

22 November 2017

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Minimum Competency Code

Dear Ms Norris,

I have recently taken over as the CEO of the Irish Association of Investment Managers. I understand from my predecessor, Brendan Bruen, that an issue has arisen for the industry in respect of the Minimum Competency Code, and I have been briefed in respect of this. I understand that following a phone conversation between Brendan and you and CBI colleagues that the IAIM agreed to provide a formal request regarding the provisions of the MCC. This request with supporting context is set out below.

Context

MiFID II (2014/65/EU) comes into force in January of 2018, and provides (in Article 25) for new Knowledge and Competence requirements for those providing information and advice on relevant products and services under the Directive.

Under MiFID II, ESMA were charged with providing formal guidance in this area and published their 'Guidelines on Knowledge and Competence' on 3 January 2017, providing for a consistent set of EU-wide interpretations. Within the guidance Part V.II provides criteria to establish knowledge and competence for staff giving information about investment products, investment services and ancillary services, while Part V.III provides similar criteria for advice about such products and services.

The Knowledge and Competence requirements are implemented in Ireland through revisions to the existing Minimum Competency regime contained in the Minimum Competency Regulations (SI 391 of 2017) ('MCR') and associated Minimum Competency Code ('MCC') published 1 September 2017, and taking effect 3 January 2018.

MCR/MCC provisions

The MCC provides detailed requirements (contained in Part I) for the those providing information and advice to retail and elective professional clients, including an exhaustive list of approved qualifications, and provisions for the recognition of other qualifications. Requirements for retail

clients form part of the original minimum competency regime and accordingly the requirements in this section largely predate MiFID II.

Part II of the MCC has been added to satisfy the MiFID II requirements and applies to the provision of information and advice to both retail and professional clients. Rather than taking the approach of Part I in setting out specific guidelines and recognised qualifications, Part II incorporates the ESMA Guidelines and effectively places on firms the obligation to determine whether staff meet the requirements.

The ESMA guidelines specifically define 'knowledge and competence' in terms of both having an appropriate recognised qualification and appropriate experience. In determining the acceptability of a qualification, Part II (Section 2.2.1.a, referencing 2.2.1.b) provides that a qualification must:

- include the competencies set out in the relevant sections of the ESMA guidelines;
- include ongoing CPD requirements of at least 15 hours per year;
- have their underlying academic qualifications included in the National Framework of Qualifications (or equivalent) at level 7 (or equivalent) or higher.

The necessity for a qualification to have an ongoing CPD requirement of at least 15 hours per year presents very significant issues for firms as some or all of the individual Knowledge & Competency elements are properly satisfied by qualifications which do not have mandatory CPD elements. We would emphasise that these CPD requirements are not mandated or necessitated by the ESMA guidelines or by the Directive.

Impact of CPD

The industry recognises that the broad parameters of the Knowledge and Competency requirements arise from MiFID II and from the ESMA Guidelines. However, the specific requirement that a qualification must have 15 hours CPD per year for it to be considered appropriate presents significant difficulties for firms in the context of provision of advice to professional clients.

The provision of the MiFID service of investment advice and the provision of information to professional clients on MiFID services is inherently different to the provision of financial advice to retail clients. A level of specialisation and technical knowledge is present on both sides of the client relationship, and qualifications with an emphasis on non-professional investors are unlikely to be sufficient to satisfy a professional investor. Specific expertise is likely to be necessary to satisfy the client regardless of the regulatory requirements, and certain qualifications that are common in the industry do not contain a formal ongoing CPD requirement.

The Certified Financial Analyst (CFA) qualification is generally seen as the highest value qualification within the industry and would be a robust indicator of the required standard. The CFA does not have a formal requirement for ongoing CPD hours, but rather has a well-developed voluntary Continuing Education element.

Similarly, firms have indicated that in specific instances, considering the actual course modules that have been taken, and potentially in conjunction with other courses, qualifications such as a Masters in Economics, Masters in Investment and Treasury, the Investment Management Certificate, the Diploma in Stockbroking and Investments, MBAs and the SEC exams may all satisfy some (or all) of the requirements set out in the ESMA guidelines, but do not have an ongoing formal CPD requirement.

The industry submits that such qualifications, either individually or in conjunction with other qualifications that do have a mandatory CPD element, can properly be considered to fulfil the

requirements of the Directive and ESMA Guidelines, and to do so in a manner that fully meets the objectives of the Directive.

We believe that supervision is not typically an appropriate solution to the issue – and that it would simply be ineffective for a person with a formal CPD qualification to be ‘supervising’ a more experienced and qualified colleague whose qualifications do not happen to have a formal CPD element.

Addressing the issue

The industry recognises that CPD is a valuable and necessary element of ensuring that skills obtained through qualifications remain current, and does not seek to avoid an ongoing CPD requirement on client-facing staff. Rather, we would submit that appropriate CPD does not necessarily flow from the qualification itself, but from the ongoing needs of the role - and that the objectives of CPD can be achieved regardless of whether or not the original qualification has a mandatory CPD requirement.

Accordingly, we would propose that the CBI considers a qualification to meet the Directive’s requirements if it meets the standards set out in the ESMA Guidelines, and where the person undertakes at least 15 hours CPD per year, either by reference to the CPD requirements of the qualification or to appropriate standards put in place and monitored by the firm. We would envisage that the firms would use existing CPD arrangements as a reference point, and may agree a common standard at industry association level in consultation with the CBI. We believe that this approach would be fully compliant with both the letter and spirit of the Directive and the ESMA Guidelines.

Yours Sincerely

Regina Breheny
CEO IAIM