

Rome, 14<sup>th</sup> March 2024  
Ref. no. 25/24

To ESMA  
European Securities and Markets Authority  
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*Via ESMA website*

**Object: Assoreti response to ESMA Discussion paper on MiFID II investor protection topics linked to digitalisation [Ref.: ESMA35-43-3682]**

Assoreti – the Association of intermediaries which provide investment advice service through their network of qualified natural financial advisors – has gratefully responded to your invitation to provide comments about the investor protection linked to digitalisation.

The intermediaries that Assoreti represents are banks and investment firms; they are motivated to ensure that retail investors receive the same degree of protection across the EU and across all investment products and distribution channels, including digital ones.

Distance marketing of financial services via the internet is on the increase. Financial products and services can be marketed on social media, for instance, through affiliates and influencers. As a result, there is an increasing risk that investors could be pushed to make decisions without considering the potential consequences and risks implied, and that they could buy financial products that don't meet their needs, objectives, expectations or other characteristics.

In this contest, Assoreti wishes to convey its views on some broad features that it believes are important for market integrity and investor protection (see paragraphs 1, 2, and 3) and on some issues on layering (see paragraph 4).

***1. Inclusion of promotion in the scope of investment services***

We believe it would be useful to draw ESMA's attention to the Italian legal framework concerning promotion and placement of financial instruments and services. Based on thirty years of experience, we are confident that the Italian framework ensures an adequate level of protection for both investors and the market, and hence, it deserves to be considered as a model for European legislation.

As reminded by ESMA in the Discussion Paper, in Italy, the online promotion and placement of financial instruments and services to retail investors can only be



conducted by intermediaries which are authorised to provide investment services mentioned in the Annex I, Section A, points 6 and 7 of the MiFID II, pursuant to Article 32 of Legislative Decree 58/1998 (Italian Consolidated Law on Finance so-called “TUF”) and articles 125, 126 and 127 of Consob’s Regulation 20307/2018 (known as Intermediaries Regulation).

More specifically, the promotion is intended as an offering or invitation to enter into an agreement for the provision of investment services and the purchase of financial instruments, and it is reserved to the aforementioned authorised subjects, due to investor protection needs that this activity entails, even if investment transactions are not completed as a result of it.

As a first consequence, and according to MiFID II, influencers and other entities not authorized to provide investment services may not promote investment products and services unless they do so on behalf of an authorised intermediary. Outside of a mandate received from such intermediary, influencers and other unauthorized parties can only carry out a generic activity as introducing broker (“*segnalatori di pregi*”) or they can only provide general recommendations addressed to a wide audience of (potential) investors for purely informative purposes (under the MAR regime and also under the Directive 2000/31/EC on electronic commerce and the Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market).

As a second consequence, the promotion of investment products and services is still carried out by authorised intermediaries who, even when they use influencers and affiliates, are required to apply the rules of transparency, product governance, conflict of interest and inducement as well as any other rule of conduct (for example, appropriateness or suitability) laid down by MiFID II, according to the nature of the assignment conferred to them, the messages spread through them and the recipients’ audience. This statement is based on the idea that MiFID II seeks to be technology neutral, as this Authority has already emphasized.

## ***2. The use of affiliates and influencers***

As said above, the Italian framework allows only authorised intermediaries to promote investment products and services via distance means, including digital ones. Such promotion is carried out by these intermediaries under their own responsibility and in accordance with MiFID II, even where they use a marketing strategy through digital channels (blog, website, podcast, forum) that include third parties (such as affiliates and finfluencers) who work on social media.

We believe that MiFID II already provides an adequate balance between the investor’s protection and the exercise of marketing activities. Therefore, no additional regulations are required and all existing rules must be followed correctly while using affiliates and influencers. Moreover, it’s in the primary interest of the authorised intermediaries to act in accordance with the applicable law and to put in place all necessary controls to prevent affiliates and influencers from acting that harm intermediaries’ market reputation.



### **3. Conclusions**

We are unsure whether MiFID II can be interpreted in the same way as the Italian framework described above, in which the promotion using distance means is expressly reserved to authorised intermediaries. If so, could provide a useful explanation; if not, we hope that ESMA can entrust the Italian framework and direct its power to incorporate it in the harmonized MiFID regime; and in the meantime the MiFID II could and should be emphasised to remember authorised intermediaries that they are already obliged to respect all the MiFID rules when promoting their products and services through affiliates and influencers.

In this way, we agree with point 64 of Discussion Paper, in which ESMA states that the firms are and will continue to be responsible for how the selected affiliates communicate about the firm and the financial services as well as they have to monitor the marketing communications and practices of affiliates they have decided to partner with. More generally, we agree with all of the points of Discussion Paper where ESMA recalls the application of existing rules (see for instance points 81 and 82).

### **4. Layering**

We agree with ESMA statement about the value of digital tools in organizing and displaying more efficiently key information to investors, including through layering techniques. In this regard, however, we would like to point out that these techniques, which are not yet in use by the most of Italian intermediaries, should not be imposed but rather tailored to the nature of the message and the information that needs to be shared from time to time with investors.

In addition, layering techniques may not be appropriate for merely advertising messages. In fact, given that they must not be misleading, the advertising messages already refer to the intermediary and include disclaimer required by law; therefore, it does not seem appropriate to charge them with additional information that would be better suited for the pre-contractual messages exchanged with investors or groups of investors (or potential investors) for the purpose of concluding investment transactions (where is the case).

Regarding advertising messages, we therefore believe that it should be left to the prudent assessment of intermediaries to decide whether or not provide more information, also taking into account their own organisational choices for any following interaction with investors interested in signing a contract.

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Assoreti would like to thank you for your attention and remains available for any clarifications.

Marco Tofanelli  
