

Annex 1 – Answers to ESMA’s Six 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.

A summary of the comments that FPSB has provided for this section includes:

- FPSB **recognizes** the importance of work experience for someone looking to apply knowledge in diverse or complex client situations.
- FPSB **agrees** that NCAs or similar bodies should be able to determine the minimum period for “appropriate experience,” with discretion to consider less than five years.
- FPSB **agrees** with a time-limited “grandfathering exemption” upon initial implementation of the guidelines.
- FPSB **supports** allowing investment services practitioners to be able to complete their experience requirement while working at more than one firm.
- FPSB **agrees** that the experience required between those selling products/providing product information and those offering advice can be differentiated, with a need to focus on relevancy over quantity.
- FPSB **does not support** allowing people to qualify as competent to provide investment advice solely based on meeting an experience requirement.
- FPSB **supports** connecting “appropriate experience” to a training period that includes supervision by a competent professional.
- FPSB **believes** that requiring those providing advice to obtain an appropriate professional certification will raise professionalism in the marketplace and restore consumer confidence.
- FPSB **recommends** that ESMA more clearly distinguish between product-driven sales/information and client-centered advice (which includes investment advice, financial advice and financial planning) and their related competencies and duties of care to clients.
- FPSB **believes** that the knowledge, experience and competence necessary to fulfill obligations under Article 24 and 25 are not “one size fits all” – those dealing with complex products or giving advice in the best interests of the client should be held to a higher competency standard, as determined and assessed by a professional body.

- FPSB **believes** that competence combines the ability to carry out the tasks derived through experience, adherence to a code of ethics, and a competency assessment, while using appropriate professional skills, drawing on relevant initial and ongoing knowledge.
- ESMA and/or NCAs **should** work with professional bodies to define the knowledge, skills and abilities needed for investment services activities.
- FPSB **suggests** ESMA add language in its Draft Technical Advice calling for investment firms that distribute to retail clients to have appropriately qualified advisers in place.
- FPSB **recommends** that assessment of knowledge and competence be undertaken by appropriately qualified professional bodies.

Grandfathering Should Be For Relevant Experience and Time-Limited

- 1.1 FPSB recognizes the importance of work experience for someone looking to apply knowledge in diverse or complex client situations. FPSB believes engaging in supervised practice is the most effective method of gaining professional experience, but alternative methods of gaining work experience are acceptable.
- 1.2 FPSB agrees that NCAs or similar bodies should be able to determine the minimum period for “appropriate experience,” with discretion to consider less than five years of appropriate experience of providing the same relevant services, as sufficient to meet the requirement for knowledge and/or competence for those selling products or providing financial product information.
- 1.3 FPSB agrees with ESMA’s approach of providing for a “grandfathering exemption” upon initial implementation of the guidelines. Such grandfathering is typical when seeking to bring existing practitioners under a new regulatory regime, as there is no other practical way to bring in the community of current practitioners in a manner that allows them to keep their jobs and continue to provide professional services. FPSB supports allowing investment services practitioners to be able to complete their experience requirement while working at more than one firm.
- 1.4 While FPSB appreciates that ESMA is recommending the “experience in lieu of competency” route as a way to embed new standards in the marketplace at the point of initial implementation of the guidelines, ESMA should specify a date when the exception will expire, after allowing for an achievable deadline for those seeking to attain the required qualification level and competencies.
- 1.5 Retaining the exemption for an excessive time period only creates uncertainty in terms of recognizing practitioner competency within a country and across borders.

- 1.6 Allowing the exemption to continue for an unspecified period of time has the potential to mislead or inadequately serve members of the public who have certain expectations of the competency and qualifications of the practitioner providing them with certain investment services.
- 1.7 ESMA may want to consider requiring completion of certain continuing professional development (CPD) requirements by those grandfathered, to ensure appropriate levels of knowledge and competency are attained.

Those Providing Advice Need to Undergo a Competency Assessment

- 1.8 FPSB agrees that the experience required between those selling products/providing product information and those offering advice can be differentiated, but the critical issue is the relevancy of the experience for the role, not the quantity.
- 1.9 ESMA's "appropriate experience" requirement should be applicable only to appropriate investment services, activities and ancillary services, and not apply to all included under MiFID 2004/39/EC section A of Annex 1 and Article 4. Some investment services, activities and ancillary services (particularly those involving advice) should only be provided if appropriate qualifications, experience and competency requirements are met. Other than allowing for a time-limited period of grandfathering at the time the guidelines are being introduced, to accommodate those already in practice, FPSB does not support allowing people to qualify as competent to provide investment advice solely based on meeting an experience requirement (or its equivalent).
- 1.10 FPSB believes that experience alone is insufficient to establish appropriate levels of competence and knowledge, particularly when it comes to advice. Rather than having a period of five (or fewer) years serve as a proxy for competency, FPSB believes it would be better to connect "appropriate experience" to a training period (for new entrants) that includes supervision by a competent professional. Beyond on-the-job training, competence could be measured through an assessment by an independent professional body, and attested to by a supervisor or other third party.
- 1.11 If the goal of ESMA's guidelines is to strengthen the protection of investors and contribute to a sound, effective and consistent level of regulation and supervision across Member States, FPSB suggests the approach should focus on an initial competency assessment, an ongoing commitment to competency, and appropriate ongoing evaluation and monitoring.
- 1.12 We suggest that relevant work experience, both at the point of initial implementation of the guidelines and ongoing be defined as follows: Staff of an investment firm demonstrate relevant work experience, either supervised or unsupervised, by:
 - a. engaging in the investment services and activities identified in Directive 2004/73/EC, Annex 1, Section A and B;
 - b. applying the knowledge and competencies described in MiFID and MiFID II; and
 - c. adhering to ethical principles described in the Code of Ethics of a Professional Body.

- 1.13 FPSB believes that requiring those providing investment advice services to obtain an appropriate professional certification or qualification will raise professionalism in the marketplace, inspire new entrants to increase their levels of skill and knowledge, and restore consumer confidence and trust in the capital markets and in financial services practitioners.

Distinguish Sales/Information Provided to Sell from Advice (Advice Must Accompany Complex Products Sold to Retail Clients)

- 1.14 As ESMA develops guidelines specifying criteria for the assessment of knowledge and competence (including appropriate experience) required under paragraph 1 of Article 25 of MiFID II, FPSB asks that ESMA more clearly distinguish between product-driven sales/information and client-centered advice (which includes investment advice, financial advice and financial planning) and their related competencies and duties of care to clients.
- 1.15 The sales of products and delivery of financial product information to sell one or more products frequently gets positioned as “financial advice.” This creates substantial opportunities for investors to be confused about what services they are in fact receiving, with what duty of care, and based on what levels of practitioner experience, knowledge and competence. While the product seller may indeed go through a process of getting to know the client and understanding the client’s fact situation, the focus for those providing product information continues to be the eventual sale of a product. The “advice” provided to the customer typically tends to be information about one or more products that is intended to result in a product purchase by the buyer. While the buyer might reasonably expect that “advice” is being provided in their interest, in instances where the buyer expresses dissatisfaction with the product, or the level of care received, the product seller may argue that the standard of care owed to the buyer was no more than one of suitability.
- 1.16 FPSB believes that the knowledge, experience and competence necessary to fulfill obligations under Article 24 and 25 are not “one size fits all,” and that while knowledge and on-the-job experience might suffice for delivery/information provision for basic products, those dealing with complex products or giving advice in the best interests of the client should be held to a higher competency standard (that includes, but goes beyond, education and experience), as determined and assessed by a professional body/certification body and not by the employing firm, for purposes of transparency, third-party credibility and consumer protection.
- 1.17 ESMA should develop a framework and set of guidelines that allow market stakeholders to clearly distinguish between product selling/information and the provision of professional advice and the related and distinct competencies required to perform these activities. The guidelines should also include whether the standard of care owed to, and expected by, the client is that of suitability or of a fiduciary. The guidelines should include clear, understandable definitions of the scope of investment services and activities to be provided, as well as the different competencies and standards of care required by practitioners to provide those services, so firms can act appropriately.

For Advice, Experience and/or Education Does Not Equal Competency

- 1.18 FPSB welcomes the MiFID II requirement that to provide investment services in accordance with the Directive, practitioners should acquire an “appropriate qualification” and “appropriate experience.”
- 1.19 FPSB believes that an education program alone is not enough to ensure competency in the delivery of client-centered advice (which includes investment advice, financial advice and financial planning). Similarly, while experience is a critical component of competence, it is not a proxy for it. Competence in the delivery of advice is about more than completing an education course and having some experience – it’s about combining the ability to carry out the tasks derived through experience, adherence to a code of ethics, and a competency assessment, while using appropriate professional skills and drawing on relevant initial and ongoing knowledge. A professional body’s assessment of the practitioner’s effective combination of abilities, skills and knowledge is what defines the performance as competent.

Use Independent Professional Bodies to Assess Competency

- 1.20 ESMA, or the NCAs, should work with professional bodies/certifying bodies and other marketplace stakeholders to define the knowledge, skills and abilities (inclusive of experience requirements) needed for investment services activities, and ancillary services as required. Guidelines and standards, as well as competency frameworks for professional certifications, should be developed based on a well-documented, transparent and collaborative process conducted in the public’s interest.
- 1.21 ESMA should consider requiring investment firms involved in the distribution to retail clients to have staff with adequate knowledge (including appropriate qualifications), skills and abilities (reflecting appropriate experience) to provide investment services and advice to clients. The almost 5,000 CERTIFIED FINANCIAL PLANNER professionals conducting business in seven European and neighboring countries (i.e., Austria, France, Germany, Ireland, the Netherlands, Switzerland and the U.K.) meet knowledge, skills and abilities requirements based on FPSB Ltd.’s Financial Planner Competency Profile, along with ethical and professional conduct obligations established for financial planning professionals by FPSB Europe. In this context, ESMA might want to add language in its Draft Technical Advice calling for investment firms that distribute to retail clients to have appropriately qualified advisers in place.
- 1.22 FPSB recommends that assessment of knowledge and competence not be undertaken by firms. While many investment firms have created structures to train employees in terms of knowledge, compliance and corporate practices, the development and administration of assessments by independent professional bodies will create greater uniformity across Member States and provide for increased consumer confidence in the financial services marketplace.
- 1.23 To protect clients, we propose that independent, nonprofit professional bodies/certifying bodies be empowered to deliver an impartial assessment of a firm’s staff members, eliminating potential conflicts and supporting the firm’s

duty to act in the best interests of their clients when providing advice. Firms should be able to train employees on products, the firm's approach to selling, corporate culture, etc., but assessment of competency should be conducted by a professional body to provide third-party adviser assessments upon which the public can rely.

- 1.24 Effective assessment of knowledge and competence of investment services and activities will be best achieved through a collaborative effort between Member States and professional bodies/certifying bodies recognized in each country. The main objectives for recognizing professional bodies should be to ensure that: (a) staff at investment firms possess minimum education qualifications and experience to provide adequate financial advice; and (b) knowledge and competence are relevant and current (including continuing professional development obligations).
- 1.25 To qualify as a professional body in a Member State, an organization should meet the following criteria:
- Represent a recognized community of expert practitioners that embraces the public interest role of the professional advice and acts accordingly
 - Work in the public interest so that its activities, and those of its members or those it has certified, contribute to raising public confidence and trust in the financial planning profession and professional financial advisers
 - Have legal recognition for its role as a professional body, with an agreed upon set of roles and responsibilities
 - Lead the development of, and maintain and promote standards of professionalism for, financial planning and financial advice, including competency (addressing the knowledge, skills and abilities required), ethics and professional practice standards that exceed the minimum requirements of the law
 - Work with appropriate government entities, members or those it has certified, and other stakeholders in an open and transparent manner to assist government entities with regulating financial advice and to build and maintain the reputation of the financial planning profession and the professional financial advice community as comprising individuals who provide both financial advice and financial planning
 - Develop and award a professional certification(s), with a set of certification requirements and standards that address market needs, existing regulations and international best practices and that include: an initial educational requirement, a valid and reliable assessment scheme, practice requirements, ethical and conduct standards, and a requirement to maintain competency through continuing professional development
 - Support members or those it has certified in meeting professional standards to ensure the quality of services offered by those providing financial planning
 - Be a legally-registered nonprofit organization or its equivalent, governed by a board comprised of people of good repute who represent the interests of the public and the profession
 - Monitor compliance with the organization's professional standards and certification requirements

- Develop and enforce a disciplinary program that takes action against members or those it has certified who fail to meet their professional requirements
- Handle disciplinary complaints and appeals in a way that delivers public confidence in the fairness and efficiency of the disciplinary process
- Have access to adequate human and financial resources to carry out its functions
- Cooperate with appropriate government entities with regard to complaints against members or those it has certified
- Promote appropriate levels of *pro bono* work amongst its members or those it has certified, enabling a broader base of consumers to access financial planning and professional financial advice
- Undergo an external review of its professional standards and certification systems and processes on a regular basis, relying on appropriately qualified standards-setting and certification experts
- Undergo an external audit that results in a favorable opinion of the organization's financial position and internal systems and controls
- Continually review and raise the standards required for the professional practice of financial planning and financial advice.

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 of those providing information. Do you agree with the proposed approach?

A summary of the comments that FPSB has provided for this section includes:

- FPSB **supports** ESMA's proposal to differentiate the knowledge and competence required of product sellers from advisers.
- FPSB **believes** that establishing an appropriate framework for the oversight of financial services calls for a clear distinction between solutions that are driven by product interests (shaped by suitability and compliance requirements) and those driven by client interests (shaped by client-first/fiduciary and professional obligations).
- FPSB **suggests** a clear demarcation be drawn between the duty of care required of practitioners when it comes to "Product" versus "Advice," which will inform competencies, knowledge and experience requirements and other professional obligations, as well as approaches to oversight frameworks for these practitioners.
- FPSB **suggests** ESMA communicate to consumers that the level of knowledge and competence attained by those providing advice is at a higher standard.
- FPSB **suggests** ESMA require that employee titles within each firm reflect what the employees actually do for clients (i.e., provide information to sell products or provide advice).
- FPSB **suggests** ESMA require that retail consumers receive advice when being sold complex products, from somebody appropriately assessed as competent to offer those services.

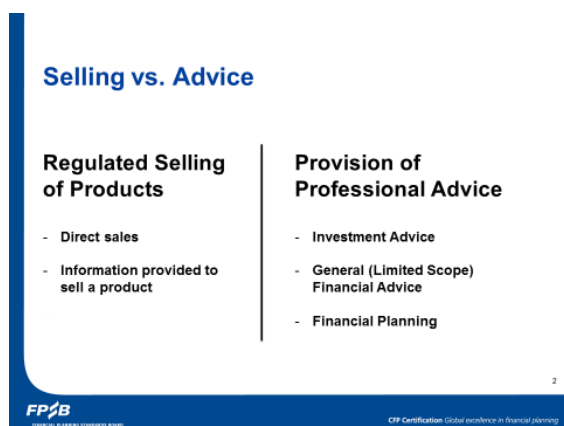
- 2.1 FPSB supports ESMA's proposal to differentiate the knowledge and competence required of product sellers from advisers, as long as, after defining what relevant services when providing investment advice or investment product information should look like for firms, legislators and regulators communicate these definitions and distinctions to consumers in a simple, straightforward manner to help consumers understand whether they are receiving advice or product information. Too often the language used to communicate what consumers are receiving is drafted in a manner that is not well understood by consumers.
- 2.2 ESMA needs to clearly define what constitutes information as distinct from advice, what disclosures must accompany the information, and what levels of knowledge, experience and competency are required of the individual providing the information and/or advice.

- 2.3 A lack of appropriate structure in these guidelines opens the door to “bait and switch” situations, in which a consumer may think she is getting advice with a fiduciary level of care from a competent, ethical adviser when she is, in fact, getting information from a less qualified individual who is only required to meet a suitability standard.
- 2.4 In addition, legislators and regulators should communicate to consumers that the level of knowledge and competence attained by those providing advice is at a higher standard, and that consumers should expect a higher duty of care, thereby encouraging consumers to work with competent and ethical advisers for their financial needs.
- 2.5 To make it easier for consumers to recognize that they can expect a higher standard of care, legislators and regulators should require that employee titles within each firm reflect what the employees actually do for clients (i.e., provide information to sell products or provide advice).

Selling vs. Advice

- 2.6 Because of the lack of legislative/regulatory clarity in this area, “advice” has become a catch-all term in many territories, with little distinction made between the competencies and focus of:
 - (a) those selling products or providing information to sell products;
 - (b) those providing limited scope advice (either limited to investment products or covering additional aspects of a client’s financial situation) that typically result in a solution that is a financial product; and
 - (c) those offering holistic financial planning, that uses the goals, needs and objectives of a client to drive recommendations and develop financial strategies, which may or may not result in the recommendation of a financial product.
- 2.7 FPSB believes that establishing an appropriate framework for the oversight of financial services calls for a clear distinction between solutions that are driven by product interests (shaped by suitability and compliance requirements) and those driven by client interests (shaped by client-first/fiduciary and professional obligations). Ultimately, the definition for what constitutes “sales/product information” versus “advice” from the consumer perspective might relate to whether the investment services provider receives income based on a product sale or regardless of whether the customer/client take the “advice” or purchases a product. (See Fig. 1.)

Fig. 1



Compliance vs. Professionalism

- 2.8 A clear demarcation should be drawn between the duty of care required of practitioners, and expected by those accessing investment services, when it comes to “Product” versus “Advice,” which will inform appropriately distinct competencies, knowledge and experience requirements and other professional obligations, as well as inform approaches to oversight frameworks for these practitioners.

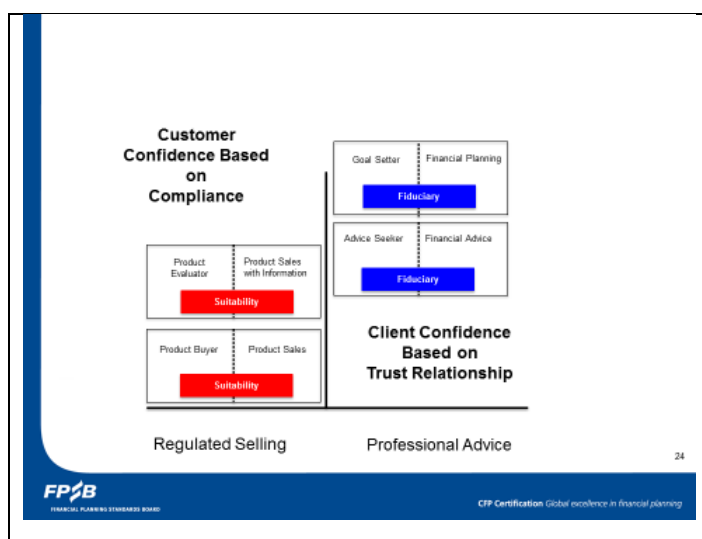
On the “Product” side:

- the standard of care is one of suitability (determined through some type of basic know-your-client (KYC) approach);
- the knowledge, experience and competencies relate to how the product functions, how it can be sold (e.g., legal requirements, manufacturer requirements, etc.) and who are the most appropriate clients; and
- the oversight mechanism is best achieved through licensing and compliance.

On the “Advice” side:

- the standard of care is one of client-first/fiduciary (determined through understanding the client’s goals, needs, objectives and current financial situation);
- the knowledge, experience and competencies relate to financial aspects beyond investing (which might include general financial management, real estate, insurance, risk management, tax, employee benefits and retirement needs) and the “softer skills” of client engagement and communication; and
- the oversight mechanism is best achieved through a combination of professional competency, ethics and conduct obligations – assessed and monitored by an independent professional body/certifying body – and regulatory licensing and compliance requirements associated with product recommendations.

Fig. 2



2.9 FPSB supports ESMA's approach to differentiate the knowledge and competence requirements between those offering advice and those giving information on products, contingent on the following:

- a) Legislators and regulators communicate to consumers that they have the right to expect that those holding themselves out as advisers have been assessed (by an independent professional body/certifying body) at a level of knowledge and competence above those who provide product information;
- b) Legislators and regulators communicate to consumers that they have the right to expect a higher duty of care (beyond that of suitability) from their adviser;
- c) To make it easier for consumers to recognize when they should expect a higher standard of care, legislators and regulators require that employee titles reflect clearly that their role is either related to product sales/information or to advice; and
- d) Legislators and regulators require that retail consumers must receive advice when being sold complex products, from somebody who has been appropriately assessed as competent to offer advisory services.

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

A summary of the comments that FPSB has provided for this section includes:

- FPSB **recommends** ESMA take a client-focused approach rather than a product-focused approach to regulation of advice. If the goal is to protect investors, an adviser should understand the client's needs and objectives before recommending a product or an investment strategy.
- FPSB is **unclear** about the duty of care ESMA requires for investment advice.
- FPSB **agrees** that those providing advice should meet higher obligations than those providing information and **supports** a fiduciary/client-first duty of care to clients for anyone providing advice.
- FPSB **supports** ESMA providing more clarity to consumers on the difference between providing product sales/information, investment advice, general advice and financial planning, and the appropriate duty of care clients should expect from each. FPSB **supports** control of titles to protect consumers.
- FPSB **supports** a definition of competency that consists of the integration of education, experience, adherence to a code of professional ethics, and an assessment performed by an independent, nonprofit professional body.
- FPSB **recommends** that retail investors who purchase complex products should receive advice from a competent and ethical adviser, who has been appropriately assessed by a professional body.
- FPSB **agrees** that NCAs should create lists of *bona fide* qualifications or professional certifications for those offering advice.
- FPSB **agrees** with ESMA's recommendations for firm compliance, but **cautions** that compliance should be a complement to competence. Consumer protection is enhanced when employees embrace competent and ethical behavior and put clients' interests first when providing advice.
- FPSB **recommends** that NCAs and firms work collaboratively with independent professional bodies to raise practitioner professionalism and better serve the interests of investors.

II. Purpose

5. Throughout ESMA's consultation paper on draft guidelines for the assessment of knowledge and competence, and within MiFID, it is not clear whether ESMA requires a "duty to act in the best interest of clients" to be positioned as a fiduciary standard of care or a suitability standard of care.

The Background 2.2 section of this Consultation Paper requires investment advisers acting on behalf of the firm to "comply with suitability requirements," while

later in the Consultation Paper it requires firms to “meet their obligations to act in the best interest of their client.”

MiFID talks about a fiduciary standard in Article 19(1) Directive 2004/39/EC: “1. Member States shall require that, when providing investment services and/or, where appropriate, ancillary services to clients, an investment firm act honestly, fairly and professionally in accordance with the best interests of its clients...”

However, Article 19(4), which deals with standards for advice, reads: “4. When providing investment advice or portfolio management the investment firm shall obtain the necessary information... to enable the firm to recommend to the client or potential client the investment services and financial instruments that are suitable for him,” while Article 19(5) (dealing presumably with non-advised services) seems to require an equivalent standard: “5. Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph 4, ... assess whether the investment service or product envisaged is appropriate for the client.”

Commission Directive 2006/73/EC reads, “(62) ... competent authorities ... approval is based only on the firm's compliance with its obligations under Directive 2004/39/EC to act honestly, fairly and professionally in accordance with the best interests of its clients....” But Directive 2006/73/EC Article 52 covering Investment Advice states: “For the purposes of the definition of ‘investment advice’ in Article 4(1)(4) of Directive 2004/39/EC, a personal recommendation ... must be presented as suitable for that person...” Assessment of Suitability and Appropriateness is covered under Commission Directive 2006/73/EC Section 3, Article 35 and 36. In ESMA’s final report guidelines on certain aspects of the MiFID suitability requirements, ESMA states, “13. Investment firms should inform clients, clearly and simply, that the reason for assessing suitability is to enable their firm to act in the client’s best interest. At no stage should investment firms create any ambiguity or confusion about their own responsibilities in the process.” Later in the same document in a supporting guideline, ESMA states: “54. ... The firm’s policy should provide that the best interests of all the persons concerned and their need for protection are taken into consideration.”

ESMA is not entirely consistent, nor clear, about whether a duty of suitability or a duty of best interest has to be met when advising a client on his investment needs. FPSB recommends that ESMA provide greater detail on the differentiation between providing product sales/information, investment advice, general advice and financial planning, as well as the appropriate duty of care to clients necessitated by each. ESMA should also be able to clearly point to how compliance with these guidelines will strengthen investor protection.

III. Definitions

- 6d. FPSB reiterates that, along with defining relevant investment advice or product information services for firms, ESMA and national regulators must communicate those definitions and their distinctions to consumers, in easy-to-understand language, to help them understand which services they are getting and what duty of care they can expect.
- 6e. ESMA needs to clearly define what constitutes investment product information, and what disclosures must accompany the information. A lack of structure to this

guideline opens the door to “bait and switch” situations, in which a consumer may think he is getting advice, with a fiduciary level of care, when he is in fact getting information, with a suitability level of care.

- 6f. As stated in our previous answers, FPSB believes true competency consists of the integration of education, experience, adherence to a code of professional ethics, and an assessment performed by an independent, nonprofit professional body/certification body, not the firm. We recommend that a specific date be set for when the experience-only exemption expires for those who qualify as “existing staff in firms with not less than five consecutive years of appropriate experience.”
- 6g. FPSB supports a training/educational certificate scenario within firms for those who sell products or provide information leading to a product sale, but we believe that there should be a separate education and certification program, assessed by an independent professional body/certification body for advice.

We recommend that NCAs do not compile an “exhaustive” list of qualifications, but rather a list of *bona fide* national, regional and global qualifications or professional certifications. To create the list, NCAs could establish a rating system by identifying qualitative and quantitative standards (based on internationally recognized best practices for certifications) against which certifications and qualifications could be evaluated. NCAs could communicate the rating system through a promotional campaign that informs consumers on how to use the system to evaluate the various designations and capabilities of financial services practitioners who hold them.

- 6h. While experience is valuable (as long as it is relevant and recent), it should not be considered a replacement for competence, particularly for those providing advice. FPSB recommends blending an experience requirement into an overall competency requirement that includes continuing professional development, to ensure that learning continues throughout an employee’s career.
- 6i. FPSB recommends creating product classes, to help firms and consumers identify simple vs. complex products, their risk attributes and their target clients. For complex products, FPSB recommends a requirement that retail investors who purchase complex products should receive advice from a competent and ethical adviser, who has been appropriately assessed by a professional body/certifying body.

IV. Compliance and Reporting Obligations

8. FPSB agrees with this section, and reiterates its position that any list of qualifications should consist of *bona fide* national, regional and global qualifications and certifications and be evaluated using a rating system which has been promoted to consumers. We recommend that NCAs consider including global, regional and national qualifications that can be used consistently by firms and consumers across borders.

V. Guidelines on the Application of Article 25(1) of MiFID II

11. FPSB agrees, but cautions that firms need to be able to accommodate new entrants into the investment field, and then be able to move those employees from providing product information into providing professional advice to clients.

These guidelines should assist firms in distinguishing between product selling/information, general/investment advice and financial planning, and outline career path opportunities for each.

12. FPSB agrees, and recommends that ESMA, NCAs, regulators and legislators educate consumers about the difference between product information and advice, as well as about the level of care to expect from firms in various situations.
13. FPSB believes individual employees at many levels throughout a firm may not be in a position to substantially impact the culture or behavior of the firm, even if the employee may be considered competent under these guidelines. We recommend that the focus for employees be on knowledge and competence required for the services to be provided, and the appropriate duty of care executed in providing those services. Firms should be evaluated on their internal processes, culture, services rendered and incentives provided to understand whether the firm is operating in the best interests of clients. In 2014, the U.K. Financial Conduct Authority's thematic review of vertically integrated businesses led to a conclusion that the right culture, and particularly the right board culture, was a key contributor to better outcomes for consumers.
14. FPSB suggests that these guidelines should go beyond basic knowledge, competence and business ethics to encourage the support of professional obligations and professional ethics and practice standards, particularly if the employee will be providing general/investment advice or financial planning.
15. To avoid this becoming a "box-ticking exercise" for the firm, ESMA should encourage staff professionalism by not confusing compliance with MiFID II with professional obligations that accompany professional certification. While we agree that compliance is necessary, FPSB believes that compliance and competence are complements, not replacements for one another. Simply requiring firms to ensure that staff comply with internal policies and procedures will not ensure that investors are protected. Those increased levels of protection will come from employees embracing ethical and competent behavior and putting the clients' interests first during professional advice engagements.
16. FPSB agrees with this guideline; however, having employee titles actually reflect the focus and scope of an employee's work would make it easier for investors to understand the service being provided and the level of care they can expect.
17. FPSB agrees with this guideline.
18. As we stated in item 15 of this section, a "box-ticking exercise" to measure compliance will likely have little impact on investor protection, or even the effectiveness of the overall control environment for investment services and activities. Employee competence, ethics and adherence to professional obligations should also be considered when determining whether firms are acting in the best interests of clients.
19. While competent authorities should review how firms meet their obligations, they should be working collaboratively with independent professional bodies/certification bodies to ensure that the best interests of investors are being

served.

V.II Requirements for Staff Giving Information About Investment Products, Investment Services or Ancillary Services

General Comment for Guidelines 20 and 21:

- FPSB generally agrees with this guideline, but recommends that it include a requirement that tax-related implications of product transactions should be considered at a fiduciary or best-interest level of care.
- Because the provision of information and advice are so different, FPSB would like to see more of a distinction made between ESMA's guidelines 20 and 21 (for product information) and ESMA's guidelines 22 and 23 (for investment advice).

20b. The language in this guideline seems more suited to advice than product information. We suggest that the language be rewritten to indicate that any discussion of tax implications moves beyond product information into advice, with a greater level of obligation on the part of the employee to understand the implications of the product on the client's financial situation. Where complex products are involved, investors should always receive advice at a fiduciary or best-interest level of care.

20c. FPSB recommends that this guideline require appropriate and adequate levels of disclosure, so investors understand they are receiving information related to a product. The disclosure should also include the amount the information provider receives in compensation for recommending the product.

21. FPSB generally agrees with this guideline, but recommends that it also include a requirement that the sale of complex products should be accompanied by advice at a fiduciary or best-interest level of care, not just information.

V.III Requirements for Staff Giving Investment Advice

22b. When it comes to the provision of advice, especially with implications on a client's tax situation or with products characterized by higher levels of complexity, FPSB encourages ESMA to take a client-focused approach rather than a product-focused approach. If the goal is to protect investors, an adviser should understand the client's goals, needs and objectives before being able to recommend a product or an investment strategy. The client's situation should direct the product recommendation, not the other way around.

22c. In addition to understanding the total costs to be incurred by the client in the context of the product(s) being offered, an adviser also needs to focus on the interrelationships of the client's financial decisions, and be able to discuss the "costs" of not making a decision.

22d. This guideline, related to advice, needs to go beyond suitability requirements for firms to reflect that advice needs to be provided at a fiduciary or best-interest duty of care.

22e. FPSB agrees, but recommends that the client's situation drive the product recommendation, not the other way around.

23g. While an understanding of portfolio theory is important, FPSB recommends that ESMA review the body of knowledge for financial advice (see Q.4 response) and include additional elements, such as behavioral finance, to ensure the provision of advice is done at a higher level than the provision of product information.

V.IV Organizational Requirements

24. FPSB recommends that ESMA broaden its focus beyond having a firm clearly distinguish product information from advice within the firm to requiring that this information be clearly and repeatedly communicated to investors in easy-to-understand language. This could be accomplished in a number of ways, including clear titling of positions or plain-language disclosures supported by appropriate nomenclature. To achieve its goal of protecting investors, ESMA and Member State regulators need to embrace how professionalism and professional standards can introduce and maintain processes that support adviser professionalism, competence and activities carried out in the client's best interests.

V.V Assessment, Maintenance and Updating of Knowledge and Competence

25a. A qualification for an employee who provides product information to a client may not be needed. An in-house firm training program leading to a government license may be sufficient, and that license would distinguish information providers from advisers or financial planners, who would meet additional, higher level competency requirements that include education, experience, adherence to a code of professional ethics, and assessment by an independent professional body/certification body. FPSB also believes that allowable titles should be determined and monitored to make clear to the customer whether the employee is qualified to provide product information or advice.

25b. FPSB agrees.

25c. In addition to submitting records concerning knowledge and competence in the provision of relevant services, firms should also be required to submit a record of any complaints received against the employee, and a list of actions taken by the firm to correct the complaint, including referring the matter out for review by an independent professional body/certifying body.

25d-h. Aside from our belief that experience is not a replacement for competency, FPSB recommends development of training that includes supervision by an appropriately-qualified senior employee for new entrants working with clients. As the employee gains experience and continues to perform duties satisfactorily, the level of supervision could be reduced. Many professional advice certification programs have an experience requirement integrated into their competency profiles, and those should also be considered for those employees meeting competency requirements for advice.

25i. FPSB believes that the employee "supervising" training and "signing-off" on any advice should be held responsible for the provision of the relevant service by an

employee under supervision. However, we believe that, ultimately, the firm should be held responsible for the provision of service to clients, as any failure in the supervision process is ultimately a failure of the firm.

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?

A summary of the comments that FPSB has provided for this section includes:

- FPSB **recommends** ESMA require that competency assessments of those providing advice be done by independent nonprofit professional bodies.
- FPSB **recommends** ESMA require investment to abide by a professional body's Code of Ethics, including a client-first principle.
- FPSB **recommends** ESMA require investment advisers to adhere to practice standards for the competent and ethical delivery of investment advice.
- FPSB **believes** that to competently deliver investment advice to a client, an investment adviser needs to combine the ability to carry out the tasks of investment advice using appropriate skills drawing on his or her knowledge of investment advice and ancillary matters.
- FPSB **considers** "professional financial advice" to be a subset of financial planning, and investment advice a subset of "general" financial advice. FPSBs' Financial Planner Competency Profile and Finance Adviser Competency Profile can provide a framework for an Investment Adviser Competency Profile.
- FPSB **believes** that central to the provision of advice is the notion of putting the client at the center of the process, that recommendations are delivered with a fiduciary standard, and recommendations take into account related aspects of the client's situation.
- FPSB **believes** as investment advisers work with more sophisticated clients with more complex financial situations, or with more complex financial products, they are likely to rely on more extensive abilities and knowledge, including knowledge on taxation of financial instruments, the ability to analyze financial research and communicate the research results to clients in an understandable way; and the use of insurance solutions to cover investment risks, as well as basic knowledge of insurance business and insurance contracts.
- FPSB **recommends** that Member States require appropriate levels of continuing professional development (CPD) to ensure investment advisers maintain competency in their area of practice and report CPD to NCAs.

- 4.1 To re-iterate a point made earlier, ESMA's draft guidelines lack a clear endorsement, if not outright recommendation, that competency assessments

of those providing advice be done by independent nonprofit professional bodies/certifying bodies.

- 4.2 Two other components missing in the overall framework for competency for investment advisers is the requirement that investment advisers abide by a Code of Ethics, based on principles that ensure the interests of the clients are being served, and that investment advisers adhere to well-established practice standards for the competent and ethical delivery of investment advice to clients.
- 4.3 To develop a European Investment Adviser Competency Profile, ESMA needs to clearly describe the abilities, skills, attitudes, judgments and knowledge that an investment adviser draws on when working with clients in investment advice engagements. To competently deliver investment advice to a client, an investment adviser needs to combine the ability to carry out the tasks of investment advice (to be defined in the Investment Adviser Abilities) using appropriate skills (defined in the Investment Adviser Skills) drawing on his or her knowledge of investment advice and ancillary matters (defined in the Investment Advice Body of Knowledge). The effective combination of abilities, skills and knowledge in other financial areas in addition to investments is what will define the investment adviser's performance as competent.
- 4.4 FPSB considers "professional financial advice" to be a subset of financial planning, and investment advice a subset of "general" financial advice. Central to the provision of financial planning, financial advice or investment advice is the notion of putting the client at the center of the process, that recommendations are delivered with a (client first) fiduciary standard of care, and that the recommendations made take into account related aspects of the client's situation.
- 4.5 To discuss what is needed for an Investment Adviser Competency Profile in Europe, FPSB needs to explain its extensive experience in developing a Global Financial Planner Competency Profile, and subsequently a Global Financial Adviser Competency Profile.
- 4.6 At the end of 2014, there were close to 160,000 CERTIFIED FINANCIAL PLANNER professionals practicing in 26 countries and territories around the world. A key facet of FPSB's global standards-setting role is to assist our member organizations in developing valid, reliable and defensible certification programs that accurately assess the abilities, skills and knowledge necessary for a financial planning professional to effectively serve clients in financial planning engagements.
- 4.7 Using data collected from more than 11,000 CFP professionals around the world, FPSB identified the tasks and professional skills that financial planners consider applicable and important to the practice of financial planning and determined appropriate content for the global body of knowledge of financial planning.
- 4.8 Based on this empirical research, FPSB developed a Financial Planner Competency Profile, which can be found at:
https://www.fpsb.org/component/docman/doc_download/1076-the-

global-practice-of-financial-planning-2014.html which serves as a guidance document for FPSB and its member organizations to:

- Ensure the validity and reliability of the global CFP certification assessment standards and their ability to benefit the public;
- Provide guidance for the content and format of global and territory-specific financial planning education courses, certification requirements and assessment programs; and
- Develop a set of test specifications to guide the construction of financial planner assessments around the world in a manner that will meaningfully evaluate practitioner competency.

4.9 In 2012, to support new entrants to the financial planning profession and broaden the application of FPSB's high-level financial planning standards to those offering limited scope financial advice, FPSB developed a Global Financial Adviser Competency Profile.

4.10 FPSB developed its Competency Profiles to support a nesting structure, whereby (with modifications) its Financial Planner Competency Profile could be scaled down to a Financial Adviser Competency Profile. In turn, the Adviser Profile can be scaled down to an Investment Adviser Competency Profile.

4.11 Drawing from the Competency Profile work FPSB has done for financial planning and financial advice, possible Investment Adviser Abilities for an Investment Adviser Competency Profile could include:

Financial Advising Function		COLLECTION
		Collects the information required to develop a financial solution
Fundamental Financial Advising Practices		1.001 Identifies the client's financial needs and objectives 1.002 Identifies the financial and tax information required to develop a financial solution 1.003 Identifies legal and estate issues that may affect the financial solution 1.004 Determines the client's attitudes and level of financial sophistication 1.005 Prepares information to enable analysis
Financial Advising Components	Financial Management	1.101 Collects information regarding the client's assets and liabilities 1.102 Collects information regarding the client's cash flow, income and/or obligations 1.103 Collects information necessary to prepare a budget 1.104 Prepares statements of the client's net worth, cash flow and budget 1.105 Determines the client's propensity to save 1.106 Determine how the client makes spending decisions 1.107 Determines the client's attitude toward debt
	Investments	1.108 Collects information necessary to prepare detailed statement of investment holdings 1.109 Determines the client's current asset allocation 1.110 Identifies cash flows available for investment 1.111 Determines the client's experience with and attitudes toward investments 1.112 Determines the client's investment needs and objectives 1.113 Determines the client's tolerance and capacity for investment risk 1.114 Identifies the client's assumptions and return expectations 1.115 Identifies the client's time horizon for investing

Financial Advising Function		ANALYSIS Assesses the information and financial need to develop a financial solution
Fundamental Financial Advising Practices		2.001 Assesses the client's financial needs and objectives to identify potential financial solutions 2.002 Reviews information to assess the client's situation 2.003 Considers regulatory requirements related to the client and potential solution 2.004 Generates potential financial solutions 2.005 Assesses advantages and disadvantages of each potential financial solution 2.006 Assesses products for suitability for the client's situation
Financial Advising Components	Financial Management	2.101 Assesses the appropriateness of the client's assets and liabilities, emergency fund, budget, real estate holdings, etc. given the client's existing and potential future financial situation 2.102 Assesses the impact of potential changes in the client's income and expenses 2.103 Assesses cash and debt management products for suitability for the client's situation 2.104 Assesses the financial and tax implications of acquiring/disposing of cash and debt management products
	Investments	2.105 Calculates required rate of return to reach the client's investment needs and objectives 2.106 Reviews the characteristics of investment holdings 2.107 Assesses the financial and tax implications of acquiring/disposing of assets 2.108 Assesses whether investment return expectations are consistent with the client's risk tolerance 2.109 Assesses whether asset holdings are consistent with the client's risk tolerance and required rate of return 2.110 Assesses investment products for suitability for the client's situation
Financial Advising Function		RECOMMENDATION AND IMPLEMENTATION Develops a financial solution and recommends a suitable product
Fundamental Financial Advising Practices		3.001 Determines which financial solutions best meet the client's need 3.002 Recommends the most appropriate financial solution 3.003 Upon agreement with the client, implements the recommendation using a suitable product

- 4.12 The professional skills that FPSB developed for a professional financial adviser are listed below, most of which should apply in an Investment Adviser Competency Profile.

FINANCIAL ADVISER PROFESSIONAL SKILLS MATRIX			
PS.1 Professional Responsibility	PS.2 Practice	PS.3 Communication	PS.4 Cognitive
PS.101 Establishes trust in all client relationships	PS.201 Complies with relevant financial services laws and regulations	PS. 301 Gives attention to what the client and others are saying and takes time to understand the points being made	PS.401 Applies mathematical methods or formulas as appropriate
PS.102 Acts in the best interest of the client in providing services professionally	PS. 202 Adheres to professional code of ethics and standards of practice	PS. 302 Establish good rapport with the client and others	PS. 402 Analyzes information from a variety of sources to arrive at the financial solution
PS. 103 Demonstrates ethical judgment	PS.203 Maintains awareness of changes in the economic, political and regulatory environments	PS. 303 Communicates information and ideas orally in a manner understandable to the client and others	PS. 403 Uses logic and reasoning to consider the strengths and weaknesses of potential financial solutions
PS.104 Demonstrates intellectual honesty and impartiality	PS.204 Engages in continuous learning to ensure currency of knowledge and skills	PS. 304 Communicates information and ideas in writing in a manner understandable to the client and others	PS.404 Demonstrates capacity to adapt thinking and behaviors
PS.105 Recognizes limits of competence and voluntarily seeks the counsel of and/or defers to others when appropriate	PS.205 Conducts appropriate research when performing analysis and developing the financial solution and product recommendation	PS. 305 Presents logical and persuasive rationales	
	PS.206 Exercises initiative in the performance of professional activities	PS. 306 Deals effectively with objections and complaints	
	PS.207 Exercises responsibility for own and/or firm's ability to deliver services to the client	PS. 307 Gains agreement with the client and others	

4.13 The topic areas that can be extracted from the FPSB Financial Adviser Body of Knowledge for an Investment Adviser Competency Profile education course framework are as follows:

I. FINANCIAL ADVICE PRINCIPLES AND PRACTICES

1. Financial advice process
2. Communication skills (includes writing, listening and verbal skills)
3. Relevant economic environment
4. Relevant political environment
5. Behavioral finance

II. ETHICS, STANDARDS AND COMPLIANCE

6. Code of Ethics
7. Financial Advice Practice Standards
8. Professional ethics (including codes of ethics)
9. Financial advice standards

10. Compliance with relevant laws and regulations
11. Relevant regulatory environment

III. FINANCIAL MANAGEMENT

12. Personal balance sheet (assets, liabilities and net worth)
13. Current and projected cash flow
14. Budgeting
15. Savings analysis and strategy
16. Credit and debt management
17. Emergency fund
18. Non-retirement employee benefits
19. Government benefits

IV. INVESTMENT AND INVESTMENT RISK

20. Investment objectives
21. Investment time horizon
22. Investment risks
23. Investment portfolios (development and analysis)
24. Investment strategies
25. Asset allocation/asset classes
26. Investment products
27. Types and measures of investment returns

- 4.14 As investment advisers work with more sophisticated clients with more complex financial situations, or with more complex financial products, they are likely to rely on more extensive abilities and knowledge, described in FPSB's Financial Adviser Competency Profile. Knowledge areas and skillsets would include:
 - Appropriate knowledge on taxation of financial instruments to assess the suitability of the advice given to the clients, including real estate and estate planning needs;
 - the ability to analyze financial research and communicate the research results to clients in an understandable way; and
 - the use of insurance solutions to cover investment risks, as well as basic knowledge of insurance business and insurance contracts.
- 4.15 Requiring appropriate levels of continuing professional development (CPD) will ensure that investment advisers maintain competency in their area of practice. Levels of CPD can be set by the Member State authorities and reported to NCAs on a regular basis.

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

- 5.1 As an international standards-setting body, FPSB is not in a position to quantify additional costs likely to be encountered by firms. However, FPSB would expect firms will face additional costs stemming from implementing training programs for new employees and existing employees who have not fulfilled the criteria, according to these guidelines, as well as for independent, professional body competency assessments and certifications. Additionally, firms are likely to experience costs from supervising the implementation and execution of these obligations within their compliance functions.
- 5.2 FPSB agrees with ESMA's position that the costs associated with complying with these obligations will result in greater standards of service to clients, a higher degree of investor protection, and an overall reduction in client detriment. In particular, FPSB believes that the benefits of requiring independent professional body certification (in terms of assessing and promoting practitioner competency and restoring consumer confidence in the marketplace) will outweigh the costs associated with implementing these guidelines.

Q6. What additional ongoing costs would firms face as a result of these proposed guidelines?

- 6.1 See also FPSB's response to Q5.
- 6.2 Additional ongoing costs for firms as a result of the proposed guidelines are likely to include: costs arising from offering employees, and/or employees attending, continuing professional development training and assessments; tracking and analyzing regulatory changes; and re-aligning compensation and reward systems within the firm to support the implementation of, and compliance with, the guidelines.

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