

RETAIL INVESTMENT ADVISER PROFICIENCY & CONTINUING EDUCATION REQUIREMENTS IN LEADING JURISDICTIONS

CANADA	
Regulators	Canadian Securities Administrator (“ CSA ”); Investment Industry Regulatory Organization of Canada (“ IIROC ”); Mutual Fund Dealers Association of Canada (“ MFDA ”)
Laws/Guidelines	National Instrument 31-103 – <i>Registration Requirements and Exemptions</i> (“ NI 31-103 ”); IIROC Rule 2900 – <i>Proficiency and Education</i> (the “ IIROC Rules ”); MFDA Staff Notice MSN-0077 – <i>Approved Person Proficiency Requirements</i> (the “ MFDA Rules ”)
Terminology	<ul style="list-style-type: none"> • A “registered individual” is an individual who is registered to act as a dealer or adviser on behalf of a registered firm. • A “registered representative” is an employee of an IIROC-regulated “dealer member” firm who has been approved by IIROC to trade and advise in securities with the public in Canada. • An “approved person” is a person who is registered with the MFDA to trade or deal in securities in respect of a MFDA-regulated “member firm.”
Proficiency Requirements	<p>NI 31-103 prohibits individuals from performing any activity that requires registration until the person has the education, training and experience that a reasonable person would consider necessary to perform the activity competently.¹</p> <p><u>IIROC</u></p> <p>To become a registered representative, a person must complete:²</p> <ul style="list-style-type: none"> • The Canadian Securities Course; • The Conduct and Practices Handbook Course; • A 90-day training program during which the person is employed with a dealer member on a full-time basis; and

¹ NI 31-103, s. 3.4(1).

² IIROC Rules, Part I, s. 3.

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	<ul style="list-style-type: none"> • Within 30 months of being approved as a registered representative, the Wealth Management Essentials Course (unless the registered representative deals only in mutual funds). <p><u>MFDA</u></p> <p>To become a registered representative who deals exclusively in mutual funds (and an approved person), a person must complete one of the following:³</p> <ul style="list-style-type: none"> • The Canadian Investment Funds Exam; the Canadian Securities Course Exam; or the Investment Funds in Canada Course Exam;⁴ • Obtain a CFA Charter and have 12 months of relevant investment management experience in the 36-month period before applying for registration; or • Receive the Canadian Investment Manager designation and have 48 months of relevant investment management experience, 12 months of which was in the 36-month period before applying for registration.
Continuing Education	<p><u>IIROC</u></p> <p>Registered representatives must complete a 12-hour compliance course and a 30-hour professional development course each three-year cycle. Registered representatives may take their courses from an external course provider or from a program offered by their dealer member.⁵</p> <p><u>MFDA</u></p> <p>The MFDA is currently undertaking consultations on whether to introduce continuing education (“CE”) requirements for approved persons.⁶</p>

³ *Ibid*, s. 3.5

⁴ *Ibid*, s. 3.1(1), a person is deemed to have not passed an exam unless the individual has done so within 36 months before the date that the individual applied for registration

⁵ *Ibid*, Part III.

⁶ The MFDA recently put out a discussion paper on the topic titled *Discussion Paper on the Development of Continuing Education Requirements*. The paper can be found at <http://www.mfda.ca/regulation/bulletins15/Bulletin0644-P.pdf>.

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Regulator/Firm Oversight⁷	<p><u>CSI</u></p> <p>The Canadian Securities Institute (“CSI”) creates and administers all proficiency courses and exams that individuals must take to become registered individuals. CSI develops its course and exam content by working closely with regulators, self-regulatory organizations and members of the investment and banking industries.</p> <p><u>IIROC</u></p> <p>IIROC’s Business Conduct Compliance staff monitor dealer members to ensure they implement policies, procedures and controls to ensure compliance with regulations and industry guidelines. IIROC staff regularly reviews registered representatives, focusing on issues such as suitability, client account supervision and due diligence, corporate finance and research, employee activities and internal controls. IIROC staff also examines the firm’s supervision of and internal compliance testing on these activities.⁸</p> <p><u>Dealer members</u></p> <p>A dealer member may develop and deliver CE compliance and/or professional development courses within its firm, or may engage an external course provider to do so. CE courses must comply with IIROC guidelines, but dealer members determine their own methods of evaluating registered representatives’ knowledge and course comprehension. Dealer members must certify that their registered representatives have successfully completed their CE requirements, and retain records to this effect.⁹</p> <p><u>MFDA</u></p> <p>MFDA’s Enforcement Department investigates situations where member firms or approved persons may have breached the MFDA Rules. It instigates a review after receiving a complaint.¹⁰</p>

⁷ “Regulator/Firm Oversight” refers to the level of oversight exercised by regulator(s) and/or firms to verify the quality of proficiency and continuing education requirements and to ensure that retail investment advisers are meeting these requirements.

⁸ See IIROC’s webpage: <http://www.iiroc.ca/industry/industrycompliance/Pages/Business-Conduct.aspx>.

⁹ IIROC Rules, Part III.

¹⁰ See MFDA’s webpage: <http://www.mfda.ca/enforcement/enforcement.html>.

AUSTRALIA	
Regulator	Australian Securities and Investments Commission (“ ASIC ”)
Laws/Guidelines	<i>Corporations Act 2001</i> (the “ Act ”); Regulatory Guide 146: <i>Licencing – Training of Financial Product Advisers</i> (the “ Regulatory Guide ”); ¹¹ the <i>Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015</i> (the “ Bill ”) ¹²
Terminology	A “ financial product adviser ” ¹³ or a “ relevant provider ” is a person authorized by ASIC to provide advice on financial products on behalf of a financial services licensee firm (a “ licensee ”) to a retail client. Under the new requirements (defined below), only relevant providers can use the titles “financial adviser” and “financial planner,” or terms of similar import or combinations of words that include these terms. ¹⁴
Proficiency Requirements	<p>Under the Act’s existing requirements (the “existing requirements”), to become a financial product adviser, a person must complete:¹⁵</p> <ul style="list-style-type: none"> • Tier 1 training standards, which are education courses that must be broadly equivalent to the ‘Diploma’ level under the Australian Qualifications Framework (the “AQF”);¹⁶ and • Skill requirements, but only if the person will provide “personal advice” (i.e. advice that is tailored to a client’s objectives, financial needs and situation).¹⁷ <p>Financial product advisers that only provide general advice (i.e. advice that is not personal advice) are not required to complete any skill requirements.¹⁸</p>

¹¹ Chapter 7 of the Act governs financial product advisers, but the proficiency requirements are set out in the Regulatory Guide, which can be found at: <http://download.asic.gov.au/media/1240766/rg146-published-26-september-2012.pdf>.

¹² The Bill takes effect July 1, 2017, with the exception of the provisions relating to the Code of Ethics, which take effect July 1, 2019.

¹³ The existing requirements refer to “financial product advisers.” The new requirements refer to “relevant providers”.

¹⁴ Bill, s. 1.25.

¹⁵ Regulatory Guide, 146.10.

¹⁶ The AQF is a national government system that provides the criteria for qualifications issued by the vocational education and training sector and the school and higher education sectors. The AQF can be found at: <http://www.aqf.edu.au/aqf/in-detail/aqf-levels/>.

¹⁷ Regulatory Guide, 146.51 and Appendix B.

¹⁸ *Ibid*, s. 146.52.

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	<p>After the Bill takes effect (the “new requirements”), to become a relevant provider, a person must complete:¹⁹</p> <ul style="list-style-type: none"> • A bachelor degree or equivalent qualification that is approved by the “standards body” (which is a company nominated by the Minister of Finance to develop education, training and ethical standards); • A year of work, training or both that meets requirements set by the standards body; and • An examination approved by the standards body.
Transition to new requirements	<p>Under the new requirements, the standards body is required to develop a Recognized Prior Learning framework to assess the value of existing financial product advisers’ prior education, on-the-job training and experience. Financial product advisers will have five years to reach degree-equivalent status (which can be achieved through various pathways, such as approved bridging courses) and two years to pass the standards body’s exam.²⁰</p>
Continuing Education	<p>Under the existing requirements, licensees are required to implement policies and procedures to ensure that their financial product advisers receive ongoing training to maintain and update the knowledge and skills they require for their professional activities.²¹</p>
	<p>Under the new requirements, relevant providers have an ongoing obligation to meet the continuing professional development (“CPD”) requirements set by the standards body and to comply with the Code of Ethics (the “Code”).²²</p>

¹⁹ Bill, ss. 1.14 – 1.16

²⁰ *Ibid*, ss. 5.3 – 5.7.

²¹ Regulatory Guide, 146.14.

²² Bill, ss. 1.18 – 1.1.9, 2.5.

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Regulator/Firm Oversight	<p><u>ASIC</u></p> <p>Under the existing requirements, ASIC does not mandate any particular course or training provider, and it does not prescribe any particular duration for a training course or method of delivery. It is not involved in assessing education courses: education courses must be approved by an “authorised assessor” (i.e. a registered training organization or professional association), and can thereafter be listed on ASIC’s Training Register.²³</p> <p><u>Licensees</u></p> <p>Under the existing requirements, financial product advisers are not required to undertake a formal diploma course, such as the one listed in the AQF.²⁴ Licensees can develop their own education courses and have them approved by an authorised assessor. An authorised assessor must assess whether an individual has met the training standards.²⁵</p> <p>Licensees are also expected to have adequate policies and monitoring procedures in place to ensure that persons not trained in accordance with the training standards do not provide financial product advice.²⁶</p>

²³ Regulatory Guide, 146.71-72.

²⁴ *Ibid*, 146.58.

²⁵ *Ibid*, 146.11-13.

²⁶ *Ibid*, 146.32.

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	<p><u>Standards body</u></p> <p>Under the new requirements, the standards body is responsible for developing education and training standards and the Code, which sets out the ethical obligations applicable to relevant providers.²⁷ These ethical obligations go above industry legal requirements and aim to encourage professionalism in the financial services industry.²⁸</p> <p><u>Licensees and professional associations</u></p> <p>Under the new requirements, all relevant providers are subject to the Code and are covered by a monitoring and enforcement scheme (a “scheme”).²⁹ Schemes are developed by licensees or professional associations, and must be approved by ASIC.³⁰</p> <p>A professional association must directly monitor the relevant providers covered by its scheme for breaches of the Code, and take enforcement action where necessary. A licensee cannot be the monitoring body for its own scheme: it must engage a third-party to monitor on its behalf.³¹ A monitoring body must notify a licensee of a relevant provider’s breach, and the licensee must in turn notify ASIC of the breach and the sanctions imposed for it. ASIC maintains a record of all breaches.³²</p>
Sanctions	<p>Under the new requirements, relevant providers can be sanctioned for breaching the Code. Soft sanctions include a warning, additional training requirements or additional supervision. Tougher sanctions include revocation of membership within a professional association or termination of one’s employment with a licensee.³³</p>

²⁷ Bill, s. 2.3.

²⁸ *Ibid*, s. 2.8.

²⁹ *Ibid*, s. 2.30.

³⁰ *Ibid*, ss. 2.4 – 2.6.

³¹ *Ibid*, ss. 2.13 and 2.20.

³² *Ibid*, ss. 2.37 – 2.40.

³³ *Ibid*, s. 2.35.

UNITED KINGDOM	
Regulator	Financial Conduct Authority (“ FCA ”) (formerly, the Financial Services Authority)
Laws/Guidelines	<i>Financial Services and Markets Act</i> (the “ Act ”); the FCA Handbook (the “ FCA Handbook ”)
Terminology	<ul style="list-style-type: none"> An “approved person” is a person approved by the FCA to perform a “controlled function” for an authorized firm. The controlled functions include a “customer function, which involves advising retail customers on retail investment products. The FCA Handbook refers to “retail investment advisers,” which fall into one of two categories: “independent advisers” or “restricted advisers.” Independent advisers can consider and recommend any type of retail investment product; restricted advisers can only provide advice on a limited set of products and providers. Independent and restricted advisers must pass the same qualifications and meet the same requirements.
Proficiency Requirements	<p>To be an approved person, a person must:³⁴</p> <ul style="list-style-type: none"> Pass the “fit and proper test,” which is a FCA-conducted evaluation of whether a person is suitable to perform a controlled function. The test is not an exam, but rather an assessment of a person’s honesty (based on factors such as the person’s openness with self-disclosures, integrity and reputation), competence and capabilities, and financial soundness; and Perform the controlled function in line with the Statements of Principle and Code of Practice for Approved Persons (“APER”). <p>To work at a firm, a person must:</p> <ul style="list-style-type: none"> Obtain the “appropriate qualifications” required to conduct the controlled function. Retail investment advisers are required to obtain the QCF Level 4 qualification, which is equivalent to the first year of a university degree.³⁵ The appropriate qualifications are set out in the Appropriate Qualification tables;³⁶ and

³⁴ See the FCA’s *The Fit and Proper Test for Approved Persons*: <https://www.handbook.fca.org.uk/handbook/FIT.pdf>.

³⁵ The Financial Advice Market Review Final Report, p. 35 (the “**FAMR Report**”).

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	<ul style="list-style-type: none"> Undergo the training that the authorized firm considers necessary based on its assessment of the person's needs at the time of hiring. A person cannot work unsupervised until the firm has determined that the person's training needs are satisfied.³⁷ <p>A person that has not been assessed as competent by his or her firm is permitted to provide advice so long as he or she is appropriately supervised at all times. Employees have 30 months from the date they start providing advice (under supervision) to acquire an appropriate qualification. If a person fails to do so within this period, he or she must cease to engage in that activity.³⁸ Firms may require their employees to attain an appropriate qualification within less time.³⁹</p>
Transition Provisions	Following the Retail Distribution Review, retail investment advisers that held designated qualifications were not required to complete further examinations, but were required to address any knowledge gaps (based on an assessment against the Financial Services Skills Council's examination standards), and have their qualification "gap-fill" verified by an accredited body.
Continuing Education	<p>Firms are required to continually assess their employees' competence and to take steps to ensure they remain competent in their roles (the "competent employee rule"). In this assessment, firms should consider their employees' technical knowledge; skills and expertise; and changes in the market, products and legislation.⁴⁰</p> <p>In addition, firms must ensure that retail investment advisers complete at least 35 hours of CPD every year. Of these 35 hours, at least 21 hours must be spent on "structured CPD activities," such as courses, seminars, lectures, conferences, workshops, web-based seminars or e-learning. The time not spent on structured CPD activities may be spent conducting relevant research; reading industry or other relevant materials; or participating in professional development coaching or mentoring sessions.⁴¹</p>

³⁶ FCA Handbook, TC 2.1.10.

³⁷ *Ibid*, TC 2.1.11.

³⁸ The FAMR Report, Recommendation 5, advises the FCA to consider modifying the time limits for employees to attain an appropriate qualification. Some firms would like for employees to be allowed to work for up to four years under supervision before having to obtain the appropriate qualification.

³⁹ FCA Handbook, TC 2.2A.1 – 2.2A.4.

⁴⁰ *Ibid*, TC 2.1.12.

⁴¹ *Ibid*, TC 2.1.15 – 2.1.16; 2.1.20 – 2.1.22.

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<p>Regulator/Firm Oversight</p>	<p><u>FCA</u></p> <p>The FCA approves “qualification providers” (such as the Chartered Institute for Securities and Investment), which create their own exams, study materials and appropriate qualifications (such as certificates, courses, designations, degrees and diplomas). In assessing whether to approve a qualification provider, the FCA considers whether the applicant has robust and reliable procedures for assessing exams and preventing conflicts of interest, and adequate financial resources.⁴² The FCA oversees the development of qualification providers’ exam standards and reviews them periodically. Before finalizing education standards, it publishes them for comment.</p> <p>The FCA reviews firms’ systems and procedures for complying with the competent employee rule. It uses a data and risk-based supervisory approach, which is based on gathering insights from firm reporting and other intelligence. The FCA’s objective is to ensure that it has a “longer-term view of advisers as they move between firms during their career.”⁴³</p> <p><u>Firms</u></p> <p>Firms decide how to assess employee competence, both at their time of hire and throughout their employment. Firms must have clear criteria in place so all individuals know when competence is reached and what conduct is required to sustain it.⁴⁴ Firms must ensure employees are always supervised, although the level and intensity of supervision depends on a person’s experience and whether they have been assessed as competent.</p> <p>Firms are required to obtain independent verification of retail investment advisers’ qualifications from an accredited body,⁴⁵ and to notify the FCA of each retail investment adviser’s professional information. Firms must also notify the FCA if a retail investment adviser loses competence, fails to obtain the appropriate qualification or breaches the APER or Code of Conduct.⁴⁶ On an annual basis, firms must obtain written</p>

⁴² The FCA has approved approximately 550 qualification providers and more than 300 qualifications.

⁴³ Financial Services Authority, Policy Statement 11/1, chapter 4, p. 30.

⁴⁴ See the FCA website: <https://www.the-fca.org.uk/firms/training-competence>.

⁴⁵ FCA Handbook, TC 2.1.27.

⁴⁶ *Ibid*, TC 2.1.31.

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	confirmation that each retail investment adviser has completed their CPD requirements and complied with the Code of Conduct or APER. ⁴⁷ Firms must keep records on everything relating to training and conduct compliance.
UNITED STATES	
Regulator	The Securities and Exchange Commission (“ SEC ”); Financial Industry Regulatory Authority (“ FINRA ”)
Laws/Guidelines	<i>Investment Advisers Act of 1940</i> (the “ Advisers Act ”); <i>Securities Exchange Act of 1934</i> (the “ Exchange Act ”); FINRA Manual (the “ FINRA Manual ”)
Terminology	<ul style="list-style-type: none"> • An “investment adviser” is a person or firm that is registered in accordance with the requirements of the Advisers Act that provides securities advice to others for a fee.⁴⁸ • A “registered representative” or “broker-dealer” is a person registered in accordance with the requirements of the Exchange Act and licenced with FINRA as a securities professional, who does not receive “special compensation” for its advisory services.⁴⁹ <p>The SEC has acknowledged that investment advisers and broker-dealers routinely provide many of the same services to retail customers, yet are subject to distinct regulatory schemes.⁵⁰ Many individuals are registered as both investment advisers and registered representatives.⁵¹</p>

⁴⁷ *Ibid* TC 2.1.26.

⁴⁸ Advisers Act, s. 203(a). Since 1996, the Advisers Act has allocated regulatory responsibility for investment advisers between the SEC and the states. Today, most small adviser firms (assets under management < \$25 million), mid-sized adviser firms (AUM > \$25 and < \$100 million), and their employees are subject to state regulation and are prohibited from registering with the SEC (unless the state has not enacted legislation governing investment advisers). Most large adviser firms must register with the SEC, and state adviser laws are pre-empted for these advisers.

⁴⁹ *Ibid*, s. 202(a)(11). Broker-dealers are excluded from the definition of “investment adviser” if they meet the following requirements: (1) the performance of investment advisory services is solely incidental to the conduct of its business as a broker-dealer; and (2) no “special compensation” is received for advisory services and the broker-dealer does not receive any additional compensation to provide such service to their customers. Thus, income earned by registered representatives is often through commissions from the products they sell.

⁵⁰ “Duties of Dealers, Brokers and Investment Advisers,” The Securities and Exchange Commission, p. 3: <https://www.sec.gov/rules/other/2013/34-69013.pdf> (“**Duties of Dealers, Brokers and Investment Advisers**”).

⁵¹ “Suitability versus Fiduciary Standard,” *Journal of Financial Planning*, <https://www.onefpa.org/journal/Pages/Suitability-Versus-Fiduciary-Standard.aspx>.

UNITED STATES	
Proficiency Requirements	<p><u>Investment advisers</u></p> <p>There are no educational or “fit and proper” requirements for investment advisers under federal law, although state law may require an investment adviser to pass securities exams in the state in which they have a principal place of business.⁵²</p> <p>For example, in both New York State⁵³ and California,⁵⁴ to become a state-registered investment adviser, a person must complete:</p> <ul style="list-style-type: none"> • The Uniform Investment Adviser Law Examination (Series 65 examination); or • The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination). <p>These exams must be completed before a person provides investment advice to the public, and must be completed within no more than two years prior to applying for registration.</p> <p><u>Registered representatives</u></p> <p>To become a registered representative that provides retail advice, a person must pass:</p> <ul style="list-style-type: none"> • the Series 7 Exam – General Securities Representative Examination. If the registered representative performs other functions, it must demonstrate proficiency in the relevant areas by passing other qualification exams, a list of which can be found here. <p>FINRA does not offer courses, but provides content outlines of the subject matter covered on exams.⁵⁵ FINRA does not mandate training or prior work experience, but some firms provide in-housing training programs.</p>

⁵² *Regulation of Investment Advisers by the U.S. Securities and Exchange Commission* (March 2013), p. 20:

https://www.sec.gov/about/offices/oia/oia_investman/rplaze-042012.pdf.

⁵³ NYCRR Title 13, Part 11, Investment Advisory Services, §11.6 or §11.7.

⁵⁴ How to Register as a California Registered Investment Adviser, Step 5: http://www.dbo.ca.gov/Licensees/Broker-Dealer_and_SEC_Investment_Advisers/pdf/HOW%20TO%20REGISTER%20AS%20A%20CALIFORNIA%20REGISTERED%20INVESTMENT%20ADVISER.v3.pdf

⁵⁵ FINRA Registered Representatives Brochure, p. 4 (the “**FINRA Brochure**”).

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<p>Continuing Education</p>	<p><u>Investment advisers</u></p> <p>Investment advisers are not subject to any CE requirements under federal law.⁵⁶ New York State and California also do not impose CE requirements on state-registered investment advisers.</p> <p><u>Registered representatives</u></p> <p>The CE requirements for registered representatives consist of two mandatory programs: the “regulatory element” and the “firm element.”⁵⁷</p> <p>(i) Regulatory element</p> <p>The regulatory element consists of periodic computer-based training on regulatory, compliance, ethical, supervisory and sales practice standards. Registered representatives must complete the regulatory element within 120 days of the second anniversary of their initial registration, and every three years thereafter. The content for the regulatory element is derived from industry rules, regulations and widely accepted industry standards and practices. The regulatory element can be completed online. FINRA makes resources, such as content outlines, available to registrants to help them prepare for it.</p> <p>(ii) Firm element</p> <p>The firm element applies to all persons registered with a FINRA “member firm” who directly interact with customers in conducting securities sales, trading or investment activities (“covered registered persons”). Each member firm must maintain a CE program for covered registered persons to enhance their securities knowledge, skills and professionalism.</p> <p>At least once a year, a member firm must evaluate and prioritize its training needs and develop a written training plan, taking into account the member’s size, structure, scope, regulatory developments, and its covered registered persons’ performance in the regulatory element. A member firm must administer its CE programs in accordance with its written plan and maintain records thereof.</p>

⁵⁶ Duties of Dealers, Brokers and Investment Advisers, p. 63.

⁵⁷ FINRA Manual, s. 1250.

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Regulator/Firm Oversight	<p><u>SEC</u></p> <p>The SEC's Compliance Office conducts inspections of investment adviser firms that have higher-risk investment advisers, or if it has received a complaint or has other cause to investigate.⁵⁸</p> <p><u>Investment adviser firms</u></p> <p>Investment adviser firms must implement policies and procedures designed to prevent employees from violating the law.⁵⁹ They must review the adequacy and effectiveness of their policies at least annually.⁶⁰</p> <p><u>FINRA</u></p> <p>FINRA develops and administers its exams, and engages and oversees industry committees that assist in developing and updating competency profiles, exam questions and content outlines. Independent training providers also create study materials and courses for candidates seeking to prepare for their exams.</p> <p>FINRA conducts thousands of on-site member firm reviews each year. These reviews are meant to determine whether member firms and their registered representatives are complying with laws and guidelines. It will also review member firms or registered representatives in response to a customer complaint.⁶¹</p> <p><u>Member firms</u></p> <p>Member firms are responsible for designing, implementing and overseeing the firm element of the CE program.</p>

⁵⁸ See *Regulation of Investment Advisers by the U.S. Securities and Exchange Commission* (March 2013), p. 57-58: https://www.sec.gov/about/offices/oia/oia_investman/rplaze-042012.pdf.

⁵⁹ Advisers Act, s. 206(4)-7(a).

⁶⁰ *Ibid*, s. 206-7(b).

⁶¹ FINRA Brochure, p. 16.

EUROPEAN UNION	
Regulators	European Securities and Market Authority (“ ESMA ”); the public authorities designated by each European Union Member State to carry out the duties provided for under law (the “ Competent Authorities ”).
Laws/Guidelines ⁶²	Markets in Financial Instruments Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments (“ MiFD II ”) and ESMA Final Report: Guidelines for the assessment of knowledge and competence (the “ Guidelines ”). ⁶³
Terminology	The Guidelines apply to Competent Authorities and to “ firms ” that provide investment services. Firms are responsible for ensuring their “ staff ” members fulfill the Guidelines’ requirements.
Proficiency Requirements	<p>For a person to provide investment advice⁶⁴ or give information about financial instruments, structured deposits, investment services or ancillary services to clients (the “relevant services”), a firm must ensure that the person has:</p> <ul style="list-style-type: none"> • “appropriate qualifications,” in the form of exams or courses that meet the Guidelines’ criteria; and • “appropriate experience,” which is a minimum of 6 months’ prior work experience providing the relevant services. <p>If a staff member does not have appropriate qualifications, appropriate experience or both, the staff member can only provide the relevant services under supervision, and this supervisory period cannot exceed 4 years. The Guidelines grant firms the flexibility to determine how trainees should be supervised within the firm (i.e. it is not necessary for them to be shadowed by a qualified adviser).⁶⁵</p>

⁶² Since MiFID II was adopted into European law on April 5, 2014, the ESMA has been working to create so-called Level-2 legislation across key aspects of the MiFID investor protection provisions. This Level 2 work takes two forms: delegated acts that are drafted by the European Commission on the advice of ESMA; and technical standards that are drafted by ESMA and approved by the European Commission.

⁶³ The investor protection provisions set out in the Guidelines, Annex VI, are set to take effect January 3, 2018.

⁶⁴ The Guidelines distinguish between staff that provide investment advice and staff that only provide information on investment products/services. The Guidelines hold investment advisers to a higher knowledge and competence standard. This chart does not outline firms’ responsibilities in respect of staff that only provide information on products/services, but this information can be found in the Guidelines at Annex VI, s. V.II.

⁶⁵ Note: The ESMA qualification standards are similar to those in the U.K., although they afford firms greater flexibility to determine how trainees should be supervised within the firm. The FAMR Report notes that U.K. firms have been dissatisfied with the lack of clarity surrounding training supervisory standards. See FAMR Report, p. 36.

EUROPEAN UNION	
Continuing Education	At least annually, firms should review staff members' development and needs; assess regulatory developments; and take action to comply with the Guidelines. Firms must ensure staff maintain and update their knowledge and competence by undertaking CPD or training as well as specific training in advance of the firm offering any new investment products.
Regulator/Firm Oversight	<p><u>Firms</u></p> <p>Firms are responsible for ensuring that staff know, understand and apply the firm's MiFID II compliance policies and procedures, and possess the requisite knowledge and competence to fulfil their obligations.</p> <p>On request, firms must submit records to their Competent Authority establishing the knowledge and competence of their staff, which should enable the Competent Authority to verify compliance with the Guidelines.</p>