European Securities and Markets Authority

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.

The Advisory Committee of the CNMV (Spanish National Securities Market Commission) has been established by the Spanish Securities Market Act as the consultative body of the CNMV. This Committee is composed by market participants (members of secondary markets, issuers, retail investors, intermediaries, the collective investment industry, etc.) and its opinions are independent from those of the CNMV.

The Committee, welcomes the opportunity to share his views and concerns on the topics covered by ESMA's call for evidence. The Committee is aware that financial markets are facing relevant changes, especially regarding sustainability and digitalization and, therefore, it understands the objective of the authorities to consider any necessary improvements/amendments/adjustments that may be needed with regards to the investor protection regulations.

As a general approach, the following are general concerns/general comments:

(i) **Investor protection:** Retail investors' protection is based to a certain extent on providing investors with an amount of information whose concepts, content and extension may not comply with the ultimate goal of protecting them.

While the implementation of MIFID/MIFIR has meant more information for investors, it implies an increase in precontractual, contractual and post-contractual information.

The information provided to retail clients remains in some cases, complicated, redundant and of doubtful usefulness.

A retail investor receives a significant number of documents and information, contracts, tests, policies, etc, including new concepts for them like different type of risks, inducements, conflict of interest, better execution, client assets' protection, etc, and he/she is required to handwrite and execute a number of documents whose comprehension requires time and dedication by the investor, and doubts can be as to the level of understanding that an average retail investor may achieve.

The Committee believes that research should be made among EU citizens and potential retail investors to understand which aspects they really valuate among all of the current measures to protect them**.**

(ii) The importance of ensuring **legal certainty**.- While The Committee shares the opinion that investor protection is of utmost importance in order to promote efficient and safe markets for consumers, it is essential to achieve legal certainty by defining a clear and reliable framework for intermediaries/financial institutions and other market operators so that they can undertake their activity in a safe and trustful way.

(iii) In this regard, as explained in Q9, in relation to sustainable investments regulation

some adjustments should be made in order to avoid legal uncertainty, useless costs for entities and clients being confused by legal changes introduced in a short time.

AS several pieces of legislation will entry into force this year and coordination is essential in two different aspects: the concept of sustainable preferences, won`t be clear until Regulation 2019/2088 RTS are definitely approved and implemented, and an alignment of the application dates for Delegated Regulation 2021/1253 and Delegated Directive 2021/1269 makes sense as both pursue the objective of incorporating sustainability factors, preferences and risks into the MIFID 2 framework, so an alignment of MIFID implementation dates and SFDR RTS development should be considered

(iv) Need to avoid **regulatory instability.**- The publication of new regulations and the periodic review of those already in force give rise to continuous changes in the "rules of the game". These changes require time and significant efforts (economic, administrative, technological, etc.) in order for firms and other market operators to implement the new regulatory requirements and, in addition, gives rise to a lack of legal certainty regarding which will be the applicable framework in the short/medium term.

An example of this is that during the last two years, the investor protection framework has been an area of review in the context of MIFID 2/MIFIR review, the so-called MIFID Quick Fix process, the European Commission's delegated acts as regards the integration of sustainability factors, risks and preferences into certain organizational requirements and operating conditions for investment firms, PRIIPS, AIFMD, UCITS, etc.

Consequently, any potential amendments should be carefully analyzed in order not to impose unnecessary new burdens and relevant costs to the industry.

(v) **Level playing field**.- Ensuring a coherent regulatory framework and supervisory convergence are important parts of ESMA's objectives.

It is of utmost importance to guarantee a harmonized market and a level playing field. Some of the investor protection rules have been global in design but local in its implementation (i.e. implementation was undertaken by different national authorities). This has indeed created unbalanced situations in different European countries and, on occasions, the proliferation of national initiatives that threaten the existence of a level playing field and hinder cross border activity, especially in the context of investor protection. In view of the above, we believe that greater coordination between competent authorities is necessary in order to help to achieve a coherent implementation of any new framework and a level playing field for all the financial system. A uniform implementation of rules across the EU is of utmost importance in order to enhance consumer protection and confidence.

(vi) **Digitalization.-** Investor protection regulation needs to reflect ongoing developments and, in particular, digitalization. In this respect, new obligations that are not related with the scope of the investment firms' activities such as navigability requirements, certain measures addressed at limiting risks for clients, proof of delivery or access by the clients, etc., should be established only based on clear arguments, avoiding additional unnecessary burdens.

(vii) **Financial literacy.** Together with the information provided to retail investors it is considered of upmost importance that retail investors make significant progress in terms of financial education, so that they are sufficiently empowered to assess investment options and to take informed investment decisions. It is obvious that investing in the current scenario where digital capacities are required raises as a new element to pay attention to in the investors education process the use and knowledge of digital means as well as their main features, benefits and risks. In this sense, we consider financial literacy and digital education as effective tools to ensure investor protection.

(viii) **Selling practices.** Together with information it is also relevant to pay attention to selling practices applied to retail investors.

2.1 Disclosures

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

The implementation of MIFID/MIFIR has meant more information for investors, it implies an increase in precontractual, contractual and post-contractual information. Investors have more information which may be positive in terms of understanding and comparability amongst products, but an increased amount of information may contribute to greater confusion of clients, having the opposite effect to that pursued by the regulation as stated in answer to Q1 above.

Thus, the information provided to retail clients is to some extent complicated, redundant and of doubtful usefulness. These undesired consequences would be avoided if the MiFID product disclosure include the same wording and document structure, defining standards whenever an Investment firm presents a particular instrument to clients.

This would be positive, at least in relation to some pieces of information that are common for all the entities and a standard would help the investor to understand the information, for example, the description of "what is this product" section.

If applicable, this option could be considered in relation to these products that are more standardized. The more effort made in this sense, the less misunderstanding will suffer clients under the decision-making and comparable process.

In addition, in relation to comparability between products, the key investor information document was precisely born with the objective, amongst others, of promoting such comparability. Consequently, it is not perceived a need for amending MIFID 2 requirements in this regard but any necessary amendments would be implemented under the PRIIPs or similar standardized framework instead.

Furthermore, introducing new requirements in this regard could result in more inconsistencies/overlaps between the PRIIPs and MIFID 2 rules.

In addition, it keeps being really relevant that information be provided to retail investors in their own language to make all information materials really accessible to them.

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.

Information on costs and charges remains too complex for retail investors to understand, and a simplification would really help and it would also facilitate comparison among products.

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

MIFID 2 and PRIIPs should be aligned with regards to the possibility of providing the KID/information on the financial instrument/service after the conclusion of the transaction/service.

There are cases where due to the nature of the activity (for instance because immediacy is required or is a recurrent activity) it is essential to keep the possibility to provide with the Key Information Document (or other pre-trade information) after the conclusion of the transaction under certain circumstances (i.e. art. 13.3 of PRIIPs Regulation, MIFID Quick Fix, etc.). The conditions to provide the KID after entering into a transaction are very strict and should be made more flexible for clients that trade on a certain family of product quite often.

This should be equivalent to the amendments set out in Article 1(4) of Directive 2021/338 (the “MiFID quick fix”) on the delivery of information on costs and charges after the conclusion of a transaction under certain circumstances.

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.

Although based on the work in the field of Behavioral and Experimental Finance it is not easy to recommend and establish concrete measures, we know that:

1. There are well-identified and empirically tested investment behavior biases that move investors away from economic rationality in their decision-making process.

In this sense, these biases should be aspects that must be taken into account in the design and establishment of regulations aimed at protecting the retail investor.

For example, in several lines of actions already initiated, these biases should be taken into account:

• In increasing the financial education of investors as the first step in investor protection to improve decision-making in managing their savings.

• In the communication channels of the regulators, with a greater presence in their warning messages regarding the prevention of investors on certain investment products and agents.

Ultimately, many of the biases identified by Behavioral Finance research are easier to exploit in the digital realm. In this sense, regulation should be able to establish or promote prevention measures or campaigns that are much more present and visible in digital media and social networks. Information and risk warning issued by supervisors should reach effectively to clients. For this, additional efforts should be made, and supervisor should have at their disposal the necessary operational and financial means.

Also, the establishment of standardized formats for information, particularly when services are provided via digital means, and an adequate supervision on all the parties involved in these cases are positively valued. In this sense it should be assessed whether to include other entities not currently regulated within the supervisory perimeter, under the principle that same risks require same regulation.

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.

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?

Sustainable investment main hurdles for retail investors are not only the lack of products or product information but more also the absence of homogeneity in the concept of sustainability across entities and investment solutions (to be partially solved by SFDR).

Additionally, most investors continue to think sustainability and profitability is a trade off instead of a different investment option with probably a better risk profile including non financial objectives aligned with some specific values.

In any event, investors are increasingly interested in ESG investments, and information regarding financial products should then be disclosed to consumers in a clear, standardized, and accessible manner to non-expert consumers.

When it comes to ESG investments, the regulatory framework is becoming very complex and, even acknowledging the major efforts made by the ESAs to interpret and complete certain vague aspects of the level I regulations, the new ESG draft templates incorporated in the final report adopted by the ESAs regarding SFDR add complexity in terms of distinction of concepts and understandability by retailers.

Delegated Regulation (EU) 2021/1253 amending Delegated Regulation (EU) 2017/565 includes a definition of "sustainability preferences" where the concept of "sustainable investment" is defined by reference to Regulation (EU) 2019/2088 or Regulation (EU) 2020/852. Since the scope of these Regulations is different to MIFID's scope it becomes highly difficult or even impossible to meet such a definition in respect to certain financial instruments under the scope of MiFID II regulation. For example, amongst others, this would be the case of derivative instruments concluded for hedging purposes. It is not clear how these instruments would fit within the new regulation as, due to its particular features, it would be difficult to meet the definition of sustainability preferences in practice.

In addition, It would be advisable to have simple and easy requirements or guidelines to implement the requirements related to collect customers' sustainability preferences in a more operational and easier way.

Finally, an alignment of the application dates of the different regulations regarding sustainability would be desirable. In particular:

- it would make sense that the implementation date of Delegated Regulation 2021/1253 was aligned with the application date of Delegated Directive 2021/1269 as regards the integration of sustainability factors into the product governance obligations. Given that both, Delegated Regulation 2021/1253 and Delegated Directive 2021/1269, pursue the objective of incorporating sustainability factors, preferences and risks into the MIFID 2 framework we understand that what would make sense is that they apply from the exact same date;

- taking into account that: (i) the definition of sustainability preferences incorporated in MIFID 2 for the purposes of the suitability assessment refers to the Taxonomy and SFDR regulations; and (ii) the regulatory technical standards developing SFDR have been delayed (what also impacts in the Taxonomy framework) we understand that it would make sense to postpone the date of application of Delegated Regulation 2021/1253 and Delegated Directive 2021/1269 until the level 2 of SDFR regulation has been completed. Otherwise, the misalignment of the application timelines of the aforementioned rules will create great legal uncertainty for investment firms and huge confusion for their clients.

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?

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.

2.2 Digital disclosures

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.

While younger investors are more familiar with the use of digital means for investment, it is perceived that more and more investors are using digital means for their investment process, including access to information.

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.

Easy access to digital signatures facilities together with security and legal certainty on communications with investment firms' clients are very relevant instruments to guarantee that clients have access to the relevant information.

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.

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.

Information requirements and documents are originally conceived to be provided in paper. Such formats are accurate for the provision of information online but may not be suitable for the provision of the information by other means (such as smart phones).

Thus, given that the use of digital disclosures is to be promoted, requirements on information and documents should also be adapted.

There must be clear rules to prescribe presentation formats such as font size, use of designs, colours etc that facilitates that the relevant information reaches retail investors.

In any event, any regulatory measure in this respect, should be carefully analyzed in order to avoid imposing unnecessary technical burdens and avoiding also unnecessary costs.

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.

Specific reaction is needed from regulators but also from supervisors. Additional efforts should be made by supervisors to reach the general investors community and in general retail investors with their information and risk warnings.

Additionally, as stated above, establishing standards would be of help.

2.3 Digital tools and channels

2.3.1 Robo-advisers

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,

There is not a perception that interest for Robo-Advisers is being increased.

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

El Robo-Advisor is a very interesting model with a great potential to be developed.

However, its development should be more focused in permitting advice to investors based on the investors' profile, not being entirely focused in a very personalized advice.

Semi automated advice for personalized investment advice may find some difficulties that will be solved if, together with a more personalized advice where the intervention of an investment adviser is required and it will be more frequently provided via face to face meetings, advice based on investors profiles be regulated and permitted.

This would also allow for a major comparability among different providers in the interest of retail investors.

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.

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?

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.

Access to investment advice via Robo-Advisers is an opportunity for retail clients to invest under advice from professional investment firms.

Please see answer to question 18 regarding potential measures for an increased development of this opportunity for investors.

In addition, in relation to robo advisors, attention must be paid to transparency, terms of buying process, reporting, communications, etc, due the fact that relationship with clientes is developed with less human contact and on an authomatic basis.

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.

As stated in answer to Q18, it could be analyzed the possibility to define an investment advice based in investors' profile as additional to a more personalized investment advice.

2.3.2 Online brokers (lessons from the GameStop case)

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.

While regulation can be complied with by online platforms or brokers, more complex products should be distributed to retail investors paying more attention to the channel, and probably requiring in a number of cases, a face to face relationship.

Attention should be payed by regulators and supervisors so that all platforms complying with the applicable rules in a similar manner avoiding unlevel playing field here.

Conversely, for liquid products unnecessary burdens and warnings could be eliminated, so that investment services provision be easier for entities and investors.

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.

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.

The way these platforms are operating is something to pay attention to. But at the same time, they are allowing a number of investors to access securities markets in an easy way, and always under the investor protection regulation.

Thus, both elements must be taken into account. The positive role played by these platforms but with close scrutiny that investor protection rules are complied with.

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.

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.

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.

It is welcomed that the European Commission and ESMA intend to assess the compatibility of PFOF practices with MiFID II/MiFIR provisions.

The Committee is aware that payment for order flow (PFOF) is a practice in Europe.

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A PFOF scheme represents an incentive for the broker to direct orders to the bidder offering the highest payout rather than to the venue offering the best execution, which can represent a price deterioration and limit the choice of execution locations for retail investors to only those offering PFOF.

According to Article 24 of MiFID II, inducements must be justified by a higher level of service. They must not benefit the company without a tangible benefit to the customer; and for continuous inducements, there must be continuous benefits for the customer. This is hardly the case in respect of PFOF schemes and practices.

In terms of transparency, investors are given the impression that the provision of services are for free while this is not really the case. This poses a serious concern as regards transparency to investors.

It is relevant, in this respect, that those brokers that offer an explicit cost zero or close to zero to retail investors end up applying an implicit cost that does not allow them to obtain the best execution. This implicit cost is generally more difficult for the retail investor to contrast.

In addition MiFID II requirements for better implementation and conflicts of interest are difficult to meet in the PFOF practice.

As a consequence of all the above, the Committee think that there are strong regulatory and retail investors protection concerns regarding the PFOF practice, and that EU regulators should guarantee that all the above consequences are avoided, seriously considering the ban of PFOF.

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.

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

PFOF activities have a detrimental impact on competition between execution venues or market makers. PFOF creates a "pay-to-play" market between venues and/or market makers. In the long run, those who pay any or the highest PFOF will prevail.

Moreover, a non-uniform approach of NCAs regarding the authorisation or prohibition of PFOF distorts competition between brokers in EU Member States. Currently, brokers from countries with strictly interpreted bans are disadvantaged by cross-border offerings from other brokers who cross-subsidise their offerings through revenues from PFOF.

PFOF can also undermine the efficient and transparent price formation process on the basis of matching of buy and sell orders. The creation of a "pay-to-play" market and the conflicts of interest inherent in PFOF lead to a reduction in transparency and worsen the price building mechanism to the detriment of investors but also for issuers raising capital in the financial market for growth and innovation.

There is also a deterioration of competition and transparency. PFOF leads to an environment where there no longer is competition on transparent prices but only between market makers and execution venues paying for order flow – not providing best execution. Transparent trading plays a central role in price formation as a well-functioning market is where information is easily available.

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).

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.

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.

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?

Gamification techniques are a great opportunity for retail clients and for the promotion of securities markets among them.

These techniques should be used to extend financial culture among investors and the society as a whole.

Risks and threatens in this ambit should be dealt with by guaranteeing that the provision of services be made only by regulated and supervised entities with compliance of investor protection rules.

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.

The Committee considers that the following are other items to pay attention to when defining a comprehensive retail client protection policy for the EU on a increasingly important cross border services provision enviroment:

- Cross border provision of services by third counties' entities. Where third countries' entities provide services to retail clients in the EU it is important that all the relevant and applicable EU rules are applied and properly supervised. This would allow not only a level playing field for the EU industry, but will also reinforce retail clients' protection.

- Cross-border provision of services among the EU. Two elements are relevant here: (i) that supervision by the Home Member State NCA be effective regarding the provision of services to retail clients in other Member States and (ii) that the compensation schemes cover be clearly regulated and established in these cases.

- Retail clients need clear indications as to the legal regime and the cover when they invest in some new products, such as some crypto assets and in the future, other potential new products. During the time that MiCA be finally passed and considering that other crypto assets will fall outside the MiCA scope, the mere fact that retail clients are acquiring these kinds of assets through regulated entities does not guarantee that they are covered by a number of protective rules such as conduct of business rules and compensation schemes rules. The fact that when a retail client decides to move from one investment to another within the same entity he/she is losing protection is something very relevant.

Retail clients may well not be aware of this, and additional efforts should be made to have clear rules in this respect, and to get retail clients adequately informed so that they can take investment decisions with all the relevant information at hand.

Role of social media

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. There is an increasing reliance of investors and particularly young investors, on information received via social media. This is something regulators should be focused on under the principle that investors need protection from false or misleading information whatever the information source may be.

The Committee believes that this is a very relevant issue.

Social media do not have effective controls in this respect and this is something to pay attention to and in respect of which regulatory and supervisory measures may be proposed and discussed. The principle the same risks require same regulation adapted when needed is very relevant here.

For instance, influencers might well be used for sending supervisors and regulators messages and warnings to the public in general.

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?

Social media have a positive impact since they allow securities markets to be better know and making investment in them more familiar to retail investors. However, care should be taken to avoid investors receiving misleading or false information.

This risk may not only harm retail investors but also reduce the attractiveness of securities markets for these investors in the medium term.

The Committee considers that regulation is required for all players under the principle that same risks require same regulation. And this may apply to some players that today are outside the regulation and supervission perimeter, if needed.

In addition, supervision should be consistent and enforce the rules in place for all current regulated and future regulated players.

This becomes even more relevant where the sources of information and the contracting point for retail investors are increasingly based in digital means where rules on publicity and other

retail investors' protection rules need to be adapted to be efficient.

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?

There are investment firms that use social media in their campaigns.

This is positive since it promotes securities markets knowledge among the population and potential investors. But obviously, both entities and supervisors should be alert that the relevant information and messages reach investors and potential investors.

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.

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.

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.

Risk warnings

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.

As stated above, regulators and supervisors should be more active in social media to make their information, messages and warnings be reached by their addressees, the investors.

Use of the same communication techniques that other operators use in social media would guarantee access to those messages and warnings.

In order to achieve this and to make it possible for supervisors to discharge their functions in the more complex and expensive social media and digital means scenario, supervisors should be granted the necessary operational and financial means.

Open finance

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.

Open finance approach in the ambit of securities markets may have the benefits of disruption, innovation, competition, while conserving customer centricity.

Clearly data – and fair rules around its sharing and usage – is the heart of the matter for digitalisation. Europe has already showed in the payment space its ability to lead the way by creating the right conditions for data to be shared to ensure consumers get the best outcome & competition develop in payments.

When it comes to investment services, more data can help improving services quality which relay on the quality and amount of information available to best advice customers.

Increasing competition will also be an effect of open finance. It is important, though, to ensure that this increased competition does not create an unlevel playing field and is at the service of disruptive innovation and not just cost-focused.

When importing the payment services experience to investment services, attention should be paid to the specificities of the different investment services and the role that specific persons such as investment advisers or entities qualification can play for an investor.

Increasing the quality of the service thus, should not be based only in cost since other elements not always clear to retail clients' eyes should also be taken into account to identify an increase in service quality.

Regarding risks, in addition to what has been said regarding the specificities of the investment services quality assessment, the Committee identifies the risk for investors of data privacy when third party providers cannot offer the same level of security and privacy (personal data may be misused or mishandled), higher cyber-fraud (theft of personal data), access to riskier products without the correct information and more difficulty for customers to access correct tailored advice.

But the Committee considers that from a more general perspective, missing this opportunity may also be considered as a risk, although we must take into consideration that open finance could lead to the creation of an unlevel playing field if it is not properly designed.

As regards competition, it is important that data access be opened to all market participants. In addition, much of EU's citizens and businesses data are in the hands of few companies. Major Bigtech players today hold extremely relevant pools of data which have been generated by EU citizens & businesses

These players have shown us the strength and opportunities that derive from combining a wide range of data, arising from different contexts. They are also providing financial services now, being directly (as regulated entities) or indirectly (as technology providers or by orchestrating financial ecosystems), improving their services by leveraging on this variety of data that they have access to.

In this respect, a cross-sectoral approach to data sharing would be more beneficial to customers than a purely financial approach that does not ease the access to data from other industries and, consequently, limit the ability of investment firms to combine financial and non-financial information.

Combining financial and non-financial information would allow investors and companies

having a more accurate view of their customers' financial situation and their preferences and necessities. As a result, investment firms would be able to personalize their advice and product offering to better cater for the expectations of the investors. For instance, more data could enable investment firms to better calculate the carbon footprint of different investments, understand their clients' cash flows and liabilities or anticipate future necessities related to critical life events and adapt their advice and service offering to those circumstances.

Data driven innovation in the financial sector will come from reusing and combining data, particularly across sectors and different market participants, including the public sector. Other jurisdictions are working in this cross sectoral approach, even acknowledging that from the operationalization perspective a gradual approach should be required, focusing on those sectors with big/high quality datasets, and always with a customer centric view. A good example of this is the Consumer Data Rights (CDR) in Australia, which started with banking, energy and telcos as a first step in this gradual approach to an open data framework.

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.

Please see answer to Q43 as regards the risk that investors data are collected or shared illegally or be used in an unfair way.

Apart from that, the main risk for retail investors is that the development of open finance does not bring the benefits it initially promised. This risk could be dispelled by involving the investment firms in the definition of the open finance framework and taking a stepped and flexible approach that allows for stakeholder collaboration.

On the other hand, an as explained above, the development of an open finance framework, which only entails financial services data, would entail a number of risks. For instance, customers could be deprived from benefitting from their data as they would be limited to the use of data generated within the financial sector, and not to the data relevant for providing them the best financial products / services, whether these data are generated in the mobility, public sector or other data space.

As regards investment firms, the open finance framework should avoid creating or broadening data asymmetries before other players that could be entitled to access data on behalf of investors but are not required to share their own consumers' data under similar conditions.

To avoid this from happening, all third-party providers (TPPs), especially non-licensed firms having access to investment data, should be subject to similar sharing obligations on the accessibility of their own customer data. In case the open finance framework is not voluntary, but mandatory, TPPs should be subject to balanced and fair regulatory and licensing requirements.

In any case, consent dashboards are essential in data sharing frameworks to ensure

investors have a clear view of the data third parties can access and are able to keep control on them.

In addition, no framework would succeed if it does not embed incentives for all participants to join. On the contrary, a framework only driven by sectoral regulatory obligations for investment firms could lead to a suboptimal situation where participants are not willing to invest in advanced technologies or develop innovative offers.

From a more practical point of view, some of the other risks can be extrapolated from what has already been observed in the more limited scope of Open Banking: ensuring appropriate consumer protection, complying with the requirements of KYC and AML/FT regulations, as well as ensuring legal responsibilities, GDPR obligations and cyber-resilience in a more fragmented value chain. These risks may be magnified if we rely on a system of passporting licenses given the significant supervisory and regulatory divergences within the EU.

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)?

Open Finance needs to expand the obligation to provide access to data not only from regulated financial service providers but also from other players which hold the uncorrelated data that can trigger disruptive innovation.

While empowering users and putting them in the centre, opening cross-sectorial data would also contribute to developing a level playing field in all sectors, even in the financial one, which will be beneficial to businesses across the market. A data agile economy and the benefits that can emerge from it will only be achieved if a level playing is guaranteed for all actors.

In addition, it is important to make a distinction between raw and observed data, on the one hand, and derived or inferred data on the other hand. Any data shared in an open finance framework should be raw or observed such as product information or transactional data, not derived or inferred data such as client's appropriateness/suitability profile.

Sharing of derived and inferred data should not be made mandatory or included in open finance frameworks as this type of data constitutes a crucial strategic and economic asset and is a strong element of competitiveness (intellectual property) for companies. Data which constitutes trade secrets or other business sensitive information should also not be subject to data sharing.

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

The main barrier is the absence of incentives to develop an open finance framework. As PSD2 implementation has shown, a legal obligation alone does not trigger a massive development and adoption of meaningful open finance services,

As it has already been said, all participants in the framework need to have appropriate incentives for their participation. Moreover, all the potential participants in the framework should be involved in its design to ensure the framework is implementable and embeds the correct incentives for all parties.

Lastly, establishing an open finance scenario in investment services should guarantee that the level of competition is not damaged, resulting in investors detriment if concentrating the market in very few and very large entities.

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.

The application of data portability across all sectors and the establishment of an interoperable European digital ID based upon knowledge and explicit consent and wallet are essential ingredients to establishing a citizen-centric data ecosystem.

Data portability should be promoted at cross-sectoral level, through the enhancement of the data portability right in GDPR. This data portability right should impose data holders the obligation to make the data available in real-time and through automated mechanisms similar to the conditions PSD2 imposes to access payment data.

Enhancing GDPR portability would give individuals real control over their data with more practical tools, particularly if coupled with wider use of digital identities and data intermediaries.

In a digital society, a trusted digital identity that enables electronic identification and authentication is key for citizens to access digital services, as well as for companies to identify and unambiguously authenticate their customers. This is without prejudice that some investors may well not be familiar with digital environment and they should also be allowed to continue maintaining their relationship with the relevant investment services providers in a non digital based way.

The new Digital ID framework proposed by the Commission is a very positive step, setting a framework that will enable citizens to identify and prove personal attributes to access digital services. An effective cross-border framework for trusted and secure digital identity solutions will foster digital businesses across the EU. Particularly in the financial sector it would translate into a quicker onboarding process and a better customer experience while ensuring the same level of security as face-to-face onboarding processes and will in the end contribute to further adoption of digital investment services.

To be successful, a digital identity scheme should be:

- Cross-sectorial, and open to any business that wants to use it on its customer authentication processes. Only a harmonized cross-sectoral approach will provide for the required market penetration.

- Include both public and private sectors to enable sufficient scale of adoption. In order for an eID system to be adopted by users and therefore entities can benefit from its use in on-boarding processes, it is essential that users can also use it in their private life. Digital Identity schemes issued by Member States should be open and propagated to be used in both public and private sectors.
- Being inclusive. Digital identities are actually the key to operate in the digital economy, and it must be ensured that anyone could benefit from using them.
- Protects citizens' privacy, giving users full control over his identity attributes.
- Built on a common technical architecture avoiding fragmentation and adoption barriers due to diverging standards. It is key to have a common toolbox enables the private sector to integrate without additional technical effort any solution that can be developed within this regulatory framework across the EU.
- Recognized by competent EU and member state AML authorities as compliant with the EU AML/CFT framework on identification and verification.
- Supported by a compelling and positive commercial model to drive adoption across the private sector. There should be the incentives for its development and to promote its use among the private sector that should be able to assume responsibility for security breaches (which in the case of national identification systems falls to the State).
- Cross-border. Built on open international standards to ensure interoperability instead of multiple fragmented standards.

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.

Horizontal legislation, such as the Data Act, should be in place and implemented ahead of having an Open Finance proposal. MiFID II and other relevant legislation should not be amended until an Open Finance proposal is live (or amended through the Open Finance proposal itself).

As already commented, a cross-sectoral approach to user data sharing is needed to maximize its potential and avoid introducing asymmetries between different players.

In the absence of such a horizontal approach, a sector-specific intervention based on a mandatory framework is not the best option for promoting open finance.

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.

Key conditions could include:

- an alignment and interoperability of open finance with other horizontal data

initiatives

- all potential participants should be involved in the identification of information and services to be available through third parties as well as in the definition of the rules and incentives of the open finance framework.
- to have a customer centric view, which would entail data from other sectors in across-sectoral data sharing perspective. This would deliver the best possible outcomes, products and services for both financial market participants and customers provided it has a competitive landscape.