**Réponse de la FBF à la consultation ESMA Call for Evidence RIP – V4 (final)**

**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.**

The FBF welcomes the opportunity given by ESMA to respond to this Call for evidence under the European Commission’s mandate on certain aspects relating to retail investor protection.

First of all, French banks would like to recall that they are advocating for regulatory stability, hardly four years after the implementation of MiFID2.

Thus, FBF believes it is essential not to add new layers to a regulatory framework (MIFID II, PRIIPs and IDD) that has already been made very comprehensive and effective for investor protection.

Indeed, in the next few months, priority shall be given by EU investment firms to compliance with the new regulatory framework for sustainable finance whereas collecting the retail clients’ sustainable preferences will be a major challenge to address.

On the topic of disclosures, many studies from competent national authorities and consumers tests tend to show that much information and probably too much information is delivered to clients.

However, information overload is not profitable to retail clients if it leads them to ignore and not to read information documents.

In this context, FBF believes that the European Commission should focus on simplification of information provided to retail clients rather than the creation of any new information documents.

It is also important to ensure that retail clients and especially the less experienced ones shall continue to have a large access to investment advice. It is therefore crucial that further amendments of EU law cannot prevent EU investment firms from providing investment advice at a reasonable cost, including on a non-independent basis.

The EC should also ensure that the disclosure requirements are well calibrated for certain clients. Thus, we believe it is essential to allow more experienced retail clients to be treated as professional ones and therefore, to receive less detailed or repetitive information, for instance, on costs and charges.

In this way, it would be essential to alleviate the legal criteria for accessing to the category of professional clients on request (criteria as defined in annex II of MIFID II).

At last, we agree with ESMA that it is very important to ensure that the disclosure requirements remain technology neutral so that it is as easy for clients to understand and access the information in a digital environment as in a face-to-face relation with a financial advisor.

**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.**

1. Making comparisons between products is something important, but understanding the information provided is at least as essential.

In this regard, the PRIIPs regulation has enabled real progress for comparing financial instruments and we believe the KID remains a key document to understand the main features of financial products and easily make comparisons between them.

However, it is crucial that the KID PRIIPs calculation methodology and output on costs and charges be aligned with that required under MiFID II and we welcome the amendments to delegated regulation (UE) 2017/653 just published.

1. Yet, we believe that the disclosure of costs and charges required by MIFID II is quite burdensome and that providing information on a trade-by-trade basis is not necessary, especially for professional clients when trading simple financial instruments.

Therefore, we are in favour of amendments to article 50 of the delegated regulation (UE) 2017/565 that would allow investment firms to use tariff grids when disclosing ex ante information on costs and charges about non-complex financial instruments.

**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.**

FBF considers that disclosure requirements in MiFID II regarding costs and charges are too complex and lead to an information overload for retail clients.

Thus, FBF recommends the simplification of article 50 of the delegated regulation (UE) 2017/565 to allow investment firms to use tariff grids when disclosing ex ante information on costs and charges about non-complex financial instruments (where the instrument is not a packaged product within the meaning of the PRIIPs Regulation).

For professional clients only, FBF is also in favour of a total exemption of the obligations required by revised article 25 (2) and article 25(6) of MIFID II instead of an exemption on demand (opt-in) provided by article 29 a of MIFID II (see article 1 (8) of directive UE/2021/338 “quick fix”)

**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.**

FBF considers that the methodology used to present costs in the PRIIPs KID should be changed to a Total Expense Ratio (TER) approach, which then enables the addition of services costs.

Indeed, the current PRIIPs KID methodology, which looks at the impact on yield (Reduction in Yield or RiY method) leads to inconsistencies, toughly understandable for retail investors, in the figures disclosed to investors in PRIIPs KIDs and the required disclosures under MiFID II. Accordingly, we believe that the methodology of calculating product costs using the RiY method is overly complex for retail investors and should be completely abandoned.

The notion of "cumulative effect on yield" used in the PRIIPs KID is difficult for investors to understand.

This method does not make it possible to communicate consistent figures between those of the KID PRIIPs and those due under MiFID II, in particular the reduction in yield vs the total costs on investment.

However, we consider that the RTS ([delegated regulation (EU) 2017/653](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0653)) as amended will allow better harmonisation between the PRIIPs regime of costs presentation and the MiFID’s one and thus will make it simpler and more understandable for retail investors.

FBF also sees inconsistency between art 24 (5 a) of MIFID II amended by directive 2021/338 (“quick fix”) which precises that investment firms shall provide all information required by MIFID II to clients in electronic format (except where the client is a retail client who has requested receiving the information on paper) and article 14 of PRIIPS that provides that KIDs are delivered on paper “by default”.

FBF believes that retail clients should continue to have the choice to receive any information document by an electronic means *or* on paper (with no “by default” method), what would be consistent with article 3.1 of the delegated regulation (UE) 2017/565 which specifies that *“investment firms shall have the right to provide information in a durable medium other than on paper only if: (a) the provision of that information in that medium is appropriate to the context in which the business between the firm and the client is, or is to be, carried on; and (b) the person to whom the information is to be provided, (…) specifically chooses the provision of the information in that other medium”*

In any case, harmonization between regulations on this topic of information support (paper-based or electronic-based) to clients should be a priority for European co-legislators.

**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 consider that the main information about a financial instrument (product objectives, main features, capital protection if any, costs information, risk) correspond to the sections of the PRIIPs KID.

**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.**

We have not identified practical lessons from behavioural finance that should be taken into account by the Commission and/or ESMA.

We consider that behavioural finance is a matter which is still in development and does not lead to undoubtful conclusions.

Thus, we believe that no change in regulation should rely (only) on conclusions from such behavioural finance studies which ought not replace the usual consultation process of all relevant stakeholders.

**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.**

See our response to questions 3 and 4.

FBF suggests amendments of article 50 of the delegated regulation (UE) 2017/565 to allow investment firms to use tariff grids when disclosing ex ante information on costs and charges about non-complex financial instruments

**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.**

Article 24 (4) c of MIFID II provides that information and all costs and associated charges must be provided in good time to clients or potential clients including the cost of advice and the cost of the financial instrument recommended or marketed, also encompassing any third-party payment.

However, the new article 29 a of MIFID II as written in Directive (EU) 2021/338 amending MiFID II (“quick fix”) provides that the obligations regarding costs and associated charges laid down in point c of Article 24(4), “*shall not apply to services provided to professional clients except for investment advice and portfolio management.*” This implies that information on inducements will no longer need to be disclosed to professional clients and eligible counterparties when using non-advised investment services under this new article 29 a (1) of MiFID II.

This exemption of disclosure for professional clients and eligible counterparts seems to be contrary to article 24 (4) c.

Therefore, FBF suggests that article 29 a (1) be amended to specify that disclosure of such inducements is required whoever the client is and insofar as information on costs and charges is required.

**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?**

Our members see great difficulties in implementing delegated regulations (UE) 2021/1253 and (UE) 2021/1257.

The most critical issue is the timing which is much too short and inconsistent with other regulations on which MIFID II is quite inter-dependent.

To implement MIFID II amendments, distributors should be able to meet their clients’ expectations through a sound offering of products duly characterized under taxonomy and SFDR regulation or through analysis which will extensively depend on data regulated under CSDR.

However, MIFID II amendments are to be implemented quite ahead of these regulations leaving distributors to struggle with quite heavy offering issues as well as with clients’ frustrations and increased risks of greenwashing.

Therefore, we strongly advocate for the postponement of MIFID II amendments to ensure a consistent regulatory timeline and a sound implementation in the best interest of clients.

The other key point relates to sustainability preferences.

Under MIFID II amendments, investment firms shall have to integrate questions about clients‘ sustainability preferences when asking them for their investment objectives before providing them with investment advice or portfolio management services.

However, clients’ sustainability preferences are defined as their choice, “to what extent” they want to invest in sustainable instruments as defined in article 2(1) of taxonomy regulation, sustainable instruments as defined in article 2(17) of SFDR and financial instruments that consider principal adverse impacts.

These categories are not within the clients’ reach, notably the retail ones who are not at all familiar with concepts such as taxonomy or principal adverse impacts.

French Banks anticipate that it will be very difficult for clients to understand them and that unfortunately this will not facilitate the promotion of sustainable finance among retail investors.

**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.

The entry into force of delegated regulations (UE) 2021/1253 is scheduled for 2 August 2022.

See question 9 our advocation for the postponement of this delegated regulation entry into force.

In addition, ESMA plans to amend its guidelines on certain aspects of the MIFID II suitability requirements to clarify how clients’ sustainability preferences shall be integrated into the suitability test.

It is also essential that the entry into force of delegated regulation (UE) 2021/1253 is preceded by the publication of these ESMA revised guidelines, with a sufficient delay to allow firms to integrate ESMA’s specifications in their IT developments.

**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.**

No, FBF does not have any empirical data or insights based on actual consumers usage or engagement with existing MIFID II disclosure.

**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.**

Yes, younger consumers are particularly users of digital means

But French banks observe that clients of all age (not only the “digital natives”) have been using digital means more widely since the beginning of the covid crisis.

The large access of people (especially the youngest ones) to non-regulated products like crypto assets via their smartphones raises crucial issues when these people have no significant knowledge and experience on these products.

**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.**

FBF wants to underline that MIFID II rules already require that information be easy to understand, clear, and not misleading, in a durable format and they should apply whatever the technical solutions.

In our opinion there is no need for additional rules for digital disclosures.

As long as the existing regulation is respected, every investment firm should be allowed to choose the technical solutions and way it intends to disclose information to clients on digital media in a competitive environment.

**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.**

No, we do not think new approaches should be integrated in MIFID II framework.

Technologies are constantly evolving. When you set out rules in such changing areas, there is a risk that these rules will quickly become obsolete.

Furthermore, all investment and banking services are now available on firms’ apps accessible on smartphones. it is thus preferable that firms enact their own technical standards for theirs apps, rather than applying strict legal rules which might become outdated quickly.

**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 opinion, it is important to ensure that MIFID II is technologically neutral and to avoid issuing different rules depending on the information disclosure channels used by the clients.

It is sometimes difficult to distinguish between digital information media because they are increasingly interdependent; it would therefore be irrelevant to define different disclosure rules when technological progress makes boundaries between devices/media (like mobiles, tablets or television) less clear.

It is prominent to define which essential information about a financial product must be disclosed to clients so that this information can be easily found by them regardless of the media used.

**Q16: Do you see the general need for additional tools for regulators in order to supervise digital disclosures and advertising behind “pay-wall”, semi-closed forums, social media groups, information provided by third parties (ie FINfluencers) etc? Please explain and outline the adaptations that you would propose?**

Yes, FBF believes that regulators should intensify their supervision of digital disclosures and advertising behind these media, especially when retail investors purchase unregulated financial instruments or trade through unregulated platforms which often do not strictly respect investor protection rules.

**Q17: 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.**

French banks and investment firms note that their clients are satisfied to benefit from a multi-channel service offer, with services provided in a face-to-face relation accompanied of remoted or digital services.

In this context, retail investors can have a certain interest for semi-automated tools, but we note that not all of these applications may be qualified as real robo-advisors and rather are intelligent product search engines.

Besides, the use of robo-advisors without human intervention remains limited in France and still represents a very small part of the market.

Indeed, several recent studies have shown that clients do not fully trust in robo-advisors and prefer to discuss with their financial advisor.

You can refer in particular to:

* a study from the Autorité des marches financiers and CSA dated of October 2020 which shows that 67% of French retail investors tend to search financial information first from their personal financial advisor ([AMF Retail Investors Motivations and Practices Survey\_Dec 2020 (amf-france.org)](https://www.amf-france.org/sites/default/files/private/2020-12/amf-retail-investors-motivations-and-practices-survey_dec-2020_1.pdf)) (see page 26)
* an Investment Trends survey (on France, UK and Netherlands) dated of July 2021 which shows that nearly 60% of French retail investors deem it is very important or extremely important that investment advice be delivered face-to-face or through other means allowing interpersonal communication
* a Kantar survey in Germany which reveals that 31% of German retails investors respond “not, not likely” to the following question: Would you be comfortable making all investment decisions yourself without professional assistance? (28% answer “not, in any case”) (German study “The future of advice: a comparison of fee-based and commission-based advice from the perspective of retail clients, November 2021)
* a 2020 study by Cap Gemini titled “Smart Money. How to drive AI at scale to transform the financial services customer experience” reveals that 60% of a sample of French clients of banks or insurers say that the value they received out of their AI interactions with banks and insurers was not-existent or lower than that expected. (<https://www.capgemini.com/wp-content/uploads/2020/11/Report-AI-in-CX-FS.pdf>) (see page 10)

Another reason for the lack of success of robo-advisors is the narrow range of financial instruments that they offer (generally limited to ETFs).

In our opinion, this limited investment universe, based on a restricted list of investment objectives, cannot allow to develop comprehensive investment advice, taking into account the global situation and needs of a client.

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

No, FBF has not identified barriers preventing firms from offering/developing semi-automated means like robo-advice.

We rather think that the limited success of robo-advisors in attracting flows of investments is due to their difficulties to offer a large range of products and services and to reluctancy from investors to trust in tools without human interaction.

**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.**

As mentioned above, we do not believe that the limited development of semi-automated tools is due to *barriers*, in particular legal barriers, but can be first explained by the reluctancy from retail investors to use tools with no human contact.

**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?**

As mentioned above, FBF considers that there are no legal barriers to the development of semi-automated means like robo-advisors, but probably other obstacles hindering their developments (like a narrow range of products offered and cultural mistrust towards tools without personal relation).

**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.**

You can refer to the other questions’ responses.

**Q22: Do you consider that the existing MIFID II 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.**

FBF believes that regulation should be technology neutral and should not lead to a specific regime for robo-advisors (or for any other digital information means) or to particular exemptions from the MIFID II current rules.

**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 preliminary comment, FBF notes that there is no precise definition of “brokerage services via online platforms” and that it is difficult to understand which type of service/activity/actor ESMA refers to.

FBF considers that the MiFID II framework already contains a lot of protection for inexperienced investors (through appropriateness/suitability tests, product governance, best execution requirements and so on).

Thus, in our view, no more rules are needed for regulated firms. For instance, we do not believe that the introduction of an appropriateness test would be useful for a client using an execution-only service (when trading non-complex financial instruments).

More importantly we think that the regulatory and supervisory focus should be put on investor protection for clients using unregulated online platforms or purchasing non-regulated products such as crypto assets.

Finally, beyond regulation, it would be essential for EU Member States to work to strengthen the financial skills of investors, from an early age, probably in school context.

**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.**

In a recent past, some EU brokers offered non covered CFDs where profits for the house stemmed from losses for clients. These activities raised major issues of conflicts of interests for these firms.

These brokers should not have been authorized to offer these financial instruments throughout the EU

to retail investors who did not have sufficient knowledge and experience to duly appreciate the risk of loss they were exposed to.

**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.**

Today rules relating to complex products already exist within the legal framework of MiFID II regulation These rules reinforce protection for retail clients investing in such products. For instance, the use of the execution-only service (with no assessment of the appropriateness) is not allowed for complex products.

Thus, FBF believes there is no need for additional regulatory requirements regarding complex products.

**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, FBF notes that there is no precise definition of “margin trading” and that many situations, firms or products can be included within this definition.

FBF considers that the main problems raised by this margin trade come from certain non-French firms acting on the French territory under free provision of service which do not comply with product governance requirements, disseminate aggressive and unbalanced advertisements online and carry out reduced appropriateness tests.

Thus, rather than drafting new rules, it would be more efficient to intensify supervision towards these firms most of which have been authorized to provide their services EU wide.

**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.**

As mentioned above, FBF does not believe that changes in the MIFID II framework are necessary.

However, national competent authorities in the EU should pay particular attention to certain authorized firms that offer “social trading” without strictly complying with all MIFID II rules. Some of them provide a “copy trading” service that is similar to individual portfolio management even though they have not been authorized to provide such a service in the EU.

In addition, national competent authorities should be given additional powers to struggle efficiently against unauthorized investment firms that often engage in fraud.

**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.** The term

PFOF is used to describe a wide array of situations. However, FBF considers that it is crucial to distinguish situations depending on:

* the targeted audience (wholesale or retail clients),
* the asset classes (e.g. stocks, bonds, securitized derivatives…),
* the market model, their product pricing dynamics and the potential impact of the PFOF on the market liquidity (for example, a PFOF on an illiquid stock may not be compared with a fundamentally distinct zero commission brokerage agreement concerning warrants and turbos).

It is also crucial not to confuse PFOF arrangements with zero commission brokerage or “free trade campaigns”.

**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.**

Yes. But PFOF is not necessarily objectionable.

However, we see that certain investment firms (which are not based in France but provide cross border services within the EU) practicing PFOF without duly respecting all MIFID II requirements: without complying with best execution rules, without real transparency on their remuneration etc.

These firms should be more strictly supervised in their home State.

However, FBF considers that changes in the actual legislative framework is not necessary.

**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 agree with the concerns that ESMA stated in July 2021.

We consider that investment firms aimed by the ESMA’s statement should be supervised more carefully.

However, we do not see needs for legislative changes.

**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).**

Yes, a recent study by the Autorité des marchés financiers (AMF) shows that “new-brokers” or “zero-commission brokers” have taken a significant part of the total trading market of financial instruments negotiated in France by retail clients via investment firms based in France and of financial instruments under AMF supervision, since the beginning of 2018.

You can refer to:[20211129-etude-a-publier-vfinale-en.pdf (amf-france.org)](https://www.amf-france.org/sites/default/files/private/2021-11/20211129-etude-a-publier-vfinale-en.pdf) (especially page 8 to 16)

**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, FBF has no information on these brokers’ business models.

**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.**

We do agree with the concerns stated by ESMA in its statement dated of July 2021, but we do not conclude to the necessity of legislative changes.

**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 19 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?**

There is no precise and undoubtful regulatory definition of “gamification” and the FBF considers that this concept refers to a great number of constantly evolving techniques (largely inspired by behavioral finance).

Therefore, we believe that it would be pointless to try to regulate these techniques, since if any regulation were enacted, it could quickly be circumvented or become obsolete.

**Q35: The increased digitalization 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.**

Yes, some online brokers authorized in certain EU States seem to comply incompletely with MIFID II rules.

Supervision of these brokers should be intensified in their home State, under the monitoring of ESMA.

**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, retail clients, especially the youngest ones, use social media more and more. Il is difficult to appreciate what is the influence of these media on their investment decision making, but this influence is certainly increasing.

This phenomenon exposes retail investors to the risk of relying on rumors, unverified information or even misleading information and to the risk of being victims of fraud.

**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?**

The main advantage of the growing use of social media is that it attracts new categories of investors who, until now, were not interested in investing on these markets.

The main risks are linked to the dissemination or unfair, biased or even false information disseminated by unregulated players (like “influencers”) as well as excessive risk taking

In this regard, FBF fully shares the concerns expressed by ESMA in its press release published in October regarding the increasing use of social networks by retail investors.

FBF strongly agrees with the conclusions of this release which underlines that retail investors should be aware of risks associated with relying on recommendations posted on social media when making their investment decisions.

Such statements as well as awareness campaigns for retail investors should be regularly promoted by competent authorities.

**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.

Our members do outsource marketing campaigns to online platform providers/agencies that execute social media marketing for them.

Sometimes they only distribute banners ads on the group’s brand on the internet.

**Q39: Have you observed different characteristics of retail clients, such as risk profiles or trading behavior, 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, FBF does not have any information or data on this subject.

**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,

**Q41: Have you observed increased retail trading of “meme stocks”, ie 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,

**Q42: Do you consider that the current regulatory framework concerning warnings provide 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 like banks or investment firms, there is no need for more rules or warning requirements.

But it should be considered whether some rules should be applied to a wider range of entities/natural persons (influencers)/forums etc.

In this purpose, national competent authorities should intensify their supervision of investment recommendations posted on unregulated social media platforms.

**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.**

The concept of open banking has been introduced with the revised Payment Services Directive (PSD2). But it should be noted that payment transactions differ significantly from transactions on financial instruments. While payment transactions usually concern payment for a service, transactions with financial instruments involve investment decisions and the expectation of returns. Given the difference in nature and the greater regulatory burden associated with transactions on financial instruments, it would not be relevant to transfer the requirements introduced under PSD2 to transactions on financial instruments.

Furthermore, we do not see any benefit for the investor if a third party is able to check his securities account. In contrast to payment accounts where the knowledge that there is enough money enables the third party to initiate a credit transfer and constitute an alternative to other payments, the knowledge which instruments the client has already purchased does not allow the third party to recommend a certain transaction. Indeed, such a recommendation can only be given after the client has been questioned about his objectives (including his risk tolerance), his financial situation (including his ability to bear losses), his investment horizon etc.

**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.**

The main risks of implementing an open finance policy involve sharing of financial data between different players beyond the banking sector that do not fall under financial supervision. These risks are especially related to security, fraud, and data protection.

Third party providers from non-EU countries (mainly GAFAs or BATHX) could have access to very numerous and sensitive personal data, with a risk of dissemination of these data and of use for unauthorized purposes.

We would like to emphasize the fact that applications for deposit accounts aggregation already allow clients to visualize their assets in each of the banks where they hold an account, which may be convenient for a few of them.

However, this type of application is of no help for the banks themselves, which do not have this comprehensive vision and therefore are not able to improve the services offered to the relevant clients.

Hence, beyond the customer himself, the non-official purpose of these applications is mainly to offer their providers access to extremely sensitive personal data and allow them to make almost unlimited use of it.

Extended to securities accounts, such a system might give those providers a totally unjustified competitive advantage, in particular if they intend to develop robo-advice services.

Another risk of such an open finance system would be the fragmentation of investment advice provided to the clients by several entities, which could lead clients to receive conflicting advice and ultimately to misunderstand such advice and make irrelevant investment decisions.

**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 comments.

**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.**

FBF is not in favor of the implementation and development of open finance as described in the ESMA call for evidence (see page 20 to 21).

Indeed, ESMA does not explain what advantages retail clients could derive from this system. In its call for evidence, ESMA simply states that open finance could help ensure access to basic financial services to a wider range of retail clients, but EU retail clients have already an easy access to a large range of financial services, in a competitive environment.

FBF is of the opinion that the advantages of open finance are quite theoretical and cannot compensate for its disadvantages, in particular the risks of dissemination and misuse of personal data and of fragmentation and contradiction of the advice given to retail clients.

Ultimately, this lack of benefits for clients would probably be the main obstacle to the development of open finance if it were implemented. be the main obstacle to the

**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, not in the open finance context as mentioned in the ESMA call for evidence.

**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 comments.

**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.**

A high level of security and protection of client personal data and a strict level playing field between all market players would be essential conditions, which are far from being met for the moment.