**Call for evidence**

**On the European Commission mandate on certain aspects relating to retail investor protection**

**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.**

Answer: The provision of investment services is generally overregulated especially in connection with the area of investor protection. The tightening of regulation of investor protection by MiFID II seems to be somehow ineffective. The way out from this situation should be certain deregulation (e.g. in general cancelation of new requirements imposed by MiFID II [such as product governance, new requirements regarding inducements] and return to the regime originally established by MiFID I).

**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.**

**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.**

**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.**

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

**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.**

**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.**

**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.**

**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?**

Answer to Q2-8 and 10: We do not agree with ESMA´s opinion that MiFID II disclosures regime generally works well (point 11.), because it is beyond reality. The investors (especially retail ones) are overloaded with information they do not understand, do not need, are not interested in and do not want. On the other hand, we agree with ESMA´s opinion that MiFID II and PRIIPS disclosures regimes should be aligned and consistent.

In general, the disclosure requirements of MiFID II should be substantially reduced and simplified. The only information in which the investors are interested in is the possible return of their investment and sometimes also the risk of possible loss. The regulatory disclosure requirements should focus on these information and all other information which are for the investors irrelevant and incomprehensible should be cancelled. Information such as information on client categorisation, conflict of interest, safeguarding of client assets, execution policy and inducements should be cancelled in their entirety. Another alternative could be that these information to be provided to investors only upon their request (or at least there should be possibility for investors to expressly disagree with the provision of the information).

Also, information on costs and charges should be substantially reduced and simplified. The existing legislative regime regarding cost disclosure requirements is very inconsistent in connection with derivatives – the rules for disclosure of costs are defined for investments but these requirements are not suitable for derivatives, because in case of derivatives there is usually no initial investment. Therefore, derivatives should be excluded from the cost disclosure requirements.

This would require certain change of the current regulatory approach, i.e. moving from more regulation to better and more effective regulation.

**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?**

Answer: The disclosure requirements under SFDR are too complex and they will be incomprehensible for most investors (especially for the retail ones). These disclosure requirements should be simplified and streamlined. Substantial portion of investors (especially retail ones) are not interested in these information and information under SFDR should be provided to retail customers only if requested by them. This would avoid information overload and ensure that information are received by customers who are really interested in.

**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.**

Answer: Our practical experience is that investors are not interested in information disclosed under MiFID II, they do not understand them and they refuse them as irrelevant and annoying. The only information investors are interested in is the information on potential return (and loss) of the respective investment. The investors do not want to be bothered by information on client categorisation, conflict of interest, safeguarding of client assets, execution policy, inducements etc. If a retail client buys a product (including an investment instrument), he/she is interested in benefits and possible risks that such a product offers, not on some irrelevant and annoying information.

**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.**

Answer: In the conditions of COVID-19 pandemic most consumers prefer communication through digital means, including preference of digital disclosures.

**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.**

Answer: There is no need for regulatory interference into the question which technical solution can work best for consumers. This question should be left to be solved by market and competition.

**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.**

Answer: There is no need for regulatory interference into technical solutions of information disclosure. Regulation of this area would harm technology development and progress. The search for the best and most effective technical solutions should be left to the market and competition.

**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.**

Answer: MiFID II requirements on information to clients should be simplified and substantially reduced in view of the increased use of digital disclosures (see also above).

**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.**

Answer: Regulators should supervise each activity that qualifies as the provision of investment services. Non-authorised provision of investment services should be sanctioned.

**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.**

Answer: No.

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

Answer: No.

**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.**

Answer: Before using automated advice, the client must fill in the suitability test. This requirement is perceived by the clients as annoying and bureaucratic. Possible solution could be simplification of the suitability test (e.g. at least return to the scope originally required by MiFID I).

**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?**

Answer: There is a risk that certain clients would prefer investing with non-authorised (illegal) providers or investing in unregulated areas (e.g. crypto assets), rather than investing with investment firms regulated under MiFID II.

**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.**

Answer: Digitalisation and automatization generally increases the risk that investment services will be provided by non-authorised entities (e.g. FinTech firms) which are not regulated under MiFID II. Investment firms subject to the regulatory burden under MiFID II cannot effectively compete with such unregulated FinTech firms.

**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.**

Answer: The regulatory burden and the disclosure requirements should be reduced in general, not only in connection with automated advice.

**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.**

Answer: We do not think that any changes are necessary in this regard. Unfair practices, if any, regarding payment for order flow should be sanctioned under the existing regulations.

**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.**

Answer: No.

**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.**

Answer: We do not have any information on whether some online brokers offer their products in the best interest of clients, or not.

**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.**

Answer: We are of the opinion that the current regulation of margin trading is sufficient.

**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.**

Answer: FinTech firms when providing investment services should be regulated in the same way as investment firms (principle of level playing field).

**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.**

Answer: No.

**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.**

Answer: No.

**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.**

Answer: No.

**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).**

Answer: No.

**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.**

Answer: No.

**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.**

Answer: No answer.

**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?**

Answer: We are of the opinion that investment service providers using gamification techniques should follow the rules laid down by regulations when communicating with the clients and that regulators should enforce compliance with those rules, rather than invent new ones.

**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.**

Answer: No.

**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?**

Answer: Increasing reliance of retail clients on information shared on social media is a general trend and this does not relate only to investment services. The problem of social media should by handled comprehensively, not particularly regarding investment services only.

**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?**

Answer: The provision of investment services through social media should be subject to the same rules as the provision of investment services through any other media. We do not see reasons for specific regulation of social media in connection with the provision of investment services. However, every entity / any person who provides investment services through social media should be authorised under MiFID II and comply with the rules laid down by MiFID II.

**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?**

Answer: No.

**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.**

Answer: No.

**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.**

Answer: No.

**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.**

Answer: No.

**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.**

Answer: We are of the opinion that the current regulatory framework concerning warnings provides adequate protection for retail investors.

**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.**

Answer: No. The concept of so-called open banking under PSD2 is a failed concept. It has not brought substantial innovation and has not enhanced competition in the banking and payment services areas and the clients in general are not interested in services of third-party providers. The concept of open banking is an artificial concept which only caused increased costs in banking sector, but it has brought little benefits, if any, to consumers and the economy. We suppose that the concept of open finance will be a similar failure and a dead end.

**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.**

Answer: From the retail investors there is no demand for sharing their data with third-party providers. It seems that the idea of “open finance” follows the interests of some third-party providers, rather than the interests of retail investors. Such interests of third-party providers are legitimate, but it should be transparently disclosed which third-party providers´ interests are fostered by this idea and this should not be hidden by alleged interests of retail investors.

**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)?**

Answer: We are of the opinion that no such regulation is needed. Retail investors are the owners of their data and they have already the right to data portability under Article 20 of GDPR. No specific regulation of data portability is necessary in the area of investment services.

**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.**

Answer: See answers to Q43 - Q45 above.

**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.**

Answer: Data portability is already regulated by Article 20 of GDPR and no specific regulation of data portability is necessary in the area of investment services. The portable digital identity is an issue which should be covered by eIDAS and we do not understand why this question is discussed in connection with investment services.

**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.**

Answer: See answers to Q43 - Q45 above.

**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.**

Answer: See answers to Q43 - Q45 above.