

## **FFI's response to ESMA call for evidence on certain aspects relating to retail investor protection**

### **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 information overload, the amount of specific and granular information is vast
- the comparability between the same kind of products is usually possible (e.g. funds) but comparing products with the different main features (e.g. investment with the hedging purpose) is difficult.
- cost disclosure regimes differ and overlap between MiFID II and PRIIPS
- the pdf-format doesn't fit well to the digital environment, where information is read with the mobile device and that's why it should be given rather in layered manner
- a freedom to choose the most suitable format to present the pre-contractual information

**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.**

- There are too much information and complexity in e.g. ex-ante and ex-post cost disclosures.
- Clients are usually interested in overall costs of their investments they are planning, but they are usually not interested in inducements or how these costs divide into different cost components.

**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.**

- product cost information: differences in how product cost information is calculated and presented.
- differences regarding the use of RYI in PRIIPs and the way costs are presented through the MiFID II cost disclosures and the cumulative effect of return
- an inconsistency between PRIIPs and MiFID II regarding inducements. From a PRIIPs perspective they are treated as product costs, whereas MIFID distributors should deduct them from product costs and add them under service costs according to ESMA.

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

- the main product features
- expected returns
- relevant risks of the product

- the overall costs (without complex ex-ante cost information)
- Further cost information could be provided by request or on the internet pages.
- information about capital guarantee (or lack thereof)
- result of suitability/appropriateness assessment or information that the firm is not obliged to assess this (execution only)
- KID / KIID templates

**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.**

- retail investors usually look at the long materials briefly: long information sheets and cost disclosures are many times easily bypassed.

**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.**

- Service provider should be able to define more freely how information is given to the retail investors.
- There are requirements that do not qualify as such to be sent in mobile environment. For example, pdf files are not the best way to store and give information in mobile environment.
- MiFID II regulation is adapted to the physical environment, where the documents can be given and signed in the form of paper.

**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.**

- the pre-contractual information should be simplified and focus only on the most important information of the product (see the answer in question 5).
- All the documents based on the MiFID or other regimes should be able to be given also to the retail investors in the electronic form, if the client gives consent for that.

**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 finance disclosure regulations bring along quite a complex set of information about sustainable products
- this will increase the information overload retail clients are now already facing
- Differing product “categorisations” in SFDR and upcoming MiFID II will create changes regarding suitability preferences.

**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?**

- Annex II to MiFID II should be revised. The opt-up rules could allow sophisticated/experienced retail client to be treated as a professional client but are not sufficiently calibrated for all types of assets.
- There are some differences in MIFID II and IDD rules: appropriateness test requirements are different in based on these rules.

**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.**

- younger generations are keener on and used to using digital channels
- increase in the more elderly customer groups as a result of the COVID-19

**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.**

- regulation should be technology neutral and would not dictate which technical formats to use
- From paragraph 27, we would like to highlight “Easy navigability of information” as well as “Presentation and format” as the most crucial factors in this context.

**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.**

- technical solution should be left to the service provider’s consideration
- Legal requirements should not contain any detailed technical requirements relating to implementation of disclosures.
- ESMA and EU Commission should regulate only the information that needs to be given to clients
- the accessibility requirements for products and services and the accessibility of the websites and mobile applications of public sector bodies give requirements to the financial sector and investment service providers

**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.**

- MiFID regulation should be technology neutral and take account to the increased usage of investment services in online and mobile channels
- Change in the MiFID “quick-fix” regarding the electronical communication as a default option was welcomed.
- PDF-format and number of pages should be avoided.

**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 adaptations that you would propose.**

- no

## Digital tools and channels

### 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, data, or other evidence on the size of the market for automated advice.**

- FFI’s members have not observed any widespread interest in robo-advice in retail client base, the development of semi-automated tools in the current regulatory environment is very cumbersome and complicated

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

- We are not aware of any regulatory related barriers, but there might be a lack of demand from the customer’s side due to lack of awareness and lack of trust.
- A wide suitability assessment and suitability reports make the client’s buying path too complicated, the digital solutions and channels should be able to lean more heavily on the appropriateness assessment regime

**Q19: Do you consider there are barriers for (potential) clients to start investing via semiautomated 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.**

- barriers are mainly related to the customer behaviour and lack of awareness about the existence of robo-advisors, greater trust in human advice than robo-advice.

**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.**

- FFI agrees with the potential risks and opportunities presented in the consultation paper.

**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.**

- FFI believes that robo-advisors are already covered under the current MiFID rules.

**Q23: Do you think that any changes should be made to MiFID II (e.g., suitability or appropriateness requirements) to adequately protect inexperienced investors accessing financial markets through execution only and brokerage services via online platforms? If so, please explain which ones and why.**

- consumers are adequately protected when purchasing retail investments online under the current regulatory framework
- MiFID II applies to all distribution channels and the same level of investor protection must apply regardless of the distribution channel
- a level playing field regarding unregulated services like crypto-assets.

#### **Online brokers (lessons from the GameStop case)**

**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.**

- FFI is not aware of this kind of business models on the Finnish market.

**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.**

- FFI is not aware of this kind of phenomenon on the Finnish market.

**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.**

- FFI sees that the current regulatory framework is sufficient for these innovative concepts. The rules should be the same for all investment service providers.

**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.**

- FFI is not familiar with the practices of PFOF on the Finnish market.

**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.**

- FFI is not familiar with the practices of PFOF on the Finnish market.

**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**

- Should PFOF practise be utilised with a particular service provider, we think that this should be openly disclosed to the client using the service.

**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).**

- FFI has not observed the existence of “zero-commission brokers” on the Finnish market.

**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?**

- FFI is not aware of this kind of phenomenon on the Finnish market.

**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.**

- We have not observed this kind of phenomenon on the Finnish market.

## **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?**

- there are platforms and social media groups where retail investors can follow one another and give information about their portfolio contents & recommend financial instruments to their peers
- increases clients' awareness on investing
- all information is not reliable

**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 might increase the retail investors' interest to invest

**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?**

- We are not aware of this, but at the general level we think that the same regulation applies to the marketing of financial services and instruments, regardless of whether it is being done by the firm itself or an outsourced service provider/influencer.

**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.**

- Our members observe that retail clients are more prone to react on information received from social media, when compared to more experienced or institutional clients.

**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.**

- FFI is not aware of this kind of phenomenon on the Finnish market.

**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.**

- FFI is not aware of this kind of phenomenon on the Finnish market.

**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.**

- warnings provide adequate protection for retail investors in the case of regulated entities
- warning is a better option than direct ban on selling the product, which might restrict the retail customer's free choice and reduce their interest to invest in the capital markets.

### 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.**

- Consent-based data sharing could be beneficial and create added value for consumers: open finance could facilitate and simplify the way information on a customer's financial position is provided (to get a picture of their whole investment portfolio through one service provider)
- It could also increase the amount of independent advice and comparison services

**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.**

- An unbalanced cost-benefit allocation.
- Problems with the settlement
- Lessons learned from the PSD2 not taken into account.
- Risks related to data protection and consumer protection.

**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)?**

- The types of data that would be subject to data sharing should be carefully considered.
- There is only one data that could be relevant to retail investors and open finance: the information on what financial assets/investments they are holding in different service providers' securities accounts.



- Any other information is not useful to be transferred to other service providers and should not be included in the scope of open finance. This information includes: Clients' investment history and transactions data, Clients' appropriateness/suitability profile, Further product information, Possibility to do trades from retail clients' securities account
- the obligation to share data should not go beyond the data that the investment service providers already have in the electronic form.

**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.**

- A mandatory framework for data sharing would require significant investments in technical infrastructure and compliance.
- Financial instruments are traded and held in custody differently in many European and global financial markets. The systems and data stored in each service provider is not standardised.

**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.**

We see no need to foster data portability and the development of portable digital identity. This would require huge standardisation.

**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.**

The focus of opening up data should not be solely on the financial sector, but broadly on all sectors of the society. Data usage, access and sharing should be considered in a broad context, with focus on cross-sectoral data sharing. It should be carefully analysed what data has the potential to enable the financial sector to provide better products and services for its customers.

A careful risk assessment should be done to estimate the benefits and risks related to the opening up of data. The benefits must be greater than the risks for businesses, clients and the society. The types of data that would be subject to data sharing should be carefully considered. In this regard, it is important to consider which areas would really benefit from data sharing from a customer value perspective.

The open data framework should not lead to unnecessary administration, development or costs for the financial sector, without achieving the desired benefits. Opening up different stakeholders' data should be compensated in a fair manner.

A mandatory framework for data sharing would require significant investments in technical infrastructure and compliance, and therefore there should not be an obligation to share data to third parties free of charge. A mandatory obligation without

any compensation would also hinder the possibilities to develop other digital services that could potentially create more benefits and value for customers.

Finance Finland finds it important that the impact, costs and benefits of the revised Payment Services Directive are carefully and comprehensively assessed and analysed before any decisions on the wider opening up of customer data are made. We have recognised several weaknesses and challenges in the revised Payment Services Directive. Hence, any new initiative in the area of data sharing should not be based on the PSD2 framework as such. For example, data protection and security related issues must be carefully considered and solved before introducing legislation regarding data sharing beyond PSD2. This also applies to questions regarding the responsibilities between different actors.

It is important that the open finance framework is compliant with the data protection regulation and consumer protection principles. Customers must have absolute confidence in the security of their data, full control over the data being shared and the right to determine to which services and under what conditions their personal data will be used. Data sharing should also be carefully considered in the context of competition law and intellectual property law. Data that constitutes trade secrets or other business sensitive information should not be subject to data sharing.