Stockholm 15 December 2021

SSMAs response to ESMAs Call for Evidence on the European Commissions mandate on certain aspects relating to retail investor protection

The SSMA welcomes the opportunity to respond to ESMAs Call for Evidence on the European Commissions mandate on certain aspects relating to retail investor protection.

1. General comments

Overall, the SSMA considers that the investor protection framework in MiFID II is sufficient. In fact, considering the existing problems with information overload for retail clients, we believe that the focus should be on simplification rather than the creation of new detailed and complex. The problem of unregulated entities and products needs to be addressed at EU-level.

A priority in the forthcoming work on an EU retail investment strategy should be to ensure that the disclosure/information requirements in EU legislation are sufficiently calibrated, taking both the type of clients and type of financial instrument into account. The SSMA therefore supports a review of the requirements in annex II to MiFID II in order to allow more experienced and sophisticated retail clients to be treated as professionals. It is important to note that the concept of retail investor is wider than the concept of consumer and that some requirements that are suitable for consumers do not work as well for smaller businesses.

In order for the information to make sense, the MIFID II costs & charges requirements should distinguish more clearly between different types of financial instruments (e.g. investment products vs. hedging instruments). Derivatives which are used for mitigating risk should be excluded from the PRIIPs scope as these are not “investments”. It should be noted that FX forwards are considered as means of payments in MiFID II which makes it very odd to treat them as investments under PRIIPs.

We agree with ESMA that it is very important to ensure that the disclosure requirements are technology neutral so that it is easy for clients to understand and access the information also in an online environment. Legal requirements such as a maximum “number of pages” should be avoided.

Finally, we want to underline that disclosures do not automatically lead to increased investor protection. In order to ensure that clients *actually understand* the information that they receive, more focus should be on increasing financial literacy e.g. in schools. In this context, it should be underlined that also investment firms can fulfil an important function by educating their clients when explaining the different functions and features of financial instruments. It is therefore important to avoid that the EU legislation unduly restrict this educative function e.g. by making it more difficult for clients to invest in new types of financial instruments after e-learing etc.

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2. Specific questions

Q1: Please insert here any general observations or comments that you would like to make on this call for evidence, including any relevant information on you/your organisation and why the topics covered by this call for evidence are relevant for you/your organisation.

On the Nordic securities market, there is a very high level of retail investor participation. Most investors use digital tools such as the internet bank or apps to place orders. In our view, it is therefore most welcome that the EU-legislators focus on digital aspects in a forthcoming review. It is very important to ensure that investor protection rules in MiFID II are technologically neutral.

The SSMA agrees that MiFID II rules has resulted in information overload for retail clients. We therefore fully support amendments which aim at simplifying the disclosure rules in MiFID II and other EU-legislations such as PRIIPs. In our view, it is more important to ensure that the information received is relevant and understandable for the retail client when making an investment decision than to focus on comparability between different types investment products.

A very important part of the forthcoming work is therefore to analyze which information is actually relevant for retail clients (e.g. total costs/fees) and to delete those rules which are of little benefit to clients (e.g. granular breakdowns of costs, illustration of cumulative effects on return, loss reporting, RTS 27 reports). In this context, it is important to take into consideration that information that is relevant for financial instruments used for investment purposes is not necessarily relevant for financial instruments used for hedging or as means of payment. Consumer testing of the proposals for amendments is important and should include different types of financial instruments.

Although targeted amendments to the disclosure regime is a priority, the SSMA wants to underline that this is only one piece of the puzzle. In order to ensure that the retail client actually understand the information, measures also needs to be taken to improve financial literacy. Moreover, it is important to ensure that EU clients continue to have access to advisory services. A cautious approach should therefore be taken in relation to any amendments of EU law which could make the provision of investment advice more cumbersome and costly for retail clients.

As a final remark, the SSMA wants to underline that retail investors is a wide concept that also includes very experienced consumers as well as smaller SME businesses. In some situations, such clients may want to be treated as professional clients instead. We therefore support a review of Annex II to MiFID in order to ensure that the “opt up” criteria are fit for purpose.

Q2: Are there any specific aspects of the existing MiFID II disclosure requirements which might confuse or hamper clients’ decision-making or comparability between products? Are there also aspects of the MiFID II requirements that could be amended to facilitate comparability across firms and products while being drafted in a technology neutral way? Please provide details.

The aim of comparability is admirable, but in SSMA’s view, it is more important to ensure that the information provided to clients is relevant for the type of instrument and client in question than to impose identical rules. The understandability of the information is more important than the comparability between products and comparability at the cost of precision and adequate information must not be the result.

For investment products which have similar features, the EU disclosure rules fulfil the objective of allowing retail clients to compare between instruments. For investment products that are more different (e.g. investment vs hedging purpose) the rules do not work as well.

The actual content of pre-contractual disclosure documents should be able to differ from product to product. Trying to define requirements which apply in the same way to all types of products in the name of comparability leads to unintended consequences with the outcome that certain information is not understood and/or that the information does not fit with the nature and characteristics of the product in question.

The SSMA is in favor of a more flexible approach regarding disclosures where the harmonization is limited to the headings and main contents and where the investment firm can adapt the information to the type of instrument in question. The main policy objective from an investor protection perspective should be that the information is understandable and relevant in order for the client to make a well-informed investment decision.

Q3: Are there specific aspects of existing MiFID II disclosure requirements that may cause information overload for clients or the provision of overly complex information? Please provide details.

<u>Investments vs hedging</u>

MiFID II is not sufficiently calibrated for different types of products (e.g. investments vs hedging). To apply some of the information requirements aimed at investments when clients buy instruments only to hedge risk or as a means of payment lead to information overload since the information is not well-suited for this type of instrument. For instance, it makes little sense to inform clients of the "return" as regards hedging derivative.

<u>Cost & Charges</u>

General

The information requirements in MiFID II regarding costs & charges are too complex. In our experience, the average retail client is mostly interested in the total costs, not in granular information on different components of the costs or calculation methodologies. Moreover, for professional clients and eligible counterparties as well as more experienced segment of retail clients, the information is of little added value and increase the administrative burden. We therefore generally support:

(1) simplification of the MiFID II requirements on cost & charges, and

(2) review of annex II to MiFID II so as to enable more experienced clients to request treatment as professional clients.

Cumulative effects on return

The SSMA questions whether the illustration of cumulative effects on return has any benefits for the clients or if it only leads to confusion. We therefore support the deletion of this requirement or, at least, that it is limited to investment services where the firm has insight into clients' portfolios through the provision of investment advice or portfolio management and where investments are made in financial instruments with the purpose to generate a performance or return on investment. The requirement of an illustration of cumulative effects on return is not well suited for products where the purpose is hedging and not trading (e.g. FX and interest rate derivatives).

Use of Percentages
For some services it is very unclear how to calculate the cost as a percentage (%). It does not make sense to calculate the customer's total cost as a percentage of the total "investment amount" on an aggregated level, mixing different types of trades and costs (equity, derivatives used for hedging etc.).

Complex instruments

The SSMA supports proportionate information requirement and considers that more information is typically needed for complex products than for simple products. However, in order to ensure that the information is relevant for clients it is important to note the following:
- Complexity relates to the structure of the instrument and does not necessarily mean that the instrument has more risk or that it is more difficult for the investor to understand what determines the return of investment.
- Too much information on complex products leads to information overload and increases the risk that the client does not read the information at all.

Overlapping EU-rules on disclosure

One factor that contributes to the information overload and/or overly complex information is that the EU disclosure rules overlap and are inconsistent, see Q 4.

Q4: On the topic of disclosures, are there material differences, inconsistencies or overlaps between MIFID II and other consumer protection legislation that are detrimental to investors? Please provide details.

MiFID II/PRIIPS:

The SSMA generally supports a closer alignment between MiFID II and PRIIPs e.g. as regards the calculation methodology for product costs. It is confusing for clients to receive different cost information for the same instrument depending on if MiFID II or PRIIPs is applied.

In particular, the SSMA proposes that the Commission looks into:

- Transaction costs ("market value" vs "arrival price")
- Inducements (product cost rather than service cost)

- The redundancy related to showing cost components which are zero

Moreover, there is some uncertainty as regards the treatment of FX contracts which are considered as “means of payment” under MiFID II (art 10 delegated regulation) but can still be considered as an investment product under PRIIPs.

Language requirements

The language requirements should be revised so that they are the same in the respective EU disclosure rules.

MiFID II/SFDR/Tax:

There is a growing concern regarding unintended negative consequences from the new sustainability rules, in particular as regards the interaction between SFDR and MiFID II. The legal requirements overlap and cross-refer to each other in a very complicated way.

One issue that the SSMA considers should be further clarified relates to portfolio management. Portfolio management is an investment service in MiFID II but is classified as a financial product in SFDR. At the same time, MiFID II delegated regulation refer to clients sustainability preferences in respect of financial instruments.

As regards format and frequency of product disclosures, the SFDR refers to requirements in Articles 24.4 and 25.6 MiFID II. However, unlike for UCITS and insurance products, there is no standardized pre contractual information document for “a portfolio” (i.e. no KID or KIID). To avoid uncertainty, it should therefore be clarified that for “a portfolio”, the SFDR-information should be provided in connection with entering into a portfolio management agreement with the client. As regards periodic information, the SSMA notes that the reference to art 25.6 in MiFID II suggests that reporting under SFDR for “a portfolio” should be on a monthly or quarterly basis. The SSMA questions if such frequency is proportionate, in particular considering that the periodic reporting for all other financial products under SFDR take place on an annual basis.

There is also a need to clarify how the new MiFID II rules on clients suitability preferences are to be applied when providing portfolio management, considering that the definition in article 2.7 a- c refer to “financial instrument” which a portfolio is not. In our view, the client should be able to express his or her preferences at a portfolio level (minimum % of the portfolio taxonomy aligned etc.). In order to avoid information overload, it should also be possible to use intervals such as “low, medium high”.

Another very important point to clarify from an investor protection perspective, is under which circumstances financial instruments - in particular those which are not covered by SFDR or which are within scope but not art 8 and art 9 products - can be referred to as “sustainable” or “ESG”. It should be noted that SFDR as well as the rules on suitability assessment in MiFID II apply to investment advice or portfolio management and not execution services. Thus, there is a risk that the terminology used vis-à-vis clients could differ depending on which service is provided to clients.

Finally, based on the above links between SFDR and MiFID II as well as the level of complexity in general, the SSMA strongly supports an alignment of the application dates for MiFID II level 2 (3 August and 22 November 2023) and SFDR level 2 so that all three pieces of legislation start to apply on 1 Jan 2023. This postponement is very important considering that the updated guidelines from ESMA on suitability assessment will not apply until summer 2022. Firms must be given time for necessary IT-developments and staff training in an orderly manner!

Discrepancies in different parts of MiFID II

Within the MiFID II disclosure framework there is a need for clarifications relating to the concept of 'cost' e.g. the interaction between the rules on MiFID II cost & charges, best execution and SI quotes.

Q5: What do you consider to be the vital information that a retail investor should receive before buying a financial instrument? Please provide details.

What is "vital pre contractual information" depends on the financial instrument in question. It is therefore crucial that there is flexibility in the EU rules which allow firms to adapt the information to the product at hand. [See Q 4.9 COM CP]

- Main product features
- Costs (total costs, not granular breakdowns and calculation methodologies)
- Risk
- Where applicable special features such as guaranteed returns, capital protection

As mentioned above, the SSMA is in favor of a flexible approach regrading disclosures where the harmonization is limited to the headings and main contents and where the investment firm can adapt the information to the type of instrument in question. The main policy objective from an investor protection perspective should be that the information is understandable and relevant in order for the client to make a well-informed investment decision.

Q6: Which are the practical lessons emerged from behavioural finance that should be taken into account by the Commission and/or ESMA when designing regulatory requirements on disclosures? Please provide details and practical examples.

In general customers seem to avoid what is seen as complicated, abstract, risky and expensive.

Information requirements and too detailed information can be perceived as information overload making the customer refrain from investing as it is seen as too complicated, abstract and risky. The granular requirements on cost have the same effect. Transparency, as part of customer protection, is important, but it is also important that customers do not refrain from investing based on too much information when that could be more costly than not investing at all

Q7: Are there any challenges not adequately addressed by MIFID II on the topic of disclosures that impede clients from receiving adequate information on investment products and services before investing? Please provide details.

Annex II to MiFID II; the opt-up rules could allow sophisticated/experienced retail client to be treated as a professional client (and hence be able to invest in corporate bonds etc.) but are not sufficiently calibrated for all types of assets. The SSMA therefore supports that annex II is revised.

MiFID II is not sufficiently calibrated for different types of investment products (e.g. investments vs hedging). To apply some of the information requirements (e.g. cumulative effects on return) which are aimed at investments when clients buy instruments only to hedge risk or as a means of payment lead to information overload since the information is not well-suited for this type of instrument.

Q8: In case of positive answer to one or more of the above questions, are there specific changes that should be made to the MiFID II disclosure rules to remedy the identified shortcomings? Please provide details.

Annex II to MiFID II which allow experienced retail clients to be treated as professionals

Cost & Charges;

(i) Align MiFID II and PRIIPs cost disclosures

(ii) exclude hedging derivatives from PRIIPs scope as not investments (NB: clients should of course continue to receive MiFID II information which can be adjusted to the features of the financial instrument)

(iii) delete information of little use to retail clients e.g. on cumulative effects on return, percentages, descriptions of calculation methodologies, loss reporting – focus on total costs, risk and key features.

Q9: On the topic of disclosures on sustainability risks and factors, do you see any critical issue emerging from the overlap of MiFID II with the Sustainable Finance Disclosure Regulation (SFDR)31 and other legislation covering ESG matters? 31 Regulation (EU) 2019/2088. 24

Yes, see Q 4

Q10: Are there any other aspects of the MiFID II disclosure requirements and their interactions with other investor protection legislations that you think could be improved or where any specific action from the Commission and/or ESMA is needed?

Yes, see Q 4

Q11: Do you have any empirical data or insights based on actual consumers usage and engagement with existing MiFID II disclosure that you would like to share? This can be based on e.g., consumer research, randomized controlled trials and/or website analytics.

One SSMA member has provided the following statistics on the cost & charges reports 2019:

- 1 168 944 reports were sent out to retail clients and small and middle size companies.
- During the period that the information was sent out, the webpage to which clients were referred for more information was visited by 36 144 clients (3 %)
- During the period that the information was sent out, the customer service received 500 calls from clients regarding the cost & charges reports (0.004 %)

Q12: Do you observe a particular group or groups of consumers to be more willing and able to access financial products and services through digital means, and are therefore disproportionately likely to rely on digital disclosures? Please share any evidence that you may have, also in form of data.

One group of consumers which are in particular willing to use digital means to access financial services and products are younger consumers.

Q13: Which technical solutions for digital disclosures (e.g., solutions outlined in paragraph 27 or additional techniques) can work best for consumers in a digital - and in particular smartphone - age? Please provide details on solutions adopted and explain how these have proven an effective way to provide information that is clear and not misleading.

As a general comment, the SSMA wants to underline that it lies in the investment firms own interest to make information accessible to clients. There are already legal requirements that information should be easy to understand, provided in durable format etc. In our view there is no need for more rules in this respect. Focus should be on supervision of the existing regime.

Q14: Would it be useful to integrate any of the approaches set out in paragraph 27 above in the MIFID II framework? If so, please explain which ones and why.

As a general comment, the SSMA wants to underline that it lies in the investment firms own interest to make information accessible to clients. There are already legal requirements that information should be easy to understand, provided in durable format etc. In our view there is no need for more rules in this respect. Focus should be on supervision of the existing regime.

Q15: Should the relevant MIFID II requirements on information to clients be adapted in light of the increased use of digital disclosures? If so, please explain how and why.

In our view it is important to ensure that MiFID II is technologically neutral and to avoid the creation of new administrative and complex processes for online services since this could have unintended negative consequences for clients and also go against the policy objectives of the Capital Market Union and Digital Action Plan.

- Avoid requirements “number of pages”
- Trading in financial instruments normally takes place online or over the phone. A clarification in the supporting text to Guideline 1 that “in good time” should be interpreted in a proportionate manner taking the type of investment service into account would be welcome.
- Uncertain if the use “pop-up” boxes to provide clients with information is always a workable solution, considering other requirements such as the record keeping obligations.
- Clarification that execution-only services where the client log-on and trade without any personal contact with the firms’ staff is provided at a clients own initiative.
- Clarification regarding provision of information via webpage. According to MiFID II, investment firms should keep the information updated. At the same time clients should be able to go back to the information provided. It should be clarified whether this possibility relates to the original information or the updated information.

Q16: Do you see the general need for additional tools for regulators in order to supervise digital disclosures and advertising behind 'pay-walls', semi-closed forums, social media groups, information provided by third parties (i.e., FINfluencers), etc? Please explain and outline the adaptions that you would propose.

The SSMA agrees that there can be a need to increase competent authorities supervision of digital disclosures and advertising behind 'pay-walls', semi-closed forums, social media groups, information provided by third parties (i.e., FINfluencers). This is important from a market integrity (MAR) perspective, in particular where retail clients invest in unregulated products and trade though unregulated platforms.

Q17: To financial firms: Do you observe increased interest from retail investors to receive investment advice through semi-automated means, e.g., robo-advice? If yes, what automated advice tools are most popular? Please share any available statistics, data, or other evidence on the size of the market for automated advice.

According to SSMA members, the use of robo-advisors has increased during the past years but still represent a relatively small part of the market (number of actors and volume).

Unfortunately, we do not have any statistics.

In 2019, Finansinspektionen performed a supervisory activity in relation to independent advice, including automated advise (Unfortunately only available in Swedish: FI-tillsyn Nr 11: Kartläggning av rådgivningsmarknaden). According to this report the market for automated advice in Sweden is in an up-start phase and services are offered by both established investment firms and new actors. There is a variety of business models and digital strategies ranging from full scale investment advice based on the client's whole financial situation to simple so-called ”sorting services”. The services are offered on the internet or apps. Portfolio management services are more common than independent advice. The most common products are UCITS and ETFs.

Q18: Do you consider there are barriers preventing firms from offering/developing automated financial advice tools in the securities sectors? If so, which barriers?

As a general comment it is important to safeguard the proportionality principle as regards suitability assessment in order for more simple and automated advice to develop further in the market and to become even better at reaching a wider audience of retail investors.

Q19: Do you consider there are barriers for (potential) clients to start investing via semiautomated means like robo-advice caused by the current legal framework? If so, please explain and outline what you consider to be a good solution to overcome these barriers.

SSMA considers that the differences as regards the development of robo-advisors on EU markets has a lot to do with clients digital experience and tax related issues, not regulation.

Q20: In case of the existence of the above-mentioned barriers, do you have evidence of the impact that they have on potential clients who are interested in semi-automated means? For instance, do they invest via more traditional concepts or do they not invest at all?

SSMA has no comments.

Q21: Do you consider the potential risks and opportunities to investors set out above to be accurate? If not, please explain why and set out any additional risk and opportunities for investors.

Roboadvice is in our view suitable for simple products which can be offered at low costs.

The risks depend on the products offered.

Q22: Do you consider that the existing MiFID regulatory framework continues to be appropriate with regard to robo-advisers or do you believe that changes should be added to the framework? If so, please explain which ones and why.

Yes. It is important to safeguard the proportionality principle as regards suitability assessment in order for more simple and automated advice to develop further in the market and to become even better at reaching a wider audience of retail investors.

Q23: Do you think that any changes should be made to MiFID II (e.g., suitability or appropriateness requirements) to adequately protect inexperienced investors accessing financial markets through execution only and brokerage services via online platforms? If so, please explain which ones and why.

As a general comment the SSMA notes that there is no EU definition of "online brokerage services" and it is difficult to understand exactly which type of service/actors that ESMA refers to in the consultation paper.

As soon as an investment firm accept orders from a client online (rather than in face-to-face meetings or over the phone) and transmits it for execution on a venue, the firm is performing a type of online brokerage services. Similarly, it is very common that investment firms enable for clients to execute transactions in non-complex instruments such as UCITS though self-serving channels without provision of investment advice. Thus, both execution only and brokerage services online are core services which regular investment firms provide under MiFID II.

The MiFID framework contains a lot of protection for inexperienced investors e.g. though disclosures, best execution requirements and appropriateness tests/warnings. In our view no more rules are needed for regulated firms. Instead, targeted amendments should focus on facilitating for clients to understand the information that they receive (see above re. financial literacy and information overload). We do not see the need to introduce appropriateness- and suitabilitytests for execution only services.

More importantly we think that the regulatory focus should be to ensure an equivalent level of investor protection for clients accessing unregulated online plattforms and/or unregulated products such as crypto.

Q24: Do you observe business models at online brokers which pose an inherent conflict of interest with retail investors (e.g., do online brokers make profits from the losses of their clients)? If so, please elaborate.

See comment above regarding the concept of "online brokers".

In our view there is no inherent conflict of interest for the type of online brokers that exists on the Swedish market. On our market online brokers do not use payment for order flow (PFOF).

Q25: Some online brokers offer a wide and, at times, highly complex range of products. Do you consider that these online brokers offer these products in the best interest of clients? Please elaborate and please share data if possible.

See comment above regarding the concept of "online brokers".

MiFID II rules regarding complex products apply.

Q26: One of the elements that increased the impact on retail investors in the GameStop case was the widespread use of margin trading. Do you consider that the current regular framework sufficiently protects retail investors against the risks of margin trading, especially the ones that cannot bear the risks? Please elaborate.

As a general comment the SSMA notes that there is no EU definition of "margin trading " and it is difficult to understand exactly which type of service/actors that ESMA refers to in the consultation paper. If the reference relates to clients who use equity as collateral to borrow in order to purchase more securities, we consider that there are already rules to cover this situation. Rather than drafting new rules we think it is important to increase supervision by competent authorities.

Q27: Online brokers, as well as other online investment services, are thinking of new innovative ways to interact and engage with retail investors. For instance, with "social trading" or concepts that contain elements of execution only, advice, and individual portfolio management. Do you consider the current regulatory framework (and the types of investment services) to be sufficient for current and future innovative concepts? Please elaborate.

See above.

Q28: Are you familiar with the practices of payment for order flow (PFOF)? If yes, please share any information that you consider might be of relevance in the context of this call for evidence.

PFOF is not common practice on the Swedish market. PFOF is more widespread on other EU and US markets.

Q29: Have you observed the practice of payment for order flow (PFOF) in your market, either from local and/or from cross border market participants? How widespread is this practice? Please provide more details on the PFOF structures observed.

PFOF is not common practice on the Swedish market. PFOF is more widespread on other EU and US markets.

Q30: Do you consider that there are further aspects, in addition to the investor protection concerns outlined in the ESMA statement with regards to PFOF, that the Commission and/or ESMA should consider and address? If so, please explain which ones and if you think that these concerns can be adequately addressed within the current regulatory framework or do you see a need for legislative changes (or other measures) to address them

We are concerned that PFOF can have negative effects on the available liquidity on the order book. Long term this could have impact on best execution.

Q31: Have you observed the existence of "zero-commission brokers" in your market? Please also provide, if available, some basic data (e.g., number of firms observed, size of such firms and the growth of their activities).

As a general comment the SSMA notes that there is no EU definition of "zero-commission brokers" and it is therefore difficult to understand which type of services/actor that ESMA refers to in the consultation paper. We do not have experience from PFOF/zero commission as in the case of Robin Hood. However, it should be noted that also "ordinary" investment firms sometimes let new retail clients to trade for free or at a very low commission for marketing purposes. But this is very different from the experience in the Gamestop case.

Q32: Do you have any information on "zero-commission brokers" business models, e.g., their main sources of revenue and the incidence of PFOF on their revenue? If so, please provide a description.

See Q 31.

Q33: Do you see any specific concern connected to "zero commission brokers", in addition to the investor protection concerns set out in the ESMA statement that the Commission and/or ESMA should consider and address? Please explain and please also share any information that you consider might be of relevance in the context of this call for evidence. Please also explain if you consider that the existing regulatory framework is sufficient to address the concerns listed in the ESMA statement regarding zero-commission brokers or do you believe changes should be introduced in the relevant MiFID II requirements.

See Q 31.

Q34: Online brokers seem to increasingly use gamification techniques when interacting with clients. This phenomenon creates both risks and potential benefits for clients. Have you observed good or bad practices with regards to the use of gamification? Please explain for which of those a change in the regulatory framework can be necessary. Do you think that the Commission and/or ESMA should take any specific action to address this phenomenon?

As a general comment the SSMA notes that there is no EU definition of "gamification techniques" and it is therefore difficult to understand which type of services/actor that ESMA refers to in the consultation paper.

To our understanding, gamification is often offered by unregulated firms not investment firms/brokers in the EU.

Q35: The increased digitalisation of investment services, also brings the possibility to provide investment services across other Member States with little extra effort. This is evidenced by the rapid expansion of online brokers across Europe. Do you observe issues connected to this increased cross-border provision of services? Please elaborate.

No comments.

Q36: Do you observe an increasing reliance of retail clients on information shared on social media (including any information shared by influencers) to base their investment decisions? Please explain and, if possible, provide details and examples. Do those improve or hamper the decision-making process for clients?

Yes.

Q37: What are, in your opinion, the risks and benefits connected to the use of social media as part of the investment process and are there specific changes that should be introduced in the regulatory framework to address this new trend?

Benefits; via social media it is possible to attract new categories of investors to capital markets.

Risks; no specific rules for social media. Difficult for supervisory authorities to supervise and there are MAR concerns.

Q38: Are you aware of the practices by which investment firms outsource marketing campaigns to online platform providers/agencies that execute social media marketing for them, and do you know how the quality of such campaign is being safeguarded?

No comments

Q39: Have you observed different characteristics of retail clients, such as risk profiles or trading behaviour, depending on whether the respective client group bases their investment decision on information shared on social media versus a client group that does not base their investment decision on social media information? Please elaborate.

Smaller retail clients

Q40: Do you have any evidence that the use of social media (including copy/mirror trading) has facilitated the spreading of misleading information about financial products and/or investment strategies? Please elaborate and share data if possible.

No comments

Q41: Have you observed increased retail trading of 'meme stocks', i.e. equities that experience spikes in mentions on social media? Please share any evidence of such trading and, if possible, statistics on outcomes for retail investors trading such instruments.

Yes, we have observed increased retail trading of "meme stocks".

Q42: Do you consider that the current regulatory framework concerning warnings provides adequate protection for retail investors? If not, please explain and please describe which changes to the current regulatory framework you would deem necessary and why.

For regulated entities such as banks and investment firms that disseminate investment related information via social media platforms there is no need for more rules or warnings. The applicable regulation e.g. in MiFID and MAR also apply to business conducted through social media.

However, there may be reason to further analyze which responsibility, if any, that should be placed on unregulated social media platforms e.g. to ensure that investors do not breach market abuse rules when they communicate with each other on the platform. Also increase regulators supervision and though the exchanges.

Q43: Do you believe that consumers would benefit from the development of an 'open finance' approach similarly to what is happening for open banking and the provision of consumer credit, mortgages, etc? Please explain by providing concrete examples and outline especially what you believe are the benefits for retail investors.

Discussing the question of additional benefits from the development of 'open finance' for areas beyond payments (PSD2), the only area where the open finance has been regulated until now, is difficult to assess as there are a vast array of potential application. Further, financial/securities transactions differ significantly from payments especially as involves taking financial risk to potentially get a return which therefore involves a heavier regulatory and supervisory framework.

Therefore, we believe that it is difficult to assess the benefits and risks involved with open finance for retail investors on aggregate but it needs to be assessed on a case-by-case basis beyond the argumentation that ESMA presents in the introductory chapter. Furthermore, any framework needs to adhere to the requirements set in GDPR especially concerning consent, sensitive data, and data minimization otherwise there is a risk that fraud levels could significantly increase just like they have done within the payments industry.

Any initiative also needs to be synchronized with other policy initiatives such as the Data Act and the revision of PSD2.

Q44: What are, in your opinion, the main risks that might originate from the development of open finance? What do you see as the main risks for retail investors? Please explain and please describe how these risks could be mitigated as part of the development of an open finance framework.

Data ending up with the wrong processor and unauthorized/authorized access that can lead to successful fraud attempts.

Q45: Which client investor data could be shared in the context of the development of an open finance framework for investments (e.g., product information; client's balance information; client's investment history/transaction data; client's appropriateness/suitability profile)?

Currently sharing this type of data has limited benefits, but a more thorough analysis on a case-by-case level is required to properly assess the risks and benefits especially concerning the customers knowledge of how the data is processed and for what motives.

Q46: What are the main barriers and operational challenges for the development of open finance (e.g., unwillingness of firms to share data for commercial reasons; legal barriers; technical/IT complexity; high costs for intermediaries; other)? Please explain.

The main barrier is the lack of identified benefits for the consumers/investors.

Q47: Do you see the need to foster data portability and the development of a portable digital identity? Please outline the main elements that a digital identity framework should be focusing on.

No benefits beyond the current applications of digital BankID and strong customer authentication in respective member states.

Q48: Do you consider that regulatory intervention is necessary and useful to help the development of open finance? Please outline any specific amendments to MiFID II or any other relevant legislation.

No, rather it would be more beneficial for the market to develop an independent scheme based on commercial terms to ensure agility, reciprocity, and high levels of security.

Q49: What do you consider as the key conditions that would allow open finance to develop in a way that delivers the best outcomes for both financial market participants

See Q48

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