programmes, and that appropriate qualifications achieved in other Member States and in other languages are recognised in the host Member State.

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Point 12: CFA Institute supports the proposal that a higher standard should be applied to those who provide investment advice as stated in our answer to question 2. We note that in Paragraph 24, it is proposed that firms set out '...a clear distinction in the description of responsibilities between the roles of providing advice and providing information'. We would suggest that publication of more detailed guidance and definitions of the boundary between these roles could be extremely helpful to ensure that firms and staff are not left in doubt as to which standards apply to which roles.

Points 13, 14 and 16: CFA Institute strongly supports the principle that -staff should possess the necessary knowledge and competence to ensure that the firm is acting in the best interests of its clients and to meet regulatory and business ethics standards. These principles are highlighted within all three CFA Institute qualification program and CFA Institute members explicitly confirm their personal adherence to these principles by annually signing and agreeing to abide by the CFA Institute Code of Ethics and Standards of Professional Conduct. Relevant extracts from the CFA Code and Standards are:

Members of CFA Institute (including CFA charterholders) and candidates for the CFA designation must:

- *Act with integrity, competence, diligence, respect, and in an ethical manner with the public, clients, prospective clients, employers, employees, colleagues in the investment profession, and other participants in the global capital markets.*
- *Place the integrity of the investment profession and the interests of clients above their own personal interests*
- *Maintain and improve their professional competence and strive to maintain and improve the competence of other investment professionals.*
- *Knowledge of the Law. Members and Candidates must understand and comply with all applicable laws, rules, and regulations (including the CFA Institute Code of Ethics and Standards of Professional Conduct) of any government, regulatory organization, licensing agency, or professional association governing their professional activities. In the event of conflict, Members and Candidates must comply with the more strict law, rule, or regulation. Members and Candidates must not knowingly participate or assist in and must dissociate from any violation of such laws, rules, or regulations.*
- *Loyalty, Prudence, and Care. Members and Candidates have a duty of loyalty to their clients and must act with reasonable care and exercise prudent judgment. Members and Candidates must act*

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for the benefit of their clients and place their clients' interests before their employer's or their own interests.

Point 15: CFA Institute agrees that staff knowledge and competence extends to the firm's internal policies and procedures designed to ensure compliance with MiFID II, and believes this can best be achieved through firm-specific continuing education supplied by each firm to their own staff.

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

Point 20: CFA Institute supports all the proposed content requirements for staff giving investment information (a. – e.).

We recognize that there are additional challenges to ensuring adequate proficiency of professionals on matters relating to tax and transaction costs. This is because specific taxation and costs may change frequently and in ways relating to differing products offered by different firms. As a result, we recommend that ESMA distinguishes which knowledge and competence requirements can be met through a core qualification and which are best delivered through an appropriate regulatory qualification or continuing education. In this regard, our initial suggestion is that the initial 'core' appropriate qualification should focus on the knowledge of general principles and approaches. Firms are best positioned to react quickly and to target effectively the changes that are relevant to their own products and staff. We suggest that it may be better to avoid fixing specific taxation and transaction costs within generic qualification programmes as this content very quickly goes out of date and can become irrelevant, or even misleading. It is also specific to particular Member States. We would suggest that a solution might be for those who have already qualified in one Member State and who move to work in another should have the opportunity, through in-firm continuing education, to refine their knowledge of local tax and cost implications without needing to re-take a full program of appropriate qualifications in the new location.

Point 21: CFA Institute supports all the proposed content requirements for staff giving investment information (a. – f.). As described earlier in our response, CFA Institute does have one recommendation

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in regards to disclosures. In addition to the points listed, we recommend that ESMA requires firms to develop suitable disclosures for staff members who are not qualified to give investment advice. Having those standard disclosures would provide further clarity to clients and investors with respect to who is, and who is not, an information provider.

V.III Requirements for staff giving investment advice

Point 22: CFA Institute supports all the proposed knowledge requirements for staff giving investment advice (a – e).

Again, we note that a generalized qualification program may not be the best method to assess knowledge of specific costs for specific products and advice services. A broader appropriate qualification can assess knowledge of these costs in principle, but individual firms should provide this content in more detail as it applies to their own products, services, and staff by providing annual continuing education updates.

Point 23: CFA Institute strongly supports the requirement that advisors 'understand the fundamentals of portfolio theory, including being able to explain the implications of diversification regarding individual investment alternatives' (g) which has clear significance for those advising higher-net-worth investors.

In addition we would recommend ESMA adds two additional points;

1. Emphasizing the higher standard of care that those providing investment advice owe their clients. This contrasts with the suitability standard of care that a salesperson would have. We would stress the importance that those providing advice must understand their duty of care with respect to exercising loyalty, prudence, and care to their clients while providing investment advice.

2. Include an explicit requirement for those giving investment advice to understand the regulatory environment in which they are operating, including the regulatory rules and guidance within the relevant business environment. If advisers are to understand their obligations as they relate to market abuse, they must understand the conduct of business rules and regulatory environment they are subject to.

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V.IV Organisational requirements

Point 24: CFA Institute supports the organizational requirement that firms set out a distinction in the descriptions of the responsibilities between the roles of providing investment advice and providing information. We suggest that further guidance could be provided as the distinction is not set out in detail either in these guidelines or in the Directive itself and firms may seek reassurance that they have correctly identified staff falling into either category. It is particularly important that those who are not qualified to give advice be aware of the distinction and be required to state and explain this to clients at the initiation of their relationship and through the use of disclaimers.

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

Point 25a: CFA Institute welcomes the proposal that staff providing relevant services to clients be assessed through successful completion of an appropriate qualification and having gained experience in the provision of relevant services to clients. Firms may need to seek additional guidance on how much experience is required of newly qualified staff as this is not currently specified. If there is a distinction to be made in relation to post-qualification experience between information providers and advice providers, then that should be set out in the guidelines. We would consider the experience requirement of greater importance for those providing advice.

Point 25 b and c: As part of the CFA Institute Code and Standards of Professional Conduct, members of CFA Institute commit to 'maintain and improve their professional competence and strive to maintain and improve the competence of other investment professionals'. We therefore strongly approve of measures to 'ensure staff maintain and update their knowledge and competence' (Paragraph 25.b).

It may be advisable to consider minimum requirements for annual continuing education. If this is not a recommendation that can be made across the Member States, NCAs might be encouraged to set an appropriate minimum number of 'hours' to be documented as continuing education (or 'continuing professional development'). With the significant developments in e-learning and online audio-visual programmes, not all continuing education need be face-to-face training. A blend of formal and less formal learning may be most effective.

CFA Institute

915 East High Street
Charlottesville, VA
22902-4868 USA

+1 (434) 951 5499 tel
+1 (434) 951 5262 fax
info@cfainstitute.org
www.cfainstitute.org

Members of CFA Institute have access to an unparalleled selection of continuing education resources covering all areas of investment. Members may log their continuing education with the CFA Institute online logging and reporting tool. Broad availability of continuing education and ease of recording are some of the advantages open to members of professional bodies. Nevertheless, we support the proposal that it should be the responsibility of firms to monitor and ensure that their staff update their knowledge. Finally, we must stress that maintaining the CFA Charter annually presupposes a commitment to continuing education.

Point 25 d – i: CFA Institute supports the need for firms to monitor and prevent staff members without sufficient knowledge and competence from providing relevant services to the client.

We support the additional proposals regarding the training and supervision of staff who are not yet competent to practice independently. By establishing standards of supervision firms can ensure that new entrants to the industry can gain the relevant work experience they need, but safely under training and supervision. It is clear that for firms to be successful at preventing untrained staff from providing investment advice, it will be necessary that adequate internal controls and policies and procedures are implemented firm-wide to reduce this type of operational risk.

Besides, seeing it as a firm responsibility, we also see it as a responsibility of the individual. In CFA Institute's Code of Ethics and Standards of Professional Conduct, under "Standard IV – Duties to Employers", employees owe a duty of loyalty to their employers, which means that they are expected to carry out their assigned responsibilities with competence and care. One of the implications of this duty of loyalty is that if an employee does not feel capable of carrying out a task, he or she should either develop the necessary skills, work with others to complete it, or decline the task.

Question 4: Are there, in your opinion, other knowledge or competence requirements that need to be covered in the draft guidelines set out in Annex IV?

As discussed in our response to Question 2, we believe that advisors who hold themselves out as providing investment advice to their clients owe their clients the highest standard of care. This means that they must put their clients' interests first by providing unconflicted advice. Advisors with a duty of care are obligated to act with prudence, loyalty, and care towards their clients. This is why CFA Institute considers that investment advisors with a duty of care to their clients should be held to the highest standards of knowledge and professional competence.

Annex IV offers a range of sensible proposals for both the approach and the required content of appropriate qualifications. We assume the guidelines for proposed content are deliberately drafted at a high level to allow individual NCAs to specify for their own context, and this seems appropriate. For this reason, we would not suggest additional content, other than the additional guideline we recommended on understanding the importance of the duty of care for those providing investment advice to their clients.

CFA Institute welcomes the principles of flexibility and proportionality implied throughout the guidelines. We do, however, have some concerns that NCAs and qualification providers could differ considerably in their interpretation of what the suitable features of appropriate qualification programmes might be. It would be an unfortunate outcome if the appropriate qualifications and experience requirements in some Member States were significantly less demanding than in others. This might damage the impact of this important initiative across Europe and, importantly, could present problems for professionals migrating from one Member State to another expecting their qualified status to be recognised.

In this regard, the following questions might be useful to facilitate comparability of minimum requirements across all Member States:

- *How much of the assessment should be 'formal'?:* formal assessment would be objective, independently verified, formally administered and invigilated in the way of traditional examinations. It may be advantageous for some assessment to be formal and some less formal to achieve both rigor and flexibility.

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- *What size should the assessment be?* Size is typically expressed in terms of required 'study hours'. For example the CFA Level I examination requires approximately 300 study hours. In some countries, terms such as 'award', 'certificate', and 'diploma' relate directly to size measured in study hours. We would suggest that a minimum qualification 'size' be stated.
- *What level should the assessment be?* Assessment level is not easy to determine, but there are basic frameworks that can place the relative level of the qualification in context. For example, the National Qualification Framework for England and Wales uses an 8 Level framework (with, for example, Level 5 deemed to be 'graduate level', Level 7 to be 'masters level').
- *Can prior learning (in particular qualifications taken before these Guidelines are implemented) be recognised and used in partial completion of the new requirements?* We would suggest that relevant prior learning be recognized with the onus being placed on the firm and the individual member of staff to provide evidence of successful completion, and demonstrate the relevance of the content in relation to the new requirements. Where partial completion of the requirements is achieved through prior learning, then a gap-fill arrangement would need to be approved.

Question 5: What additional one-off costs would firms encounter as a result of the proposed guidelines?

CFA Institute has no comments in regards to this question.

Question 6: What additional ongoing costs will firms face a result of these proposed guidelines?

CFA Institute has no comments in regards to this question.

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www.cfainstitute.org

We would be pleased to discuss our comments in greater detail, or to provide any other assistance that would be helpful. If you have any questions, please do not hesitate to contact us.

Yours sincerely,

On behalf of CFA Institute:

Iñigo Bengoechea, CFA
CFA Institute
Director, Program Recognition
477 Madison Avenue
New York, NY 10022
Tel: 212 418 6895
Email: inigo.bengoechea@cfainstitute.org

Christina Rulfs, CFA
CFA Institute
Director, Society Advocacy Engagement
131 Finsbury Pavement, 7th Floor
London EC2A 1NT, United Kingdom
Tel: +44 (0) 207 330 9529
Email: christina.rulfs@cfainstitute.org

Peter Watkins
CFA Institute
Director, Exam Development
131 Finsbury Pavement, 7th Floor
London EC2A 1NT, United Kingdom
Tel: +44 (0) 20 7330 9518
Email: peter.watkins@cfainstitute.org

Daniel J. Larocco, CFA
CFA Institute
Manager, Program Recognition
915 East High Street
Charlottesville, VA 22902-4868
Tel: 434 951 5204
Email: dan.larocco@cfainstitute.org