ESMA's call for evidence – certain aspects relating to retail investor protection

FINANCE DENMARK

Memo

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2.1 Overview

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.

Finance Denmark is a business association for banks, mortgage institutions, asset management, securities trading and investment funds in Denmark. Our members are mortgage institutions, banks, savings banks, cooperative savings banks, Danish branches of foreign banks, asset managers, Danish securities dealers and investment funds.

Through many years EU investor protection regulation has focused on protecting retail investors from mis-selling, but in a way which has promoted disclosure of all potentially relevant information to all investors under the perception that if retail investors are given all information, they will read and understand the information before making their investment decisions. Adding to the complexity, different products and distribution channels are regulated by different EU-legislative acts, and processes governing especially the advisory service have grown in complexity due to MiFID II and are expected to grow even more in complexity when ESG is integrated into the framework. These facts have led to a very complex and not always consistent landscape of regulatory acts with the overall effect that investors receive too much information, which is not always consistent and leading to information overload. We consider the investor protection framework in MiFID II for sufficient and considering the existing problems with information overload for retail clients, we believe that the focus should be on simplification rather than the creation of new detailed and complex information requirements. A very important part of the forthcoming work is therefore to analyse which information is actually relevant for retail clients (e.g. total costs/fees) and to delete those rules which are of little benefit to clients (e.g. granular breakdowns of costs, illustration of cumulative effects on return, RTS 27 reports).

In the Danish as well as the rest of the Nordic market most retail investors communicate with their bank using digital tools or use digital tools such as the internet bank or apps to place an order. We believe that investor protection rules in general and disclosure rules should be technical agnostic. Retail investors should receive the same information regardless of how the financial product is distributed. The legislation should be able to accommodate all forms of distribution. The retail investor's choice of distribution channel should not determine which information

is disclosed. The presentation of the information should be adopted to the format of the distribution channel and the legislation should allow flexibility in the way the information is presented, but the information disclosed should be the same.

Furthermore, there should be horizontal alignment between legislation to ensure transparency and comparability, especially uniform information for similar investment products and services. E.g., there is a gap between IDD and MiFID II investor protection requirements. We therefor welcome ESMA's intention to coordinate closely with EIOPA, who have received a call on similar aspects regarding protection of retail investors (investing in insurance-based investment products).

When evaluating the rules, it is also important to bear in mind that the retail investor category covers a wide range of retail investors from the unexperienced retail investors investing their first EUR 100 to the experienced and knowledgeable semi-professional retail investor.

2.2 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.

Lack of level playing field

We see a problem in the lack of a level playing field in relation to other regulations and/or financial products such as e.g., IDD and crypto assets. Retail investors should receive the same information or equivalent information on investment products regardless of which financial legislation that regulates the investment product. This does not mean that we think that identical rules should be imposed on all types of financial instruments or products – at least not without consideration to whether the information to be provided is relevant for the type of financial instrument or product and the client in question.

Repeated information

When a retail investor repeats a transaction several times it seems unnecessary that the retail investor receives the same or similar information again and again and often the retail investor finds it inconvenient and irritating. It should be considered that some retail investors – who have a lot transactions – under certain criteria based on knowledge and experience should be able to opt out/choose not to receive all disclosures.

PRIIPs KID

The PRIIPs KIID is not easy to read or understand for a retail investor. The information in the PRIIPs KID is to be accurate, fair, clear and not misleading, but the one size fits all approach in a locked template sometimes leads to misleading information. With UCITS now transitioning to the PRIIP KID from the UCITS KIID we are sad to see that the historical returns will be replaced by the expected return. Even though that historical returns are no guarantee for future returns, we still find it a better measurement than expected returns.

Requirements that are confusing and should be amended:

1) Harmonizing of disclosure obligations:

- MiFID II and PRIIP as well as other cost related information should be harmonized. We should avoid providing the client with differing, not comparable information.
- Any discrepancies resulting from the provision of pre-contractual information should be addressed
- Discrepancies in the sustainability regime in MiFID II and SFDR should be addressed
- The MiFID Quick fix introduced digital information as a standard for the provision of information in MiFID II. We welcome this improvement and suggest widening the scope on all applicable information, including PRIIP, Prospectus Regulation, SFDR etc.). Clients should receive all information through one specified channel. Since the rule also refers to "potential clients", the website should be a suitable way of reaching people who are not clients of the intermediary and, as such, cannot be reached by personal communications. We therefore expect that retail investors will be facilitated in comparing the information available on the website of the intermediaries.

2) Lift unnecessary disclosure information:

Clients are significantly burdened by the constant provision of information. Especially for experienced clients this does not seem to be justifiable. Investment firms should have the possibility to adjust the amount of information a less vulnerable client receives.

Besides the aforementioned improvements we suggest lifting the following informational duties we deem to be unnecessary and burdensome for clients:

- Quarterly reporting (Article 63 in the MiFID II Delegated Regulation): The client always has the chance to request for information about his current status.
- Reporting on losses is not helpful when trading with leveraged financial instruments. Due to the leverage the reporting on losses is triggered often which burdens clients. We suggest an increase of the threshold for losses on leveraged financial instruments from 10 to 20 percent for all clients. For experienced clients it may be helpful to lift all reporting on losses requirements.

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.

The information that retail investors receive especially when receiving investment advice is too much for the vast majority of clients to grasp. Basic retail investors should be offered the relevant information in a way that makes it easy to understand and for them to make an informed decision. If retail investors are given all information (without asking for it themselves), they might be overwhelmed and discouraged from reading any of the information at all.

In general, the information requirements in MiFID II regarding costs & charges are too complex and the cost disclosures should be simplified for retail clients. Our members deal with a lot of confused clients and almost no retail clients ask for greater detail in the cost disclosures as they are entitled to according to MiFID II. In our experience, the average retail client is mostly interested in the total costs, not in granular information on different components of the costs or calculation methodologies. Moreover, for professional clients and eligible counterparties as well as more experienced segment of retail clients, the information is of little added value and increase the administrative burden. A single cost figure is enough for the vast majority of all retail clients. Hence, the minimum legally required granularity should be minimized to fewer, and perhaps just one cost figure with supplementary information on the amount of inducements received by the investment firm. We therefore generally support:

(1) simplification of the MiFID II requirements on cost & charges, and
(2) review of annex II to MiFID II so as to enable more experienced retail clients to request treatment as professional clients

The strengthened requirements on disclosing information about cost and charges to clients introduced with MiFID II has shown to be interpreted in a variety of ways resulting in the fact that the shown costs are not comparable across different distributors. For that reason, we see a need for more guidance on the interpretation of the regulation. The amount of disclosure requirements has increased. It should be kept in mind that these are additional to disclosure requirements under other regulations (cookie, personal data etc.). The information disclosed to retail investors may be perceived by the retail investors as overwhelming.

Bearing in mind that the retail investor category is very wide, some retail investors experience that they are overloaded with information that they neither wish nor care for. It could be considered if some retail investors fulfilling certain criteria based on knowledge and experience should be allowed the option to opt out of specific disclosure requirements.

- For some of the retail investors, who can always access an up-to-date overview of their investments in their internet bank, the quarterly overview that they receive in their mailbox or e-Boks[1] might be considered as spam or just annoying and adding no value for them.
- For some retail investors, who have an ongoing dialogue with their investment advisor leading to trades based on the dialogue, can provision of a suitability report based on each single contact seem like information overload and creating no added value.
- In general, it could be relevant to look into possibilities for use of layering in the information, i.e., make it possible for retail investors to access different layers of the information depending on their needs and capabilities. Reference is made to the ongoing call for evidence on the PRIIPs Regulation where this approach also is discussed.

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.

The PRIIPs regulation has limited access to products for retail investors. Partly by the scope uncertainty effecting the issuers, who are scoping out retail investors from all corporate bonds, and secondly by third country PRIIPs producers not delivering a PRIIPs KID for products. The second barrier is particularly relevant in smaller jurisdictions such as Denmark where local NCAs demand that PRIIPs KIDs are available in the local language. This is also relevant in relation to PRIIPs produced in other Member States with another official language.

Discrepancies in different parts of MiFID II

Within the MiFID II disclosure framework there is a need for clarifications relating to the concept of 'cost' e.g., the interaction between the rules on MiFID II cost & charges, best execution and SI quotes.

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

What is considered "vital pre contractual information" depends on the financial instrument in question. It is therefore crucial that there is flexibility in the EU rules which allow investment firms to adapt the information to the product at hand. In general, this will include:

[1] e-Boks is a trusted Nordic provider of secure platforms and digital postboxes, that offers companies, public authorities and private citizens an effective, secure and user-friendly platform for digital communication.

- Main product features and where applicable special features such as guaranteed returns, capital protection
- Costs (total costs, not granular breakdowns and calculation methodologies)
- Risk (if relevant illiquidity should be mentioned as a risk)
- Expected or historical returns depending on the financial instrument or product
- ESG-information
- The information included in the suitability report (however, this does not mean that all retail investors should necessarily receive the report every time).

The main policy objective from an investor protection perspective should be that the information is understandable and relevant (for the specific financial instrument) for the client to make a well-informed investment decision.

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.

Some of the practical lessons learned emerged from behavioural finance are that more information is not always better. Through many years EU investor protection regulation has focused on protecting retail investors from mis-selling, but in a way which has promoted disclosure of all potentially relevant information to all investors under the perception that if retail investors are given all information, they will read and understand the information before making their investment decisions. The information that retail investors receive especially when receiving investment advice is too much for the vast majority of clients to grasp. Basic retail investors should be offered the relevant information in a way that makes it easy to understand and make an informed decision. If retail investors are given all information (without asking for it themselves) they might be overwhelmed and discouraged from reading any of the information at all. Experience have shown that when you keep adding on information to retail investors it will end in information overload and result in retail investors not reading and making decisions based on the disclosed information.

Article 62 of the MiFID II delegated Regulation is an example of concrete rule that could leave to unintended behaviour by retail investors. According to MIFID II clients who receive the service of portfolio management or retail clients invested in leveraged instruments receive loss reports when their portfolio has declined 10 pct. in value. These reports are confusing especially for retail clients, and especially when markets are extremely volatile, as was the case during the

COVID-19 pandemic. The main issue however is the risk of retail investors acting against better judgement upon reception of such information. There is a real risk of so-called "herd-behaviour" since especially less experienced retail investors might trade based on this information in the event of market turmoil and this might not be in their best interest, as they might be better off maintaining a longer investment horizon. The rules thus risk to enforce short-termism in investment behaviour, but also pro-cyclical behaviour and unnecessary losses for clients. The 10 % Loss Threshold Reporting for portfolio management (all clients) and leveraged instruments (only retail client), currently required according to article 62 of the Delegated Regulation should be reviewed and an opt-out possibility for clients should also be considered.

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.

The legislation – especially the new legislation on sustainable disclosures – sometimes contradicts the good, simple and direct information to retail investors. MiFID II requires that the information to clients and potential clients are fair, clear and not misleading, however this is challenged by the ESG disclosures as the ESG-rules are very technical.

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.

As mentioned earlier when retail investors repeat the same actions several times, the retail investors should be able to opt out of certain information requirements if the retail investors meet certain criteria. Opting up and being categorized as professional investor is not necessarily possible or the right solution for all retail investors that could be considered semi-professional/sophisticated/experienced investors.

Q9: On the topic of disclosures on sustainability risks and factors, do you see any critical issue emerging from the overlap of MiFID II with the Sustainable Finance Disclosure Regulation (SFDR)[31] and other legislation covering ESG matters?

We welcome the ESG amendments to MiFID II and the financial legislation in general. Finance Denmark wants to contribute to the sustainable transition by helping investors make informed decisions to invest in more sustainable products aligned with their sustainability preferences. However, we would like to raise a concern of ours, as we fear that the new ESG disclosure rules are just adding on to the already existing information overload and will result in investor not reading the ESG information and thereby not making an informed decision based on the information. The information requirements on ESG are not proportional with the other disclosure requirement.

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?

See our answer to question 4.

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.

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.

We find the question a bit unclear.

The Danish and the Nordic market and society is very digital. Citizen are used to communicating and receiving all information from the public authorities digital (unless they have requested to be expected) and used to having their interaction with their bank through digital tools.

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.

Digital cost and return calculators could fulfil ex ante cost disclosures.

Illustrations can help promote the understanding of a financial product.

The legislation should be able to accommodate digital solutions as well as traditional solutions, but there is a need for more guidance on how the rules should be implemented digitally. There must be actual equality between different distribution channels. The current rules can be an obstacle in regard to full on digital implementation as digital solutions was not considered, when the rules were written. The rules might also contribute to information overload as the clients will receive the information several times.

In a digital setup it should be a possibility to link to heavier information documents such as e.g., prospectus, which are not suitable for digital distribution channels e.g., a smart phone.

The definition of "durable medium" should be reconsidered to also fit digital solutions.

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.
To ensure a level playing field there should not be more requirements nor different requirements for disclosures depending on whether the distribution channel is digital or not. A solution could be more guidance on what one should pay attention to when implementing the rules in a digital solution.

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.
Yes, but it should be general to reduce information overload and should be able to have different information layers, use links, use other tools etc.

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.
There is a need to increase competent authorities' supervision of digital disclosures and advertising behind 'pay-walls', semi-closed forums, social media groups, information provided by third parties (i.e., FINfluencers). This is important from a market integrity (MAR) perspective, in particular where retail clients invest in unregulated products and trade though unregulated platforms.
We consider this point of outmost importance in order to ensure a level playing field between investment firms and unregulated entities which can provide any kind of information related to financial instruments.

2.4 Digital tools and channels

2.4.1 Robo-advisors

Q17: To financial firms: Do you observe increased interest from retail investors to receive investment advice through semi-automated means, e.g., robo-advice? If yes, what automated advice tools are most popular? Please share any available statistics, data, or other evidence on the size of the market for automated advice.
It is our general impression when observing the trends in the market that the use of robo-advisors has increased over the past years, but the competition law sets limits on what our members can disclose on that kind of information.

As a general remark and as previously stated, we are generally a digital society, so it would be a natural development. We can see that there are solutions in the market, but we do not have data to disclose.

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

As a general comment it is important to safeguard the proportionality principle as regards suitability assessment in order for more simple and automated advice to develop further in the market and to become even better at reaching a wider audience of retail investors. That being said, we do not believe that there are unnecessary barriers hindering the take-up of robo-advice, but the AML rules set some natural barriers in regard to automated financial advice tools.

There is no current wording in the legislation, but the legislation is based on physical advice. It should also be able to accommodate the digital advice, but it is not always appropriate in relation to digital advice.

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.

There is subjectively in relation to the individual client but depends on what can be offered to the client and whether the client feels assured in investing via semi-automated means like robo-advice.

Q20: In case of the existence of the above-mentioned barriers, do you have evidence of the impact that they have on potential clients who are interested in semi-automated means? For instance, do they invest via more traditional concepts or do they not invest at all?

No.

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.

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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.

To ensure a level playing field there generally should not be more requirements nor different requirements for disclosures depending on whether the distribution channel is digital or not. A solution could be more guidance on what one should pay attention to when implementing the rules in a digital solution.

2.4.2 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.

Regulators have had a strong focus on investor protection for a longer period. As mentioned above, this has resulted in a wide range of regulations which to some extent have become very complex and also in some situations resulted in an overload of information to investors. We are of the opinion that it is not in the interest of investors to increase the regulation. Therefore, we do not see a need for a change in the MiFID II rules. Instead, we believe that amendments focusing on making it easier for retail investors to understand the information they are provided would be more beneficial.

In the consultation paper ESMA touches upon some recent cases regarding U.S. shares such as GameStop. In our view, the behaviour that was identified with GameStop is a behaviour that potentially is covered under the market abuse regulation and therefore should not be dealt with under the MiFID II regulation.

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 Denmark we have not identified or observed any conflicts of interest with retail clients in relation to online brokers.

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 there are already rules in the MiFID II regulation regarding complex products which put an extra layer of protection on retail clients, such as no execution-only trading in complex products. We do not see a need for further regulation.

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.

We would like ESMA to elaborate more on the concept of "margin trading" and what it specific stands for. Until then we do not see that we are able to comment further on this, except from what we have stated above, that we do not see a need for further regulation on MiFID II for the regulated entities.

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 stated above we do not believe that changes to the MiFID II regulation is needed for the regulated entities. In our opinion social trading is already covered by the current regulation and should be categorized as investment advice or portfolio management depending on the specific set-up.

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.

Though PFOF is not practiced in Denmark, we do see some conflicts of interest in relation to best execution when it comes to both PFOF and zero-commission brokers.

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.

Please see our answer to Q28.

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

Though we do agree with the concerns that ESMA has stated in their statement from July 2021 we do not see a need 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).

We have not observed any "zero-commission brokers" in the Danish market.

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.

Please see our answer to Q31.

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 that ESMA has stated in their statement from July 2021 but, we do not see a need for 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 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?

To our understanding there is not a common definition of the term "gamification". We would like ESMA to elaborate further on this.

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.

No comment.

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?

The social media have for sure an impact on retail investors. We do see some challenges with for example influencers with a lot of followers recommending investments without complying with any investor protection regulation. But as stated previously in this consultation the regulation regarding investment recommendations is primarily regulated in the market abuse regulation.

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?

Please see our answer to Q16.

Q38: Are you aware of the practices by which investment firms outsource marketing campaigns to online platform providers/agencies that execute social media marketing for them, and do you know how the quality of such campaign is being safeguarded?

No comment.

Q39: Have you observed different characteristics of retail clients, such as risk profiles or trading behaviour, depending on whether the respective client group bases their investment decision on information shared on social media versus a client group that does not base their investment decision on social media information? Please elaborate.

We do not have any specific observations 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 comment.

Q41: Have you observed increased retail trading of 'meme stocks', i.e. equities that experience spikes in mentions on social media? Please share any evidence of such trading and, if possible, statistics on outcomes for retail investors trading such instruments.

No comment.

Q42: Do you consider that the current regulatory framework concerning warnings provides adequate protection for retail investors? If not, please explain and please describe which changes to the current regulatory framework you would deem necessary and why.

In the market abuse regulation, there are disclosure obligations for banks and investment firms when they disseminate investment recommendations. It could be considered whether such disclosure requirements should apply to a wider range of entities/persons/forums etc.

2.4.3 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.

The benefits of an open finance approach in the field of retail investment as well as in any other area of financial services will strongly depend on how an open finance policy is implemented in the EU and whether the initiative is limited to data that is now held by banks instead of all the data that is useful in the financial ecosystem, including data from other sectors. When combining and reusing data across sectors and different market participants the most valuable opportunities for data driven innovation in financial services will arise. Combining financial data and non-financial data will give companies even better opportunities to personalise their advice and product offerings even more to the individual client.

As open banking is mentioned, we find it important to mention that this has been introduced with the revised Payment Services Directive (PSD2) and it should be

noted that payment transactions differ significantly from transactions with financial instruments. Payment transactions usually concern payment for a service, whereas transactions with financial instruments involve investment decisions and the generation of returns. We do not find it appropriate to transfer the requirements introduced under PSD2 to transactions in financial instruments as the burden associated with transaction with financial instruments differ significantly. In general, the PSD2 framework should not form the basis of any Open Finance 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.

If an open finance policy is not part of a broader cross-sectoral framework, that will enable data sharing across different types of firms, it will create an unlevel playing field and will place existing financial services firms at a disadvantage in terms of access to data.

Furthermore, as mentioned in consultation paper there are risks related to security, fraud, and data protection, when granting third parties' access to securities accounts.

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)?

When discussing sharing of data, it is important to make a distinction between provided and observed data on one hand and derived or inferred data (i.e., data whose value has been enhanced via analytics or other processing) on the other hand. Clients should be able to share data they themselves generate (their provided or observed data) through secure data sharing mechanisms. The framework should allow data holders to share their derived and inferred (=enriched) data, but as this type of data constitutes a crucial strategic and economic asset and is a strong element of competitiveness (intellectual property) for companies, it should be up to them to decide if and under which conditions this data should be shared.

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.

We believe in an open data economy approach able to facilitate the development of innovative services in a level playing field for all actors. This requires a horizontal approach rather than a sector based approached. The economic use

of data should be inspired by a set of principles that balances trade-offs between innovation, opportunities for clients and the protection of businesses and stakeholders' rights. There should also be a fair distribution of value and risks among all participants.

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.

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.

We find that horizontal legislation designed to unlock data sharing across different sectors, such as the Data Act, should be in place and implemented ahead of having an Open Finance proposal. As already mentioned in our answers to the previous questions a cross-sectoral approach to user data sharing is needed in order to maximise the potential and avoid asymmetry between different market participants.

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.

As already mentioned, a proposal on Open Finance needs to be part of a wider, data sharing ecosystem. The proposal should enable financial institutions and others to reap the potential business opportunities an open data economy can offer. This should be done in a sustainable manner and with a fair distribution of risks and value among all participants, ensuring a level playing field and addressing the current asymmetries in data sharing. A sound user centric cross-sectoral data sharing framework should be designed before any further initiatives for the financial sector are implemented.

An Open Finance framework should therefore be considered around four objectives which can only be fully attained in the framework of an open data economy:

1. Strengthening the role of the consumer through user-centric data sharing
2. Enabling Data-driven innovation
3. Enhancing fair competition between market participants
4. Consistency with other data-sharing initiatives