

**Review of Minimum Competency Requirements - Consultation Paper CP 45**

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## Review of Minimum Competency Requirements - Consultation Paper CP 45

Dear Sirs,

I refer to your request for comments on the above consultation paper and set out below for your attention my opinion on some of the specific points dealt with in this paper.

***The current definition of 'advice' is based on the definition contained in the Investment Intermediaries Act 1995. We propose amending this definition to more closely reflect the definition contained in the European Communities (Markets in Financial Instruments) Regulations 2007.***

As far as I am aware under this specific definition the term "investment advice" contained in the EC Regulations 2007 is subject to a further paragraph definition that I have set out below and is meant to refer to the provision of personal recommendations to a client, either upon the client's request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments;

The sub paragraph definition "personal recommendation" in the context of "investment advice", refers to recommendations;

- (a) that are made to persons in their capacity -
  - (i) as investors or potential investors, or
  - (ii) as agents for an investors or potential investors,
- (b) that are presented as suitable for those persons or are based on a consideration of their circumstances, and
- (c) must constitute recommendations to take one of the following sets of steps:
  - (i) to buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular financial instrument;
  - (ii) to exercise or not to exercise any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange, or redeem a financial instrument, but does not include recommendations that are issued exclusively through distribution channels or to the public.

While I would agree that all of these definitions are valid, they do not cover the many recommendations that emanate from the financial media, many of which pass comment in a very forceful way by virtue of their opinion and reliance on the strength of their media brand. While we are very fortunate to have a broadly excellent cohort of financial journalists, one should not overlook the power of their commentary and the reactive nature of readers. In this regard, one should also consider the issue of whether financial journalists also need to obtain professional qualifications that are relevant to the giving of such advice, especially where the advice takes the form of a "what should I do?" column.

*We propose changing from the current three-year cycle for Continuing Professional Development (CPD) to an annual requirement. We believe that an annual requirement would be more effective for both individuals and regulated firms to manage. In addition, we are proposing that CPD will only be made up of formal hours that can be validated and no longer include a requirement for informal hours that is difficult to verify. The proposed annual requirement will be 15 formal hours. (Requirement 3.2.1)*

I would be in favour of your proposal to both change the requirement for CPD to be an annually as well as the removal of informal hours.

I would, however, go considerably further than these recommendations and would suggest:

1. **The topics needed to be covered should be specified.** Your consultation paper in section 3.2.2 states that CPD hours need to be widely spread but does not seem to prescribe this more definitively. Currently it is quite possible to complete the required CPD hours by actually attending the same type of seminar or presentation and in so doing neither extend one's knowledge nor keep other areas of knowledge up to date. For example in a financial advisory context, by attending, say, 4 investment only seminars or conferences promoted by the various investment and insurance companies the majority of the 15 hours formal CPD could be obtained. This, however, does not mean that an individual has kept up to date in other areas such as retirement planning, protection arrangements, taxation, regulatory issues, ethics etc. For most advisors these are an integral part of their work. A similar case could be made, no doubt, for those involved in general insurance.
2. **The formal hours required be extended up to 20 hours.** If the CPD topic range was extended, it is likely that more hours would be needed. In making this suggestion, I am aware that many in the industry would feel that this is just another unnecessary pressure on those involved in financial services. My view is that there are many outlets now available for any financial service professional to obtain valid CPD hours that such a negative reaction would be invalid. CPD is available from presentations & conferences from investment and insurance houses, industry bodies and many private training companies not to mention the online facilities such as [www.mycpd.ie](http://www.mycpd.ie) and the hours granted on successful passing of the modules that form part of the professional qualifications relevant to the industry.

*Some regulated firms have indicated that there may be concerns in relation to the security of their employees arising from the requirement to make the Register publicly available. We propose retaining the requirement to maintain a register. Regulated firms may continue to provide the Register to the public or they may choose to provide each accredited individual and specified accredited individual with a certificate in a defined format, setting out the areas in which the individual has been grandfathered or holds a relevant recognised qualification. Consumers must be informed that they may request sight of the Register or the certificate. (Requirement 4.1)*

I would be in favour of making such Registers of accredited individuals available to the public. I would, however, go further than just a basic system of broad information. I feel that there is a case to be made to help the public differentiate about the level of technical ability that any particular individual has. Each professional qualification has, as far as I am aware, a grading level within the HETAC structure. For example a QFA has a HETAC level of 7 while a Post Graduate Diploma in Financial Planning (the minimum requirement for the new Certified Financial Planner qualification) has a HETAC level of 9. The skillset for each of these qualification is, in parts, widely different. The latter involves a far more advanced knowledge of investment portfolio management, ethics, tax computations, retirement planning and broad based financial planning skills than just a "mere" QFA standard. **These registers could be automatically fed from the databases of the various professional organisations**

operating in the industry such as the LIA, the Institute of Bankers and the Chartered Insurance Institute. This would mean that any loss of qualification for whatever reason would be automatically carried through to the Regulators own public registers

I would feel that any such register should have the minimum the following information available:

1. Name of individual
2. Business name including trading name (this should be linked back to the Organisation records held on the Regulators Registers.
3. Business Address, phone number, email and website of the business with which they are involved.
4. Qualifications and year when they were obtained (this section should have a linkage to a full website listing of what these qualifications represent as well as a full explanation of the subject matter covered by these qualifications and HETAC grading ,or indeed any recognised international standard.
5. CPD history records
6. How the business organisation that they are employed by or run is regulated i.e. whether they are, for example, Authorised Advisors, Multi Agent Intermediaries or indeed any other relevant category that exists.

***We are proposing that regulated firms that have allowed individuals to avail of the grandfathering arrangements would be required to provide those grandfathered individuals with a Certificate of Compliance with the Experience Requirement for Grandfathering when they cease employment with the firm. We have set out the format of the proposed Certificate. (Requirement 4.4)***

I would feel that this certificate should come from someone other than the employer. If grandfathering is allowed by the Regulator then the certificate should likewise be forthcoming from the Regulator even though the former employer oversaw the employee. Otherwise to do so undermines the regulatory weight of such a process.

***We are considering phasing out the grandfathering arrangements and are proposing that this would take place over a period of time. A number of issues have arisen since the introduction of the Requirements in relation to the grandfathering process. There appears to be confusion in the industry regarding the process, the extent of the activities for which an individual may be grandfathered and the activities a grandfathered individual may undertake. In order to ensure a consistent standard across the industry, we propose phasing out the grandfathering arrangements over a four-year period. We would expect that all those providing services that fall within the scope of the Requirements would hold a relevant recognised qualification by 2015. We would welcome your views on the proposal to phase out the grandfathering arrangements and also on the proposed timeframe.***

I would be in favour, at this point in time, of removing the whole regime of grandfathering as it has only served to allow those who do not have any qualifications to perpetuate a lower level of knowledge under the guise of experience.

On the financial advice stream of the industry the QFA established an entry level that, while accepted by most of the industry, was never fully embraced. This is not to say that the QFA itself should be the measure of the industry but it should be a minimum starting point.

An argument is often made that many advisers are experienced and should not be put through a common measure of comparison as though this is an insult to expect them to comply and they are above such measurement of standards. Alternatively, some make the comment that as they are older, they would find study difficult. This latter point, in particular, could be directed to the recently launched Post Graduate Diploma in Financial Planning which at a HETAC level of 9 is two levels above the QFA HETAC level of 7. Of the approximately 120 students from the first stream my sense of the age profile is that at least half the students are aged 40+ with many in their fifties, if not late fifties. My understanding is that most of the students involved in this program have successfully moved through the four modules to date. Thus, the argument of age being a problem is not a valid one.

In my view, the reality is that all advisers need to display a minimum ability so that the public can have faith in them and the Regulatory authorities can vouch for the ability of those employed in the organisations they oversee. If someone is so experienced from their years of involvement in the industry to date, then it could be said that it should be a simple matter for them to turn up for the exam and pass it. Being fair however, exams require an element of a technique to answer formally as well as focusing on what the question being asked is seeking as an answer. I would, however, counter this by saying there are considerable resources employed by the various educational, insurance company and broking bodies so that it is no longer reasonable to state that assistance is not available. All that is required at this stage is commitment. A good analogy is the need to undertake a driving test. All who turn up for their driving test know how to physically drive the car regarding operational issues of starting, stopping, changing gear etc. They will also know a modicum if not the full range of answers to the oral examination. The question is, can they drive safely and within tolerances with regard for public safety? Hence the need for a driving test to establish a minimum acceptable standard.

Likewise, the fact that an individual has been involved in financial services is not sufficient to demonstrate that they have any level of competence. **Financial advisers need to have similar benchmarks imposed on an industrywide basis.**

***At present, the Requirements do not apply to those providing services over the internet. We would welcome your views as to whether individuals setting up internet sites that provide financial services should be subject to the Requirements.***

**This is an area that needs to be addressed sooner rather than later** as it is very easy for anyone proffering any financial advice to establish an internet site and make it publically available within a few hours. I believe that separate legislation might even be needed in this regard. I would feel that any Irish based website that offers financial advice to Irish residents should first be approved by the Regulator before it is allowed. While this would entail more resources and expense from the Regulator, it is a necessary development to protect the public in the same way that the Regulator seeks to keep the public informed on non regulated entities.

***Loan restructuring - The Requirements focus on the sales/advisory process and on certain specified activities. In view of the difficulties currently being experienced by many consumers in mortgage/loan arrears, should the Requirements specifically include the restructuring of existing loans?***

The whole area of debt management is not actually a recent development since as far as I am aware such organisations have existed for, at least, the last 40 years. The only difference now is that the debt crisis brought on in recent years has seen a proliferation of such organisations, **most of which are unregulated** either by way of skill sets or in terms of client money management. **A further concern is the lack of transparency with regard to charges and the implied costs of such services once deductions are made.** The Regulator needs to establish a **dedicated division to deal with such organisations with similar legislation and regulatory approval structures that are in existence for other financial intermediaries.**

***Should investment management be included in the Requirements as a separate activity? If so, please set out the reasons why. Please also indicate whether you think the current recognised qualifications are appropriate for this activity and if there are other relevant qualifications that may also be appropriate.***

**The scope of the phrase needs to be clarified further before any meaningful response can be given.** Is this to mean the formal management of specific funds whereby discretion is given to the investment and disinvestment of funds or does it refer to the giving of advice to clients to switch within existing unit fund structures?

#### **Other Issues That I Feel Need To Be Addressed But Have Not Been By CP45**

- 1. Tighter regulation of CPD events is needed** as it is possible, and happens regularly, for an individual to sign into an approved session and leave at any point but still obtain a certificate from the organiser stating that they have attended the full session and therefore get CPD credit of more hours than they are entitled to.
- 2. A very relevant issue is what constitutes a financial adviser?** While the thrust of this consultation paper refers, quite rightly, to those who are involved in the financial services advisory industry directly, some thought should also be given to those in the financial media that commentate upon it. As a country we are very well served by individuals in the financial media profession in much the same way that we are very well served by the vast majority of financial advisers. It would be inconsistent to impose some level of professional qualification standard on those who make a living giving direct personal advice while at the same time not imposing some standard of similar professionalism on those who commentate upon financial advice and who offer opinion on various financial products irrespective of the media in which they chose to espouse their opinions. Their opinion is, in many cases, keenly followed and acted upon.

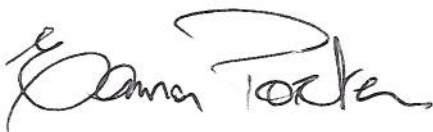
3. Attention is needed by the Regulator in the **policing of individuals who espouse to have particular qualifications through websites, business cards or normal written correspondence to their clients**. Over recent years, I have seen this abuse take one of two main forms:
  - a. Individuals who espouse to have a qualification (such as a QFA) but never held such a qualification at all, or,
  - b. Individuals who spuriously add initials after their names (such as the letters LIA) to give the impression that they hold a professional qualification. While the professional bodies deal with such individuals when notified and ask them to desist it is very difficult for them to police it as they have no penalties that they can impose on wayward non academically qualified members or, indeed, non members.

By making a regulatory penalty applicable for such malpractice it is very probable that such a practice would desist.

4. The competencies displayed in Appendix 1 appear to differentiate between those that advise only in life assurance and those that are involved in other areas of advice such as pensions and investments. The reality is that I am unaware of any adviser who is a life assurance only adviser as they would be offering a limited palate of financial products if this were the case. In any event, **anyone involved in recommending life assurance would need to have a strong awareness of investments from the perspective of long term costing and the “bombing out” nature of whole of life contracts** building up an early value to be only dissipated in later periods, thus necessitating a premium review.
5. **Appendix 2 of CP 45 does not list the ACII (Life) as a suitable qualification for giving advice on life assurance** even though the ACII (General) is recognised by the Regulator in the qualifications for the area of general insurance.
6. Appendix 2 states that the QFA is a qualification of sufficient knowledge to impart advice for shares and bonds. One only has to read the Financial Ombudsman reports of recent vintage to see that persons who gave advice on subordinated loan related products did not understand the legal and investment consequences of what they were involved in. In my opinion, **the QFA should be removed from the list of qualifications of those involved in giving advice on shares and bonds**.

Finally if there are any issues which your office feels requires clarification I can be contacted at 01-8455827.

Yours sincerely



**Eamon Porter QFA FLIA ACII**

## **Appendix 1 – Brief Biography of Eamon Porter**

Eamon Porter is 50 years of age and is the principal of Aspire Wealth Management, a fee based financial planning and wealth mentoring business.

He is a Past President of the Life Insurance Association, having previously been an examiner and corrector for the LIA's examinations as well as previously being joint editor of the LIA's own technical publication "The Professional". He was also one of the inaugural judges of the Moneymate Investment Awards.

He has recently served (between 2008 and 2010) on the Council of the Irish Broker Association and on its Management Committee as well as being the Chairman of its Financial Services Committee. He previously served on the IBA's Technology Committee being one of its first representatives on the board of Assurelink, the computer company founded by life assurance companies to provide technology support to Irish life assurance and pension brokers.

He has 33 years experience in the Irish Financial Services sector having worked with Irish Life Assurance, Abbey Life Assurance (subsequently sold to and now trading in Ireland as Canada Life) and NCB Stockbrokers before becoming a co-owner of a general insurance and financial services brokerage for 15 years. In 2005, he established Aspire Wealth Management, based in Malahide, Co. Dublin, through which he is regulated by the Financial Regulator as an Authorised Advisor and a Mortgage Intermediary. Apart from his broking activities, he is also engaged regularly as an Expert Witness in legal cases involving negligent or reckless advice.

He is a Qualified Financial Advisor (QFA), A Fellow of the Life Insurance Association (FLIA) and an Associate of the Chartered Insurance Institute(ACII). He is currently undertaking an 18 month three semester program for a Post Graduate Diploma in Financial Planning with a view to being among the first Certified Financial Planners® in Ireland when the program finishes in February 2011. To date, he has successfully completed the first two semesters of this program. He is also in the final stages of obtaining the Fellowship of the Chartered Insurance Institute (FCII) and expects to have this completed by October 2010. His career roles have involved him in policy administration, pensions servicing, financial accountancy, management accountancy, stockbroking, computer strategy development, personal financial advice and behavioural finance analysis.

He is a strong believer in personal self development and travels regularly throughout the UK, Europe and the United States in order to keep himself informed of developments in global financial services.