

30 December 2021

European Securities and Markets Authority

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Submitted online at www.esma.europa.eu

Response to ESMA Call for Advice on certain aspects relating to retail investor protection

BlackRock¹ is pleased to have the opportunity to respond to ESMA's Call for Advice on certain aspects relating to retail investor protection.

BlackRock supports a regulatory regime that increases transparency, protects investors, and facilitates responsible growth of capital markets while preserving consumer choice and assessing benefits versus implementation costs.

We welcome the opportunity to comment on the issues raised by the Call for Advice and welcome the opportunity to continue to contribute to the thinking of ESMA on any issues that may assist in the final outcome.

We welcome further discussion on any of the points that we have raised.

Yours faithfully,

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¹ BlackRock is one of the world's leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers and other financial institutions, as well as individuals around the world.

Executive summary

In reviewing ESMA's three focus areas in the Call for Evidence, we make the following points:

1. Disclosures

We believe that the format of disclosure of the current disclosure regime for retail investors (especially the PRIIPs KID) needs to focus on the key information investors need to make effective decisions. We recommend limiting the amount of detail in retail disclosure documents aimed at intermediaries than at end retail investors.

We also believe that the rules on risk disclosures need to evolve to reflect situations where investors buy a portfolio of products and the need to assess both financial and sustainability risks at a portfolio level to complement individual product level risk disclosures.

We also believe that volatility- based risk disclosures such as the SRI are inappropriate for many pensions products which have an in-built dynamic derisking profile such as lifecycling products. Alternative approaches such as those in the PEPP Regulation are more relevant.

2. Digital disclosures

We believe that a move to a digital disclosure regime will assist clients by allowing the development of a more individualised approach to data (e.g. reflecting the actual amount investors want to invest rather than a single amount), through the layering of information and by allowing investors to select the presentation format of key concepts such as performance and costs on the basis of their cognitive preferences.

3. Digital tools and channels

We believe that emergence of neo-brokers and digital retail trading platforms represents an innovative approach to connecting investors with capital markets. These trends should be encouraged where they lead to greater retail participation in markets and more empowered consumers.

We believe that European regulators are raising a number of valuable issues regarding the underlying economic models and consumer behaviours on these platforms. We believe that regulatory efforts in this area should focus on encouraging retail market access, fostering innovation and competition, while ensuring full transparency on trading and dealing practices and execution quality. We also believe that an increased focus on investor education and guidance is key to fostering responsible retail investor participation in markets.

Responses to 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.

In recent years, the number of individual investors accessing capital markets has increased significantly everywhere around the globe. This structural and defining global trend has intensified during and since the pandemic with an estimated 40 million new self-directed investment accounts opened globally since 2020. [Sources: *Financial Times*, “Is the army of lockdown traders here to stay?,” Oct. 18, 2021 quoted data provider BrokerChooser estimated that 30 million new accounts were opened in the U.S. during the first 12 months of the pandemic.

- *In the U.K., according to the Financial Conduct Authority there were 7.1 million new accounts opened between April 2020 and April 2021.*
- *In Germany, the number of people who own shares directly or via funds rose by 2.7 million since 2019, according to Deutsches Aktieninstitut (Aktionärszahlen 2020, “Deutschland und die Aktie?”).*
- *In Australia, Australian Securities & Investment Commission data indicate approximately 700,000 new accounts that traded for the first time.*
- *In Canada, as many as 500,000 accounts were opened in the first quarter of 2020 alone (Financial Post, “‘Money to be made’: Meet the new retail investors flooding the market amid the pandemic,” July 6, 2020)].*

Whilst ESMA understandably raises a number of concerns regarding this growing trend, the increased retail investor participation in capital markets should also be seen as a defining opportunity for the completion of the Capital Markets Union. As Europe enjoys one of the highest levels of savings amongst its population, a vibrant retail investor community could indeed help deliver on many political priorities such as financing Europe’s post-covid recovery, channelling capital to the sustainable and digital transitions, and help EU households prepare with retirement planning..

Since 2021, the global investing landscape has undergone a major structural change Millions of retail investors – individual savers who allocate their own money and make their own investment decisions – are now participating in financial markets.

Increasingly, existing and new generations of investors want to access financial markets in the same way they access other financial and non-financial professional services: online and via mobile apps. New platforms and services providers who provide this functionality increasingly offer the ability to open individual savings plans allowing regular payments into diversified funds such as ETFs. For instance, in Germany, the Deutsches Aktieninstitut found that, since 2019, around 2.7 million new customers are now invested in shares, equity funds and ETFs – representing 17.5% of the population aged 14+, a level not seen since 2001. The

number of ETF retail savings plan is also growing fast, showing an increased interest for diversified equity strategies (from circa 1.3 to 3.1 million open “ETF-Sparpläne” between 2019 and 2021).

[Sources:

https://www.dai.de/fileadmin/user_upload/210225_Aktionaerszahlen_2020.pdf ;
<https://cdn.extraetf.com/downloads/research/2021/extraETF-Studie-ETF-Marktstatistik-November-2021.pdf>].

An increasingly digital consumer economy is preparing the way for the growth of online trading platforms offering features such as no-minimum-investment accounts, zero-commission, and fractional-shares trading. This is making low-cost, direct-investing accessible to individual investors who previously found it more difficult or expensive to access financial markets. In addition to the influence of digital technology on democratising market-access, another catalyst driving retail participation has been the constant evolution of communication technology, with social media platforms and networks enabling greater information-sharing amongst non-professional investors. We believe these channels, whether offered by existing market players or by new market entrants, can be helpful in complementing existing distribution channels, allowing consumers more choice and better information while investing for the long-term using well-regulated diversified products such as UCITS.

In light of these changes, we support ESMA’s effort to review the suitability of the current regulatory framework, the underlying market structure, and the existing industry practices to ensure appropriate levels of investor protection, whilst also encouraging innovations which empower retail savers to invest for their future. To navigate this new retail trading and investing environment, we believe it will be helpful to assess the benefits of the fast-growing retail use of online brokers and digital advisors against a number of key principles. These principles are drawn from the existing regulatory framework of European securities markets – including key principles underpinning MiFID 2/MiFIR. The assessment framework we propose is designed to apply these principles to these new business models to ensure retail investors have access to fair, safe and attractive investment opportunities:

1. Market access

The goals of the Capital Markets Union are more likely to be achieved by reinforcing the ability of retail investors to buy and sell securities on equal terms with other investors. An equitable market structure should be based on the principles of fair and impartial access to all publicly traded securities, encourage the development of low-cost platform technology and ensure retail trades benefit from all available liquidity sources.

2. Transparency

Regulation should promote market practices and structures that ensure informed decision making by retail investors, fair treatment of their orders including best execution, and a reliable price formation process.

We believe that improvements could be made especially around the delivery of a consolidated tape for European securities underpinned by data licencing and market access reform. The development of a European consolidated tape as proposed in the European Commission's recent proposals to update MiFIR represents a fundamental step forward in this respect and can provide considerably improved access to low-cost market data at a pan-European level. A consolidated tape will first and foremost serve as a valuable benchmark to assess whether retail platforms have been providing best execution in their relationships with liquidity providers. As such, the delivery of a consolidated tape could go a long way to reassure investors that brokers are actually delivering optimal execution quality.

We also support transparency in the provision of information to consumers on any inducements paid and clarity on the enhanced value consumers should receive by way of exchange.

We also support the development of best practices regarding the provision of information of costs to comply with the current MiFID requirements so that retail investors are fully aware of the full costs of the services they are using and underlying instruments they are using: for example, the provider of a zero commission trading service will need to ensure that investors are fully aware of any embedded cost of ownership of the underlying instruments, such as an ETF, and any other account maintenance fees.

3. Supporting innovation and competition

The growth of digital trading platforms has come with ever reducing trading costs for retail investors such as commission-free retail trading on many platforms and new ways of allowing consumers to access services. Recent concerns around conflicts of interest and fairness of retail trade execution under Payment for Order Flow (PFOF) arrangements between platforms and market makers justify further analysis and discussion. Issues to consider following the European Commission's recent proposals for MiFIR include to the exact definition of PFOF and whether restrictions will apply to trades executed both on or off exchange. . We note that there digital trading platforms are represented by a number of different emerging business models across the EU, specialising in different instruments. It is important to ensure that implications of the incentives underlying these different business models are fully explored and understood when assessing the appropriate legislative and regulatory regime.

4. Investor education

The increasing adoption of self-directed investment underlines the urgent need to improve financial literacy amongst retail investors, to encourage diversification, regular savings habits and long-term “buy-and-hold” behaviours while avoiding day-trading on ever-more complex instruments such as cryptocurrencies and ICOs, options and margin-based trading with more complex risk profiles. Promoting a high-level of financial education, as well as ensuring that regulated diversified products – such as UCITS and ETFs – are as (if not more) easily accessible than certain more complex and volatile products will be key to achieving investor trust and protection, and therefore complete the Capital Markets Union project.

We believe that it would be beneficial to review the extent to which digital platforms can provide non-personalised, generic advice or guidance to retail investors to assist them in making better investment decisions and develop longer term trading strategies.

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.

We note that PRIIPs, PEPP and MiFID contain different approaches to presenting risks in products due to their being a number of different purposes in the respective risk disclosure frameworks.

Example: risk disclosures Before taking further steps to address these inconsistencies it is important to review the purpose and objectives of relevant risk disclosures. For example, the PRIIPS SRI shows the inherent volatility and risk return profile of a product. The SRI is less helpful as a tool to give an investor an indication of the overall risk profile of a portfolio of products in the context of the investor’s investment time horizon. It is important that more flexibility in risk profiling at a portfolio level continues to be permitted in MiFID to allow advisors and portfolio managers to combine individual products with different inherent risk profiles to achieve the optimal balance between managing short, medium and long term risks.

An example of this broader approach can be seen in the PEPP KID which allows, for example, a life cycling strategy with a high equity component to be presented as low risk when held for its recommended holding period based on the probability of a minimum return of invested capital.

A more digital approach would also allow investors to receive more meaningful individualised investment amounts rather than the current standardised €10,000 disclosure. This would be particularly helpful for investors wishing to invest smaller amounts.

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.

In order to invest in any given financial product, a retail investor is typically given a number of technical disclosure documents required frequently referencing technical terms and legislative references. This creates confusion and obstacles to investing for retail clients. Much of this information may be relevant for intermediaries selecting products for their clients rather than for the direct retail investor.

When looking holistically at retail investment trends and opportunities, we note that the effect is that buying unregulated products (such as cryptocurrencies) is easier than buying a single stock from an EU public company, or a share in a UCITS fund. Whilst not arguing for a deletion of all form of contractual and pre-contractual regulatory disclosures, there would be merit in adapting the amount and length of mandatory disclosure documents to the simple and regulated nature of these products, in order to avoid retail investors viewing them as riskier than they really are.

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.

We also note that in MiFID focuses on the provision of services rather than products. As such the risk assessment of an advised or discretionary managed portfolio will inevitably be different from a single product volatility linked indicator such as an SRI. A professional intermediary designing a portfolio of financial instruments for their clients will look at risk over time (in the context of their client's investment horizon) rather than at risk at a point in time. This longer-term approach to risk is important when managing increasingly important risks such as inflation risk or managing products with a dynamically changing risk profile such as a life-cycling product. In the area of sustainability, the ability to include forward looking projections such as transition risk and climate scenarios is gaining in importance and needs to be reflected in risk metrics and reporting.

With the ever-increasing focus on costs and charges it is essential that past performance reporting is provided as otherwise consumers will be unable to judge the value provided by a manager for a given level of costs and charges. Without this comparator consumers will be pushed to choose products simply on the basis of the lowest costs regardless of an assessment of the level of performance

and the added value of risk mitigation techniques the manager has provided.

On cost reporting please see our ViewPoint on Disclosing Transaction Costs for a more detailed discussion of the flaws inherent in the current PRIIPs transaction costs methodology and recommendations for changes: This is available at: <https://www.blackrock.com/corporate/literature/whitepaper/viewpoint-disclosing-transaction-costs-august-2018.pdf>.

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

We believe that information on risks, both financial and sustainability related, performance, costs and a description of the issuer constitute vital information. These concepts are currently contained in KID documents – we believe that the issue lies more in the format and presentation of this information rather than in the omission of key concepts.

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.

Nudge techniques indicate the importance of ensuring messaging and disclosures lead to positive and easily actionable outcomes. Many types of disclosures are currently designed in a way which discourage consumers from taking action rather than encouraging them into taking positive action. We recommend more consumer testing of retail disclosure standards to achieve the a better balance between empowerment and protection than is currently the case.

We also note that disclosure standards focus on presenting information in a single format thus failing to recognise the breadth of cognitive diversity across the population. For example, the focus of consumer testing has too frequently focused on a single preferred presentation rather than focussing on how a common data set can be presented effectively in a number of different ways and therefore reaching out to a wider population with different needs.

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.

- **Bridging the understanding gap**

The ever-increasing levels of detailed, technical disclosures discourages retail investors' engagement in capital markets.

BlackRock's People and Money survey regularly surveys the experience of European retail investors and shows that the most important reason why people do not think investing is "for people like them", is the fact they find the information too difficult to understand. In this regard, we encourage a holistic review of existing disclosures to minimise multiple overlapping

documents and disclosures to consumers and the inconsistencies in service delivery that exist today across the different legislative and regulatory pieces (MiFID, PRIIPS, IDD, UCITS, and SFDR disclosures). Ideally, it is worth considering whether non-complex products should be able to rely on a simplified regulatory disclosure regime.

(See further details of BlackRock People and Money 2020 at: <https://www.blackrock.com/corporate/insights/people-and-money>)

- **From products to portfolios**

A further important point to note is that investor protection measures such as disclosures are product-specific. This does not reflect the fact that investors increasingly do not buy products on a standalone basis but rather as part of a standardised or tailored portfolio solutions that include several products and instruments. Where consumers are sold standardised investment solutions, we recommend that disclosure and reporting on key issues such as cost, performance and risk is made primarily at the portfolio level rather than at the level of the underlying financial instruments. We would also encourage the development of more effective risk presentations for longer-term investment solutions, focusing on risk over time rather than on volatility at a point in time.

- **The ESG lens**

The Sustainable Finance and Taxonomy-related product disclosures that are being implemented will present yet another challenge for consumers when trying to understand and select an investment solution. A study conducted by the French AMF shows that a majority of investors do not relate to concepts such as 'ESG', 'SRI', labels, 'sustainable investments', or the Taxonomy itself. The SFDR required disclosures and the ESG-related sections of client-focused Key Information Documents (KIDs) are particularly difficult to understand for them, sometimes even more so than the wording used in lengthy contractual documents such as fund prospectuses (https://www.amf-france.org/sites/default/files/private/2021-09/csa-pour-amf-rapport-lisibilite-des-messages-isr_-juillet-2021.pdf)

- **Digital**

Current disclosure documents are paper based and when provided digitally are made available in a non-interactive pdf format. For example, there are a number of ways of presenting costs and performance information e.g. in tables, graphs or charts. Investors have different cognitive preferences to consuming this type of data and disclosure standards rather than requiring a one size fits all approach should allow consumers to choose the presentation which is most intuitive to them based on a common set of data. An interactive disclosure model giving flexibility as to how to view the underlying data sets provided by product manufacturers is as important as the individual disclosures themselves.

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.

See our recommendations in answer to Question 7.

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) and other legislation covering ESG matters?

Sequencing issues

We have identified important sequencing issues in regards of the implementation of MiFID II entering into force in August 2022. The definition of sustainability preferences refers to three concepts (sustainable investments, taxonomy alignment and principal adverse impact) that will be reported on a later date than MiFID. The application of the SFDR Level 2 has been delayed to Jan 2023 and companies will only start reporting Taxonomy data as of 2023. These sequencing issues leading to report on the basis of incomplete data sets represent a challenge for product manufacturers and distributors. The industry is working collectively on how to best integrate sustainable preferences into the MiFID suitability assessment and product governance processes. Given the absence of reliable data, pushing forward with implementation of changes to the MiFID suitability rules ahead of the SFDR/Taxonomy entering into force, increases the risk of confusing the end-investor on how their money is being invested.

Investor education

BlackRock's 2020 People and Money survey shows how few consumers actually have a workable knowledge of the basic concepts of sustainable investing and how to apply them to investing. Based on our survey we found that

- Most respondents were not familiar with the term “sustainable investing” (including only 57% of current investors) but after providing them with a definition, they found the concept very appealing. There was little difference in preferences by age group highlighting the point that ESG investing is not only for younger generations.
- People understand environmental factors more easily than social or governance factors, so environmental factors are more likely to be the gateway to ESG products for many.
- People would switch into sustainable products if all else is equal but there are still some concerns about how sustainability is measured and whether sustainable investing generates sufficient returns

These results are consistent with a survey conducted by the French AMF showing that whilst many retail investor have an interest in sustainable finance, a vast majority of them struggle to understand basic principles and concepts of ESG investing (https://www.amf-france.org/sites/default/files/private/2021-09/the-french-and-responsible-investment-products-july-2021_1.pdf).

There needs to be a recognition that consumers will need significant help and support in understanding the complexity of the proposed disclosures, especially in a rapidly changing investing environment. But not only the end-consumer will need significant help in understanding these new concepts introduced by the MiFID II definition of sustainability preferences– advisors will also need education

around these concepts to be able to advise the client. If not translated into basic language and concepts for the retail investor and their advisor, there is a risk that this overly complex framework might further widen the advice gap.

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?

No additional comments to our response to Question 7.

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.

As mentioned in our answer to Question 7, feedback from BlackRock's 2020 People and Money survey is that the most important reason why people do not think investing is for people like them, is the fact they find the information to difficult to understand.

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.

We recognise that younger people tend to use more social media platforms, as this is the way they access information and interact with people on a daily basis. Given the increasing role of these platforms, we believe that regulators should work with social media firms to ensure that investors are protected from market manipulation and potentially fraudulent comments which could incite harmful behaviour.

We draw ESMA's attention to surveys produced by Oliver Wyman and the Deutsches Aktieninstitut (referenced below). As an example of age-related preferences, we note from these surveys that 1 million of the 2.7 million new investment accounts opened in Germany since 2019 belonged to investors under 40. Between 2019 and 2020, the number of equity investors aged 30 or less increased by almost 70% (+600 000 investors). The surveys also find that younger equity investors tend to invest more in single stocks, whereas those aged 40+ diversify more, using equity mutual funds and ETFs. Around one-third of German securities accounts have been opened online or have a strong online focus.

When selecting a broker, the Olivier Wyman survey of German retail investors shows that the investor's decision is often based on the provider's account management and trading fees (almost 27 percent cite custody fees as the most important argument, 26 percent cite low trading fees as the most important argument), followed by reputation and ease of use. For many other respondents, it is still important that the broker is a bank or the customer's existing bank.

(Sources: Deutsches Aktieninstitut :

https://www.dai.de/fileadmin/user_upload/210225_Aktionaerszahlen_2020.pdf ;

Oliver Wyman : https://www.oliverwyman.de/content/dam/oliver-wyman/v2-de/publications/POV_Oliver%20Wyman_Online%20Brokerage_web.pdf

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.

With reference to the solutions in paragraph 27, bullet 2, we note that we in all marketing materials for UCITS funds we include URL links to where fund regulatory documentation can be found. This means clients can easily find and access the fund's full list of risks and disclosures without having to search for it.

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.

With reference to paragraph 27, bullet 2 on retrievability of information, this is a facility we offer for UCITS funds under the Cross-border Distribution of Funds Regulation. This is a process which could be reflected in the MIFID II Framework.

With reference to bullet 3 on the obligation to provide the possibility to save information, current practice is the option given to client to save information if it is in pdf form on the website. Including this or similar provisions in the MIFID II framework would mean increased accessibility for clients to save information provided by firms.

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.

A more interactive approach to disclosures would encourage investors to use information more effectively. The ability to move to a more interactive format where more unfamiliar concepts (such as equity, bonds, risk/return, indices, ESG, etc.) can be layered would be beneficial in terms of delivering information to investors in an investor-ready format.

In addition, developing the use of digital formats would allow cost information to be layered allowing more detailed cost breakdowns to be accessed by those investors or their intermediaries or wish to see more granular information

Layering of information could also assist in providing additional information or case studies on the risk associated with more complex products as well as non-linear product structures.

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 adaptations that you would propose.

No comment.

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.

Participants in BlackRock's 2020 People and Money survey indicated that when making financial decisions they would like some way of knowing whether the information provided is trustworthy or not, and to be able to use digital tools or apps. That said, neither did most participants want to go down the route of managing their money entirely through a digital platform. There is a preference for a balance between human interaction and technology and this is anticipated to only change marginally over the next few years (please note that this survey was conducted in 2019, we have not yet tested whether these perceptions have changed since the COVID-19 pandemic). When asking European respondents to the survey where else besides their advisor they go for advice when making investment decisions:

- 9% said social media,
- 13% said online blogs and forums,
- 19% said they were ready to use digital investments tools on their own, and
- 39% looked for investment information online.

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

We believe the barriers have more to do with client preferences and habits on relaying on at least partly on human interaction when investing. This habits and preference might change in light of the pandemic which have accelerated the move to a digital-first approach for many aspects of consumers' purchasing behaviours (in financial and non-financial services).

Q19: Do you consider there are barriers for (potential) clients to start investing via semi-automated 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.

We believe the barriers have more to do with client preferences and habits to rely at least partly on human interaction when investing. We suspect that these preferences may be changing in the light of the pandemic but at this stage we do not have additional data to quantify the level of change.

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?

No comment

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.

Our surveys of European savers show that they place confidence in existing trusted providers and that they prefer access to a hybrid model where they have access to a physical individual even though they are happy to accept that many of the underlying processes are digital.

(See our ViewPoint on digital investment advice (available at <https://www.blackrock.com/corporate/literature/whitepaper/viewpoint-digital-investment-adviceseptember-2016.pdf>) for a wider discussion of the issues related to robo advice.)

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

We believe that robo-advisors (or hybrid advisors) are already covered under the current investment advice and disclosure MiFID rules.

We believe there are five key focus areas when looking at delivering good outcomes in robo-advice models:

1. Know your customer and suitability. Suitability requirements require advisors to make suitable investment recommendations to clients based on their knowledge of the clients' circumstances and goals, which is often gained from questionnaires. These rules apply equally to digital advice, though the means of assessing suitability may differ somewhat. Suitability assessments must be tailored to the clients' goals and the services that are being offered. Digital advisors should clearly state the objectives their services are designed to meet in order to ensure the services being offered are in line with the client's needs and objectives.

2. Investment design and oversight. Digital advisors should ensure that investment professionals with sufficient expertise are closely involved in the development and ongoing oversight of investment design particularly when it concerns the use of algorithms. Algorithm assumptions should be based on generally accepted investment theories, and a plain language description of assumptions should be available to investors. Any use of third-party algorithms should entail robust due diligence on the part of the digital advisor. It is increasingly important to ensure that a robust process to ensure that the algorithm does not embed hidden biases. A diverse governance structure can help mitigate against the use of hidden or implicit bias.

3. Disclosure standards and cost transparency. Disclosure is central to ensuring that clients understand what services they are receiving as well as the risks and potential conflicts involved. Like traditional advisors, digital advisors should clearly disclose costs, fees, and other forms of compensation such as

inducements prior to the provision of services. Digital advisors should similarly disclose relevant technological, operational, and market risks to clients.

4. Trading practices. Digital advisors should have in place reasonably designed policies and procedures concerning their trading practices. Such procedures should include controls to mitigate risks associated with trading and order handling, including supervisory controls. Risks and potential conflicts associated with trading practices should be clearly disclosed.

5. Data protection and cybersecurity. Digital advisors must be diligent about sharing and aggregating only information that is necessary to facilitate clients' stated objectives. Digital advisors should use the strongest data encryption, conduct third party risk management, obtain cybersecurity insurance, maintain business continuity management plans, and implement incident management frameworks

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.

We believe strong investor protection is the foundation for building retail investors' trust and confidence in EU capital markets. To guide prudent financial regulation towards the aim of investor protection, we advocate four underlying principles as discussed in our response to Question 1. These include:

- 1) **Market Access**, defined as retail investors' ability to buy and sell securities on equal terms with other investors.
- 2) **Transparency**, wherein regulation should promote market practices and structures that ensure informed decision making by retail investors, fair treatment of their orders (including best execution), a reliable price formation process and transparency as to the costs of investing.
- 3) **Innovation**, to nurture a competitive market landscape.
- 4) **Investor Education**, which complements market regulation through informed decision-making and awareness.

Current requirements under MiFID II support retail investors in many of these aspects, but we feel there is room for further improvements. Specifically, we advocate for the following changes:

- Delivery of a **consolidated tape for European securities**, underpinned by data licencing and market access reforms.
- **Holistic review of any changes to existing industry practices** such as ban on PFOF. Regulatory reforms should be carefully balanced so as not to have any detrimental effect on the existing structural features which have so far proved beneficial to EU retail investors.
- **Educational engagement** with retail investors should be another area of focus to balance aspects of market access with their potential lack of investing experience and sophistication. Potential areas could include guidelines on

financial literacy, identification of standard information and labelling of financial instruments, the role of various market participants involved in order execution (including any potential conflicts of interest), access to investor grievance redressal mechanism, etc.

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.

We are not in a position to comment on the business model and profitability of particular brokers, including revenue contribution from payment for order flow arrangements. We, however, strongly support market practices and structures that ensure fair treatment of retail orders including best execution.

Existing MiFID 2/R principles such as transparency, best execution and fair competition remain relevant and efficient when applied to new entrants to ensure that such market innovations are provided responsibly and deliver value to end-investors.

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.

Please see our response to Question 23, specifically the scope for increased and/or mandatory educational engagement for retail investors.

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.

Several factors influence investors' use of leverage, including macro-economic factors like the prevailing monetary policy and/or industry-specific practices. As highlighted in our response to Q23, both industry and regulation should aim for a high watermark of investor education and awareness about the risks involved in margin trading, standardisation of financial instruments labelling, and delivering an effective investor grievance redressal mechanism. A higher level of financial literacy would lead investors towards more diversification, regular savings habits and long-term "buy-and-hold" behaviours.

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.

No comment.

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.

No comment

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.

No comment

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.

Improvements to several aspects of EU capital market structure, such as, (1) availability of a real-time consolidated tape, which in turn could promote pre- and post-trade transparency, support best-execution, and (2) harmonising of exchange rules to promote more on-exchange trading, can bring more transparency to EU capital markets and improve the levels of investor confidence and participation.

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).

Zero- or low-commission brokers have developed in several Member States. Evolving in a fast-paced, highly innovative and competitive environment, these so-called “neo-brokers” have very diverse business models. We observe that some, for example, offer a flat-rate for third party costs (e.g., EUR 01) per executed order, while other will offer totally free trading. Some platforms also offer some free-of-charge basic services and limited amount of trades, and charge a rate or a subscription to access “premium” trading services, or higher number of trades. As such we are unable to generalise on the different models in the markets.

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.

No comments

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.

The move to low-to-zero commission brokerage is an important trend that rightfully attracts ESMA’s attention, and we would like to emphasize the fact that this is a global trend observed in the US and Asia (exemplified by the decision of the leading US Securities broker Charles Schwab to cut trading commissions to zero in October 2019, soon followed by its major competitors). It is also important to recognise that consumers’ price-sensitivity for all types of digital services – financial and non-financial – has dramatically increased in the past decade.

Zero-commission brokers have very different business models and operate in an innovative and competitive landscape. We believe that the various features such as offering zero-commission should be assessed on the basis of the principles of retail trading we set out in our answer to Question 1. Strategically we note that these platforms offer a real opportunity for retail investors to discover capital markets in ways that traditional distribution channels do not offer.

While we support regulators’ aims in ensuring that investor protection standards are upheld on these platforms, it is crucial to recognise that access to these platforms also has the benefit of empowering retail investors and help them familiarise themselves with capital markets. Regulators should look into these emerging business models in detail and assess how existing rules and principles (conflict of interest, best execution, transparency) are being applied to ensure that investors benefit from innovative processes.

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?

No comment.

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.

Digitalisation across investment services should be viewed as part of a broader trend of an increasingly digital, cross-border and low-cost consumer economy. Regulatory efforts to address any issues related to digitalisation – for example,

concerns around ‘gamification’ – should be carefully assessed in light of the benefits that digital technology has offered – for example, democratisation of market-access, increased competition, and lower costs. Some aspects of market competition, user-data privacy, and educational engagement may benefit from increased regulatory analysis.

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?

No comment

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?

No comment

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 comment

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.

No comment

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 comment

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.

No comment

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.

No comment

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.

We believe any data that helps build the picture of an individual's financial position is relevant in offering financial products. An individual's financial position is a web of interconnecting assets, liabilities, preferences and goals. Issues such as affordability are incredibly difficult for a consumer to really understand because it is a function of all of these factors, and it is up to the individual to collate and process all their personal data in this regard – something that is very hard to do. Opening up access to these sources of data to help consumers build a better picture of their own financial position allowing better data-driven recommendations or suggestions is potentially hugely valuable for a consumer. It presents the opportunity for investors to have greater control of their finances which is a key component of improved investor engagement.

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.

We encourage policymakers to build an investor-centric framework that balances investor protection and investor inclusion. We see a risk of financial exclusion for a certain group of consumers that don't have access to digital tools and therefore cannot/ less benefit from an open finance policy. Therefore, we strongly recommend to always maintain accessibility for those individuals.

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)?

No comment

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.

No comment

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.

Yes, we encourage the use of digital take on procedures, know your client and portable suitability profiles as key tools to achieve greater simplification of the administrative burden of investment, and would recommend that any reforms allow for, if not explicitly build in, these tools. Innovations like an investor digital ID and a personalised and portable fact find are key to improve consumer engagement, giving them greater control of their finances and taking out duplicative costs from the account -opening process. The digital ID is not just a key enabler for portability of consumer information allowing citizens to shop around and to switch to more cost-effective service providers. It also facilitates the creation of dashboards allowing consumers to visualise their pensions and savings in a single place and avoiding orphaned assets in an increasingly mobile economy.

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 comment

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 and customers? Please explain

We believe consumers do not like the idea of sharing data when it is not clear what value they get from doing so, therefore it is key to demonstrate the value of sharing data. Above all consumers should always be in control of their data and it should be easy for them to take away access should they no longer see the benefit of doing so. Businesses should be encouraged to clearly articulate the benefits to consumers of granting access to their data.

Conclusion

We appreciate the opportunity to address and comment on the issues raised by the Call for Advice and welcome the opportunity to provide further insights to ESMA on any specific issues which may assist in assessing developments in the retail investment market.