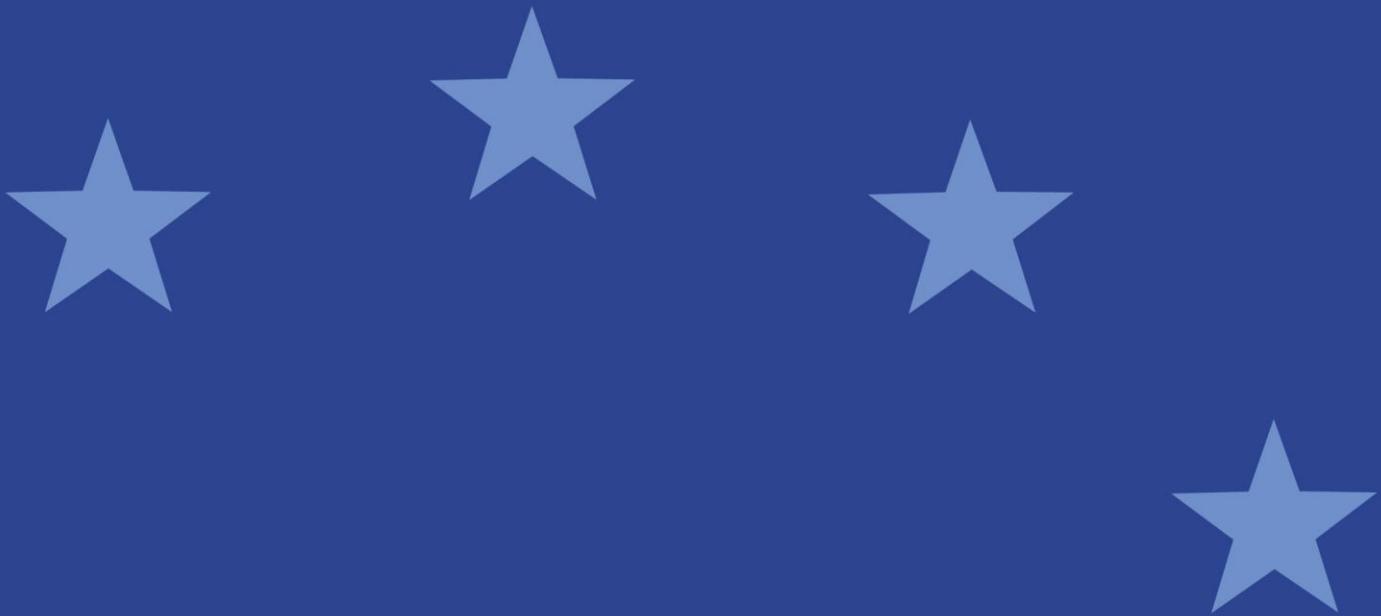




European Securities and
Markets Authority

Consultation Paper

Draft guidelines for the assessment of knowledge and competence



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **10 July 2015**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading [Legal Notice](#).

Who should read this paper

This paper is primarily of interest to competent authorities and firms that are subject to MiFID, in particular, investment firms and credit institutions performing investment services and activities and their staff. This paper is also important for trade associations, investors, and consumer groups, because the guidelines seek to implement enhanced provisions to ensure investor protection with potential impacts for anyone engaged in the dealing with or processing of financial instruments

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1 Executive Summary

Reasons for publication

The European Securities and Markets Authority is required by Article 25(9) of MiFID II to develop guidelines specifying criteria for the assessment of knowledge and competence of the investment firm's personnel giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm to fulfil their obligations under Article 24 and Article 25.

In accordance with Article 16(2) of the ESMA Regulation, this paper sets out, for consultation, draft ESMA guidelines on certain aspects of MiFID II for the assessment of knowledge and competence.

ESMA considers that these guidelines will establish a knowledge and competence framework that will set principles for individuals in MiFID firms that give investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm.

The purpose of these guidelines is to improve investor protection by increasing the knowledge and competence of individuals in investment firms providing services to clients.

Contents

Annex I lists all the questions set out in the consultation paper; Annex II describes the legislative mandate to adopt guidelines; Annex III contains the high-level cost-benefit analysis; and Annex IV contains the full text of the draft guidelines.

Next Steps

ESMA will consider the feedback it received to this consultation in Q2/Q3 2015 and expects to publish a final report in Q4 2015.

2 Background and principles for guidelines specifying criteria for the assessment of knowledge and competence

1. Article 25(9) of MiFID II requires ESMA to develop Guidelines specifying criteria for the assessment of knowledge and competence required under paragraph 1 of Article 25. Article 25(1) states: Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their obligations under Article 24 and this Article. Member States shall publish the criteria to be used for assessing such knowledge and competence.
2. Under the current MiFID framework, investment firms must ensure that their personnel have the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. This implies, for example, the obligation for investment advisers acting on behalf of a firm, to know the characteristics of the products they offer in order to give a personal recommendation to clients and comply with the suitability requirements.
3. In addition to the minimum standard already required by MiFID in the area of knowledge and competence, some Member States (such as Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Malta, Portugal, Romania, Slovenia, Sweden, and UK) have already further detailed the obligations of natural persons giving investment advice or information about instruments and services on behalf of a firm. In other countries (such as Italy), there are also knowledge and competence requirements related to specific areas not falling under MiFID scope (e.g. independent advisers exempted from MiFID under Article 3 and door-to-door selling).
4. ESMA considers that National Competent Authorities should ensure that investment firms act in accordance with the best interests of their clients and are able to comply with their obligations under MiFID. ESMA considers that these guidelines will assist firms in acting in accordance with the best interest of their clients and meeting their obligations under MiFID II.
5. ESMA considers that these guidelines should be applied in a proportionate manner, taking into account the nature, scale and complexity of a firm's business and the nature and range of financial services and activities undertaken in the course of its business.
6. These guidelines should also be considered to complement the requirements that already apply to investment firms to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them (Article 5(1)(d) of MiFID Implementing Directive). The establishment of these guidelines should strengthen the protection of investors and contribute to establishing a sound, effective and consistent level of regulation and supervision across Member States. To further protect clients, it is

also important to ensure that investment firms assess the knowledge and competence of their own staff in a way that does not conflict with the firm's duty to act in the best interests of their clients. We consider that the application of consistent guidelines across Member States will help to achieve this and will inspire consumer confidence and build trust.

7. Given the complexity of investment products and continuous innovation in their design, it is necessary that staff who give investment advice or information about financial instruments, structured deposits, investment services or ancillary services to clients, on behalf of the investment firm, possess an appropriate level of knowledge and competence in relation to the products offered. Investment firms should allow their staff sufficient time and resources to achieve that knowledge and competence and to apply it when providing services to clients.
8. ESMA considers that compliance with knowledge and competence requirements under MiFID II requires acquiring an "appropriate qualification" and "appropriate experience" in order to provide relevant services in accordance with the Directive.
9. ESMA, being cognisant of the vastly differing education and qualification systems at national level across the Member States, acknowledges that the specification of the criteria for assessment of the qualifications and experience required to comply with these guidelines has to be made at national level. In this context, 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 these guidelines. As an illustrative example, an NCA might determine that (i) a primary university degree in economics with specific exams focusing on financial markets, or (ii) other recognised qualifications complemented by identified courses in financial services that capture the requirements of the guidelines, should be considered an appropriate qualification. The NCA or another national body identified in the Member State should determine whether they wish to publish an exhaustive list of the types of qualifications, courses or tests that they consider meet the requirements of the guidelines. Where an NCA or another national body identified in the Member State does not set out any specific qualifications or sets out a non-exhaustive list, it should publish the criteria (on the basis of the guidelines) against which an appropriate qualification needs to be assessed (for example: content, length and type of courses).
10. It should also be noted that each NCA or another national body identified in the Member State should determine the minimum period of "appropriate experience" that is required for relevant individuals. This period of time can be differentiated depending on the appropriate qualification attained by staff and also depending on the relevant service being provided.
11. ESMA considers that, by way of exception to previous paragraphs 8-10, existing relevant staff in firms with not less than five consecutive years of "appropriate experience" of providing the same relevant services (i.e. those providing investment advice or information about financial instruments, investment services or ancillary services to clients) could, at the discretion of the NCA or another national body identified in the

Member State and subject to a specific assessment by the investment firm, be considered to possess the necessary knowledge and competence to fulfil their obligations under Article 24 and 25 of MiFID II. This exception could be applied where a staff member has at the date of the application of the guidelines at least five consecutive years appropriate experience of providing the same relevant services.

12. ESMA proposes that this could only be applied where the investment firm has assessed and continues to assess that the relevant staff members have sufficient knowledge and competence to fulfil the firm's obligations under Article 24 and 25 of MiFID II and any implementing measures relevant to these Articles. Investment firms should retain records of the assessment made to verify the knowledge and competence of the relevant staff members.

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.

13. ESMA considers 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. This reflects the fact that investment advice is a high value service that requires an enhanced level of investor protection.

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?

14. In confirming that staff have achieved the appropriate level of knowledge and competence it is important that all parties can identify when they have been reached. This will require consideration of procedures and clear criteria. It is also important that standards of knowledge and competence are maintained on an on-going basis and this should include appropriate monitoring and evaluation.

15. ESMA considers that the introduction of guidelines on knowledge and competence should secure commitment from all stakeholders and increase emphasis on providing evidence that firm's staff have attained appropriate knowledge and competence. Over time this should lead to better outcomes for clients and investment firms.

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

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?

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

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

3 Annexes

3.1 Annex I

Summary of 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.

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?

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

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?

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

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

3.2 Annex II

Legislative mandate to develop guidelines and relevant legislation

1. Article 16 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council (the ESMA Regulation) empowers ESMA to issue guidelines and recommendations addressed to competent authorities or financial market participants, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law.
2. Article 25(9) of MiFID II requires ESMA to adopt by 3 January 2016 guidelines specifying criteria for the assessment of knowledge and competence required under paragraph 1 of Article 25.

Article 25(1) of MiFID II

3. Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their obligations under Article 24 and this Article. Member States shall publish the criteria to be used for assessing such knowledge and competence.

3.3 Annex III

Cost-benefit analysis

ESMA notes that a general obligation exists in the MiFID Implementing Directive for investment firms to employ staff with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. Furthermore, ESMA has noted that a large number of Member States already have in place specific requirements for certain staff in investment firms providing services to clients.

These proposed guidelines set out an additional level of detail in this area for investment firms and NCAs. In this context, ESMA considers that while additional costs will have to be met for firms in some Member States, there already exists extensive knowledge and competence obligations in other Member States.

ESMA considers that the costs associated with complying with these obligations will result in greater standards of services to clients, a higher degree of investor protection and an overall reduction in client detriment. ESMA considers that these benefits would outweigh all associated costs in respect of these guidelines.

3.4 Annex IV: Draft guidelines

I. Scope

Who?

1. These guidelines apply to:
 - a. firms and
 - b. competent authorities.

What?

2. These guidelines apply 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.

When?

3. These guidelines apply from 3 January 2017.

II. Purpose

4. The purpose of these guidelines is to specify the criteria for the assessment of knowledge and competence required under Article 25 (1) of MiFID II, in accordance with Article 25 (9) of the same Directive.
5. ESMA expects these guidelines to 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. These guidelines set important standards to assist firms in meeting their obligations to act in the best interest of their clients. In complying with these guidelines, ESMA anticipates a corresponding strengthening of investor protection. Annex II includes a number of illustrative examples of how an investment firm might apply the guidelines. These examples do not form part of the guidelines but instead aim to assist firms in identifying practical examples of how the requirements in the guidelines can be met.

III. Definitions

6. Unless otherwise specified, terms used in the Directive 2014/65/EU (MiFID II) have the same meaning in these guidelines. In addition, the following definitions apply:
 - a. Competent authority (or NCA) means an authority designated under Article 67 of MiFID II.

- b. Firms mean investment firms (as defined in Article 4(1)(1) of MiFID II, including credit institutions when providing investment services, UCITS management companies and external Alternative Investment Fund Managers (AIFMs) when they are providing the investment services of individual portfolio management or non-core services (within the meaning of Article 6(3)(a) and (b) of the UCITS Directive and Article 6(4)(a) and (b) of the AIFMD).
- c. Staff means natural persons (including tied agents) providing relevant services to clients on behalf of the investment firm.
- d. Relevant services means providing investment advice or information about financial instruments, structured deposits, investment services or ancillary services to clients.
- e. Information about financial instruments, structured deposits, investment services or ancillary services means information directly provided by staff to clients in order to market these investment products or services without providing investment advice.
- f. Knowledge and competence means having acquired an appropriate qualification and appropriate experience to fulfil obligations in Article 24 and 25 MiFID II in order to provide the relevant services. Existing staff in firms with not less than five consecutive years of “appropriate experience” of providing the same relevant services at the date of application of the guidelines, could be considered to possess an appropriate qualification at the discretion of each NCA or another national body identified in the Member State, where the firm has assessed and continues to assess that the staff member is able to fulfil the firm’s obligations under Article 24 and 25 of MiFID II and any implementing measures relevant to these Articles.
- g. Appropriate qualification means a qualification or other test or training course that meets the criteria set out by the guidelines. Where an NCA or another national body identified in the Member State does not specify a list of appropriate qualifications, it must publish the criteria against which an appropriate qualification needs to be assessed.
- h. Appropriate experience means that a member of staff has successfully demonstrated the ability to perform the relevant services through recent work. This work must have been performed, on a full time equivalent basis excluding breaks, for a minimum period to be specified by the NCA or another national body identified in the Member State. This period of time can be differentiated depending on the appropriate qualification attained by staff and also depending on the relevant services being provided.
- i. Investment products means financial instruments and structured deposits as defined in MiFID II.

IV. Compliance and reporting obligations

Status of the guidelines

7. This document contains guidelines required under Article 25(9) of MiFID II and issued under Article 16 of the ESMA Regulation. In accordance with Article 16(3) of the ESMA Regulation, competent authorities and financial market participants must make every effort to comply with the guidelines.
8. Competent authorities to whom the guidelines apply should comply by incorporating them into their supervisory practices, including where particular guidelines are directed primarily at financial market participants. Competent authorities or other national bodies identified in the Member State shall publish a list of the appropriate qualifications that they consider meets the requirements of the guidelines or the criteria required to attain an “appropriate qualification”, and the requirements of the “appropriate experience” to be attained by staff in investment firms giving investment advice to clients and by staff giving information about investment products, investment services or ancillary services to clients. This information shall be published on the NCA’s or the other relevant national body’s website.

Reporting requirements

9. Competent authorities to which these guidelines apply must notify ESMA whether they comply or intend to comply with the guidelines, stating their reasons for non-compliance where they do not comply or do not intend to comply, within two months of the date of publication of the translated versions by ESMA. In the absence of a response by this deadline, competent authorities will be considered non-compliant. A template for notifications is available from the ESMA website.
10. Financial market participants are not required to report to ESMA whether they comply with these guidelines.

V. Guidelines on the application of Article 25(1) of MIFID II

V.I General

11. These guidelines, which aim to set a general framework, should be applied in a proportionate manner, taking into account the nature, scale and complexity of a firm’s business and the nature and range of financial services and activities undertaken in the course of its business, as well as the specific activities carried out by staff.
12. The level and intensity of knowledge and competence expected for those providing investment advice should be of a higher standard than those that only give information on investment products and services.

13. Firms should ensure that staff possess the necessary knowledge and competence to ensure that the firm is acting in the best interests of its clients.
14. Firms should ensure that staff providing relevant services possess the necessary knowledge and competence to meet relevant regulatory and legal requirements and business ethics standards.
15. Firms should ensure that staff knowledge and competence extends to the firm's internal policies and procedures designed to ensure compliance with MiFID II. This would include the firms' conflict of interest, complaints management, product governance and telephone recording policies, including the firms' policy regarding the handling of orders.
16. Firms should ensure that staff have the necessary levels of knowledge and competence to fulfill their obligations, reflecting the focus, scope and degree of the relevant services provided.
17. Firms should note that there may be additional requirements on staff providing advice and information set out in national legislation or regulatory requirements.
18. The compliance function should assess and review compliance with these guidelines. This review should be included in the report to the management body on the implementation and effectiveness of the overall control environment for investment services and activities.
19. Competent authorities, through their supervisory activities, should review how firms meet their obligations under Article 25(1) of MiFID II, based on the criteria set out in these guidelines.

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

20. Firms should ensure that staff giving information about investment products, investment services or ancillary services have the necessary knowledge and competence to:
 - a. comply with Article 24 and 25 of MiFID II;
 - b. understand the key characteristics, risk and features of the investment products available through the firm, including any general tax implications and costs to be incurred by the client in the context of transactions. Particular care should be taken when giving information with respect to products characterised by higher levels of complexity;
 - c. understand the total amount of costs to be incurred by the client in context of transactions in an investment product;
 - d. understand the characteristics and scope of investment services or ancillary services;

- e. understand the total amount of costs to be incurred by the client for investment services or ancillary services.

21. Firms should also ensure that staff giving information about investment products, investment services or ancillary services have the necessary knowledge and competence to:

- a. understand how markets function and how they affect the value and pricing of investment products on which they provide information to clients;
- b. understand the impact of economic figures, national/regional/global events on markets and on the value of investment products on which they provide information;
- c. understand issues relating to market abuse, where relevant;
- d. assess data relevant to the investment products on which they provide information to clients such as a prospectus, financial statements, or financial data;
- e. understand market structures for the investment products on which they provide information to clients and, where relevant, their trading venues or the existence of any secondary markets;
- f. understand basic valuation principles for investment products.

V.III Requirements for staff giving investment advice

22. Firms should ensure that staff giving investment advice have the necessary knowledge and competence to:

- a. comply with the requirements of Article 24 and 25 of MiFID II;
- b. understand the key characteristics, risk and features of the investment products being offered or recommended, including any general tax implications and costs to be incurred by the client in the context of transactions. Particular care should be taken when providing advice with respect to products characterised by higher levels of complexity;
- c. understand the total costs to be incurred by the client in the context of the investment product(s) being offered or recommended and the costs related to the provision of the advice and any other related services being provided;
- d. fulfil the obligations required by firms when meeting the obligations set out in the Guidelines on certain aspects of the MiFID suitability requirements;

- e. understand how the investment product may not be suitable for the client, having assessed the relevant information provided by the client against potential changes that may have occurred since the relevant information was gathered.

23. Firms should also ensure that staff giving investment advice have the necessary knowledge and competence to:

- a. understand how markets function and how they affect the value and pricing investment products offered or recommended to clients;
- b. understand the impact of economic figures, national/regional/global events on markets and on the value of investment products being offered or recommended to clients;
- c. understand issues relating to market abuse, where relevant;
- d. assess data relevant to the investment products offered or recommended to clients such as a prospectus, financial statements, or financial data;
- e. understand market structures for the investment products offered or recommended to clients and where relevant their trading venues or the existence of any secondary markets;
- f. understand basic valuation principles for investment products offered or recommended to clients;
- g. understand the fundamentals of portfolio theory, including being able to explain the implications of diversification regarding individual investment alternatives.

V.IV Organisational requirements

24. Firms should set out the responsibilities of staff and ensure that, where relevant, in accordance with the services provided by the firm and its internal organisation, there is a clear distinction in the description of responsibilities between the roles of providing advice and providing information.

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

25. Firms should:

- a. ensure that staff providing relevant services to clients are assessed through the successful completion of an appropriate qualification and having gained appropriate experience in the provision of relevant services to clients. Existing staff in firms with not less than five consecutive years of “appropriate experience” of providing the same relevant services at the date of the application of these guidelines may be considered to possess an appropriate qualification at the discretion of each NCA or another national body identified in the Member State,

where the firm has assessed and continues to assess that the staff member is able to fulfil the firm's obligations under Article 24 and 25 of MiFID II and any implementing measures relevant to these Articles.

- b. review, on at least an annual basis, staff development and experience needs, and regulatory developments and take action necessary to comply with these requirements. Firms should ensure that staff maintain and update their knowledge and competence by undertaking professional development or training in the appropriate qualification.
- c. ensure that they submit to their NCA, on request, records concerning knowledge and competence of staff providing relevant services to clients. These records shall contain information that enables the NCA to assess and verify compliance with these guidelines.
- d. ensure that when a member of staff has not acquired the necessary knowledge and competence in the provision of the relevant services, this staff member cannot provide the relevant services until the staff member acquires appropriate experience and an appropriate qualification.
- e. ensure that, where the staff member does not have any appropriate experience in the provision of relevant services to the client, the inexperienced staff member is trained by another member of staff until they are deemed to have gained the appropriate experience.
- f. ensure that, where the staff member is being trained, the person providing the training has the necessary knowledge and competence required by these guidelines and necessary skills to act as a competent trainer.
- g. ensure that the training provided is tailored to the services to be provided by that staff member and covers the requirements of these guidelines relevant to those services.
- h. ensure that, during the training period, the person providing the training is present during all client meetings and communications.
- i. ensure that responsibility for the provision of the relevant service remains with the person providing the training.

Annex V – Illustrative examples of the application of certain aspects of the guidelines

General example:

A firm provides regular mandatory training to staff in the area of MiFID conduct of business, and organisational requirements.

Examples relating to paragraph 15 and 20:

- A firm provides regular mandatory training to staff in the features and characteristics, including potential risks of the products offered by the firm. This comprises training about products newly offered by the firm.
- A firm ensures staff are familiar with the situations in which conflicts of interest arise and how to apply the rules regarding the management of conflicts of interest.
- A firm ensures staff are familiar with the situations as to when an investment firm may pay or receive an inducement and the relevant legal requirements regulating inducements.

Examples relating to paragraph 22 and 23

A firm regularly monitors the suitability assessments provided by staff to assess whether the staff member has considered all aspects of the suitability requirements, against the specific details of the investment product.

A firm regularly monitors that relevant staff demonstrate:

- ability to ask appropriate questions to the client to understand her/his investment objectives, financial situation and knowledge and experience.
- ability to explain the risks and rewards of a particular product or strategy to the client.
- ability to compare selected products with regards to terms and risks, to be able to select the product best suited to the client profile.

Examples relating to paragraph 24

The firm documents staff roles and responsibilities and evaluates their performance against key set criteria contained in the description of responsibilities.

The firm adopts a code of ethics to set forth the standards of business conduct and behaviour necessary for the proper provision of relevant services and obtain written acknowledgements from staff that they have read, understood and complied with it.

Investment firms communicate publicly, in a way that is consistent and meaningful to clients, their criteria for demonstrating how staff comply with these guidelines.

Examples relating to paragraph 25

Continuous or on-going professional development is required in order for staff to hold the “appropriate qualification”. This ongoing assessment will contain updated material and will test staff on their knowledge of, for example, regulatory changes, new products and services available on the market. This ongoing assessment:

- may involve training in the form of courses, seminars, independent studies or learning; and
- includes verification questions demonstrating that staff has necessary knowledge and competence.

Investment firms verify the relevance of continuous on-going development being provided to staff providing relevant services.