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FMA CIRCULAR

ON THE CRITERIA FOR THE
ASSESSMENT OF
KNOWLEDGE AND
COMPETENCE OF
INVESTMENT ADVISORS
AND PERSONS PROVIDING
INFORMATION ABOUT
INVESTMENT PRODUCTS
(ARTICLE 55 WAG 2018)

TABLE OF CONTENTS

1	Introduction	3
2	Criteria for the Knowledge and Competence of Relevant Staff Members	6
2.1	Relevant staff members, who provide information about investment products, investment services or ancillary services (Section V.II of the ESMA Guidelines)	6
2.2	Relevant staff members, providing investment advice (Section V.III of the ESMA Guidelines)	7
3	Additional Requirements for Appropriate Qualification	9

1 INTRODUCTION

- 1 Requirements for the qualifications of client advisors are explicitly defined in Article 25 (1) of Directive 2014/65/EU (MiFID II) with the objective to improve investor protection.
- 2 Article 25 (1) MiFID II specifically states that the legal entities must ensure that natural persons, that provide investment advice on behalf of a legal entity as defined in Article 26 Securities Supervision Act 2018 (WAG 2018; Wertpapieraufsichtsgesetz 2018) or give information about investment products and investment services (including ancillary services), possess the necessary knowledge and competence to fulfil their obligations. The possession of the necessary knowledge and requests shall be required to be proven to the FMA upon request. The aforementioned group of persons shall hereinafter be referred to as "relevant staff members".
- 3 Pursuant to Article 25 (9) MiFID II the criteria for the assessment of the possession of knowledge and competence required shall be defined in relevant ESMA Guidelines.. The ESMA "Guidelines for the assessment of knowledge and competence" (hereinafter: "the ESMA Guidelines") of 22 March 2016 (ESMA/2015/1886/EN) have determined minimum standards for the assessment of knowledge and competence of relevant staff members. The ESMA Guidelines shall apply from 3 January 2018, from the same time as the entry into force of the Securities Supervision Act 2018 (WAG 2018; Wertpapieraufsichtsgesetz 2018).
- 4 The FMA is required pursuant to Article 55 para. 1 WAG 2018, which transposes Article 25 (1) MiFID II, to publish the criteria that are to be applied for the assessment of the possession of the necessary knowledge and competences of the relevant staff members. The ESMA Guidelines further substantiate this obligation by stating that the FMA is required to publish the *criteria* and *characteristics* that are defined in the ESMA Guidelines, and which constitute an appropriate qualification to satisfy these criteria.
- 5 Furthermore, according to the ESMA Guidelines, the FMA must also additionally publish the following details:

- (a) The minimum amount of experience that relevant persons shall be required to prove they have to be able to provide the relevant service without supervision within the firm (according to the ESMA Guidelines, this period shall be at least six months);
 - (b) The maximum length of the period of time in which a relevant person may be allowed to provide specific services under supervision due to having not acquired the necessary qualification (according to the ESMA Guidelines, this period shall not be allowed to exceed more than four years);
 - (c) Whether the reviewing of holding appropriate qualification is conducted by the legal entity or an external body.
- 6 The "*Criteria for the existence of appropriate qualification*" were defined in the ESMA Guidelines by means of a list of the specific knowledge and competences that the relevant staff members must possess. "*Characteristics*" that demonstrate appropriate qualification mean the requirements in relation to acquiring such knowledge and competences.
- 7 This Circular contains the following disclosures as described in the preceding paragraphs:
- The knowledge and competences that the relevant staff members must possess that are listed in the ESMA Guidelines;
 - The requirements in relation to the acquiring of such knowledge and competences;
 - The minimum amount of experience that relevant persons shall be required to prove they have to be able to provide the relevant service without supervision within the firm;
 - The maximum length of the period of time in which a relevant person may be allowed to provide specific services under supervision due to having not acquired the necessary qualification;
 - The addressee's disclosure about the obligation to review whether the relevant staff members hold the appropriate knowledge and competences.

- 8 This circular is aimed at the following legal entities as defined in Article 26 para. 1 WAG 2018:
- Credit institutions pursuant to Article 1 para. 1 BWG and CRR-credit institutions pursuant to Article 9 BWG, that provide investment services on the basis of holding a licence pursuant to Article 1 paras. 1 and 3 BWG in Austria (even if conducted through a branch);
 - Investment firms pursuant to Article 3 para. 1 WAG 2018 and investment services providers pursuant to Article 4 para. 1 WAG 2018, branches of investment firms (Article 19 para. 5 WAG 2018) as well as branches of third country firms (Article 23 para. 2 WAG 2018);
 - Management companies (investment fund management companies) pursuant to Article 5 para. 1 InvFG 2011 providing individual portfolio management services and investment advice pursuant to Article 5 para. 2 nos. 3 and 4 InvFG 2011;
 - AIFMs (alternative investment fund managers) when providing individual portfolio management services, investment advice, or the receiving and transmitting of orders, that use financial instruments pursuant to Article 4 para. 4 no. 1 or no. 2 lit. a or c AIFMG.

To aid readability the aforementioned entities shall hereafter be referred to as "legal entities".

- 9 This circular does not constitute a legal regulation. It is intended to serve as guidance and reflects the FMA's legal interpretation. No rights and obligations extending over and above the provisions of the law can be derived from circulars.
- 10 Where designations used refer to natural persons, the formulation used applies to both genders.
- 11 This Circular shall apply from 3 January 2018.

2 CRITERIA FOR THE KNOWLEDGE AND COMPETENCE OF RELEVANT STAFF MEMBERS

2.1 Relevant staff members, who provide information about investment products, investment services or ancillary services (Section V.II of the ESMA Guidelines)

Content of knowledge and competences

- 12 Relevant staff members, who provide information about investment products, investment services or ancillary services shall in any case possess the following knowledge and competences to:
- 13 understand the key characteristics, risks and features of those investment products available through the legal entity, including any general tax implications and costs to be incurred by the client in conjunction with transactions. Particular care should be taken when giving information about products characterised by higher levels of complexity;
- 14 understand the total amount of costs and charges to be incurred by the client in the context of transactions in investment products or in conjunction with investment or ancillary services;
- 15 understand the characteristics and scope of investment services or ancillary services;
- 16 understand how financial markets function and how they affect the value and pricing of investment products on which they provide information to clients;
- 17 understand the influence of economic figures, national/regional/global events on markets and on the value of investment products on which the relevant staff members provide information;
- 18 understand the difference between past performance and future performance scenarios as well as the limits of predictive forecasting;
- 19 understand issues relating to market abuse and anti-money laundering;

- 20 assess data relevant to the investment products on which they provide information to clients; e.g. Key Investor Information Documents, prospectuses, financial statements or financial data;
- 21 understand specific market structures for the investment products on which they provide information to clients, and where relevant about their trading venues or the existence of any secondary markets;
- 22 have a basic knowledge of the valuation principles for the type of investment products in relation to which the information is provided.

2.2 Relevant staff members, providing investment advice (Section V.III of the ESMA Guidelines)

The level and intensity of knowledge and competence

- 23 The level and intensity of knowledge and competence for relevant staff members providing investment advice, should be of a higher standard than those that only give information on investment products and investment services (cf. Section V. MN 13 of the ESMA Guidelines).

Content of knowledge and competences

- 24 Relevant staff members who give investment advice should in any case possess the following knowledge and competences:
 - 25 understand the key characteristics, risks of offered and recommended investment products, including any general tax implications and costs to be incurred by the client in conjunction with transactions. Particular care should be taken when providing advice in relation to products characterised by higher levels of complexity;
 - 26 understand the costs and charges to be incurred by the client in total in conjunction with the type of offered or recommended investment product, as well as the costs that arise in conjunction with the advice provided and other related services;
 - 27 satisfy the requirements for the assessment of suitability including the requirements stipulated in the "ESMA Guidelines on certain aspects of the MiFID suitability requirements" [ESMA/2012/387];

- 28 understand to what extent the type of investment product offered by the legal entity is potentially not suitable for the client, by means of the relevant information supplied by the customer being assessed for potential changes, that may possibly have arisen since the relevant data was last collected;
- 29 understand how financial markets function and how they affect the value and pricing of the investment products offered or recommended to clients;
- 30 understand the influence of economic figures, national/regional/global events on markets and on the value of investment products offered or recommended to clients;
- 31 understand the difference between past performance and future performance scenarios as well as the limits of predictive forecasting;
- 32 understand issues relating to market abuse and anti-money laundering;
- 33 assess data relevant for the type of investment products offered or recommended to clients; e.g. Key Investor Information Documents, prospectuses, financial statements or financial data;
- 34 understand specific market structures for the investment products offered or recommended to clients, and where relevant about their trading venues or the existence of any secondary markets;
- 35 have basic knowledge about the valuation principles applicable for the investment products offered or recommended to clients;
- 36 understand the fundamentals of portfolio management, which also includes the ability to understand the implications of diversification regarding individual investment alternatives.

3 ADDITIONAL REQUIREMENTS FOR APPROPRIATE QUALIFICATION

- 37 The knowledge and competences listed for the respective position (see 2.1 or 2.2) shall be acquired by completing training courses addressing the respective listed course content. Learning objectives shall be proven to have been achieved by means of documentation confirming that exams have been passed on the course content required for the respective function.
- 38 With regard to the recognition of previous qualifications, the legal entity shall evaluate to what extent the relevant staff members employed by the legal entity possess the required knowledge at the time of the ESMA Guidelines entering into force. This evaluation must be documented. The legal entity shall arrange where applicable that a lack of knowledge may be caught up.
- 39 A relevant staff member should have successfully proven in his/her previous activities that he/she is in a position to provide the relevant services ("appropriate experience" [cf. Section II MN 4 lit. h of the ESMA Guidelines]). The relevant staff member must have performed this activities for a period of time of at least six months, on a full time equivalent basis.
- 40 Relevant staff members that do not possess the appropriate experience to provide the relevant services may only perform these services under supervision (cf. Section V.IV MN 20 lit. d of the ESMA Guidelines).
- 41 A relevant staff member who does not possess the appropriate experience to provide the relevant services, shall be allowed to perform these services under supervision for a period of a maximum of two years (cf. Section V.IV MN 20 lit. h of the ESMA Guidelines).
- 42 The necessary measures pursuant to Section V.IV MN 20 lit. b of the ESMA Guidelines in order to ensure the appropriate continuous professional development of the relevant staff members, shall consist of professional trainings of at least 15 hours per year.
- 43 The performing of the review of whether relevant staff members have appropriate level of qualification may be conducted by the legal entity or an external body. In the latter instance, the legal entity remains responsible for the orderly review.