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**Consultation on ESMA draft guidelines for assessment of knowledge and
competence**

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Reply from:

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Introduction

The Dutch Investors' Association (VEB) was founded in 1924 with the objective of representing the interests of retail and institutional investors. Today, it is the largest investors' association in the Benelux with around 45,000 members. The VEB believes it is important that investors enjoy sufficient legal protection and that legislative and regulatory measures contribute to a well-functioning capital market. The VEB is therefore always interested and prepared to comment on consultations initiated by European and national legislators and regulators, especially because individual retail investors are often not in the position to defend their own interests.

In principle, the VEB is very supportive of the ESMA guidelines for the assessment of knowledge and competence. The guidelines reinforce the general obligation that currently exists in the MiFID Implementing Directive and the specific requirements that are already in place in some individual Member States. The VEB believes the guidelines will result in improvements in the knowledge and competence of persons providing investment advice and giving information on financial instruments. This will lead to greater standards of services to clients, a higher degree of investor protection and an overall reduction in client detriment.

Below, the VEB will respond to the specific questions posed by ESMA in its consultation paper:

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 years of experience should be made in the same firm or whether document experiences in more than one firm could be considered?

No, the VEB believes it is important that all persons providing investment advice or giving information on financial instruments possess an appropriate qualification, regardless of the experience they have in providing the relevant services. A transition period should be introduced in which existing staff that possess five consecutive years of appropriate experience of providing the same relevant services on the 3rd of January 2007 can continue their work but are obliged to obtain the appropriate qualification, as defined by the National Competent Authority (NCA), at the end of the transition period in order to be allowed to continue their work afterwards. The VEB assumes that persons that have five consecutive years of appropriate experience should have no problems obtaining an appropriate qualification.

Q2: ESMA proposes that the level and intensity of 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 advise should be of a higher standard than those providing information. Do you agree with the proposed approach?

The VEB is in principle supportive of the approach whereby persons who provide investment advice are obliged to fulfil higher standards than those who only give information. However, the VEB believes that in practice the relevance of this differentiation (at least in the Netherlands) is

very limited as the dividing line between information and advice is in extremely narrow. Situations in which persons exclusively give objective information are therefore very rare. The VEB believes that the requirements applied to persons providing investment advice should therefore be applied to all persons having contact with (potential) clients. This guarantees that clients always enjoy the highest level of protection and removes the risk that persons who are only competent to give information are in practice also providing investment advice.

In case a differentiation is applied, the VEB believes the NCAs should clear define 'where information ends and where advice begins'. Furthermore, the VEB believes that it is of great importance that a client engaging with a person who is not competent to provide advice is, at the beginning of the meeting, phone conversation or chat, clearly informed about this. The client subsequently needs to have the possibility to choose to engage with a person who *does* have an appropriate qualification and the appropriate experience to provide advice.

When a person who is not competent to give advice observes that the client needs advice or when the client explicitly or implicitly requests advice, he or she should at all times refrain from giving advice. The client should again be informed about the fact that the person who he is currently engaging with cannot give advice and that there is the possibility to engage with a person who can. The investment firm will need to supervise this very closely. This requires a constant monitoring of interactions between persons who are only allowed to give information and their clients - in person or by telephone or digitally via a chatroom.

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

Appropriate experience

With regard to 'appropriate experience', the VEB believes that a person should acquire at least three consecutive years of relevant working experience. The VEB furthermore believes that a person who has gained appropriate experience in the past but has not provided any investment advice or has not given any information for a period between 6 and 18 months should do another year of training in order to reacquire appropriate experience. A person who has not given any investment advice or provided information for more than 18 months should do again the whole training of three years.

Fulfilling the minimum period of experience, as determined by the NCA, should not be a sufficient condition for acquiring appropriate experience. As stated in the guidelines, a person should have 'successfully demonstrated the ability to perform the relevant services'. The VEB believes that NCAs should define criteria on the basis of which investment firms should determine whether the person has successfully demonstrated the ability to perform the relevant services. When a person has three consecutive years of relevant working experience, but has not successfully demonstrated, in accordance with these criteria, the ability to perform the relevant services, he should not be considered to have acquired appropriate experience.

Appropriate qualification

With regard to an 'appropriate qualification', the VEB believes NCAs should publish a list of criteria. A non-exhaustive list of qualifications should provide further guidance. The criteria should on the hand be stringent enough to prevent situations in which persons who have an

appropriate qualification on paper prove not to have required knowledge and competence in practice. On the other hand, the criteria should not lead to a shortage of qualified personnel and/or a sharp increase in the costs of investment services for individual clients. The VEB believes a fine balance should be struck between these two considerations by NCAs.

Requirements V.II & V. III

The VEB agrees with the requirements listed in section V.II & VIII of the draft guidelines. However, it believes it is important that ESMA explicitly mentions that these lists are meant to be non-exhaustive. NCAs should pose additional requirements to persons who provide investment advice (or give information) if they feel there is a necessity to do so.

Q4: Are there, in your opinion, other knowledge and competence requirements that need to be covered in the draft guidelines set out in Annex IV?

See response to Q3.

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

Since the VEB does not provide any investment services, it cannot assess the one-off costs that will result from the proposed guidelines. Nevertheless, the VEB believes that knowledge and competence are essential to the quality of advice and to investor protection and that requirements and standards should not be watered down on the basis of costs, except when the costs are passed on to clients and these costs are not proportional to the benefits that clients gain as a result of the guidelines. As ESMA states in the consultation paper, there already exist extensive knowledge and competence obligations in some Member States.

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

Since the VEB does not provide any investment services, it cannot assess the ongoing costs that will result from the proposed guidelines. Nevertheless, the VEB believes that knowledge and competence are essential to the quality of advice and to investor protection and that requirements and standards should not be watered down on the basis of costs, except when the costs are passed on to clients and these costs are not proportional to the benefits that clients gain as a result of the guidelines. As ESMA states in the consultation paper, there already exist extensive knowledge and competence obligations some Member States.