ASSOGESTIONI

associazione del risparmio gestito

Rome, 23 December 2021

**ESMA – European Securities and Markets Authority**
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Our ref: 222/21
Your ref: ESMA35-43-2827

**Assogestioni's Reply to ESMA's Call for evidence on the European Commission mandate on certain aspects relating to retail investor protection.**

Assogestioni[1], the Italian Investment Management Association, welcomes the opportunity to respond to the ESMA's Call for evidence on the European Commission mandate on certain aspects relating to retail investor protection (hereinafter, the "*Call for evidence*").

**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.**

Assogestioni, the Italian Investment Management Association, welcomes the opportunity offered to express appreciation for the topic of the Call for evidence. In particular, we share the aim expressed by ESMA in the introduction to the Call for Evidence regarding the main issues on which it intends to focus attention, namely: (i) the disclosure to retail investors and therefore the need to identify limits, overloads and inconsistencies of the information flow that could undermine the understanding of the aforementioned investors; (ii) the need to enhance the use of digital tools in order to simplify the information itself; (iii) the open finance.

This Association, as already underlined in other circumstances - such as the response to the European Commission Consultation on the review of the MiFID regulatory framework, and to the European Commission Consultation on a Retail Investment Strategy for Europe - considers it essential that the future retail investment strategy considers disclosure as part of a broader framework which also includes high quality advice and higher levels of investor financial education.

In this regard, please refer to the more detailed comments contained in the answers to the following questions.

[1] Assogestioni represents the interests of the Italian fund and asset management industry. Its members manage funds and discretionary mandates around 2,544 billion (2021 Q3).

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**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.**

In line with our response to the European Commission Consultation on a Retail Investment Strategy for Europe, we reiterate the request to remove the criticalities on cost disclosures that inhibit the comparability among undertakings for collective investment (UCIs), with the real risk of introducing distortions in the decision-making process of investors.

In accordance with article 24(4) MiFID II and article 50(2) of the MiFID II Delegated Regulation, firms shall aggregate costs and charges in connection with the investment service and costs and charges associated with the financial instruments. The aggregated costs and charges shall be totaled and expressed both as a cash amount and as a percentage. We strongly support the principle of transparency of all costs, however we wonder about the level of understanding of the aggregate cost indicator, especially in the ex-ante disclosure, as it aggregates costs of different nature such as transaction costs and performance fees. The predictability of performance fees may be poor as their amount depends on the future performance of the fund. Transaction costs, on the other hand, may not reflect only the discretionary choice of the managers but also the cost of obtaining exposure to the market of the choices made by investors (subscriptions and/or redemptions). We believe that this type of costs must (always) be presented but not included in the aggregate cost indicator. A separate indication of this type of costs would have the advantage of making these costs clearly identifiable by investors without affecting the goodness of the single aggregate indicator that it is used to compare different UCIs. Therefore, we advocate a revision on costs disclosure under MiFID (and PRIIPs) framework.

**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.**

[No answer]

**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.**

Assogestioni believes that in the current regulatory framework the rules on investor protection are often misaligned (e.g., financial products that fall within the scope of the MiFID and the IBIPS that, although financial products, fall within the scope of the IDD because of their insurance-related nature). For this reason, with specific regard to the disclosure's discipline, we recommend that the general MiFID and IDD regulatory frameworks should identify criteria that should be reflected, as far as possible, also in the PRIIPs framework.

Please find below some evidence of material differences/inconsistences between MiFID and PRIIPs as regard product information; for more details, please see our response to the call for evidence on the European Commission mandate regarding the PRIIPs Regulation:

- **Product cost information - Transaction costs.** Both MiFID II and PRIIPs require the disclosure of transaction costs. The provision in MiFID explicitly forbids the inclusion of "market movements" as a cost. The PRIIPs RTS, however, have come up with a calculation methodology referred to as "arrival price" (also known as "slippage"), which considers certain market movements as transaction costs. This would lead to misalignments that should be addressed updating the PRIIPs framework in line with MiFID. In addition, transaction costs, including the implicit one, should be easily explained and understandable for retail investors. We support the current MiFID provision and recommend a substantial revision of the calculation on transaction costs under the PRIIPs framework to remove the too detailed RTS provisions that increase the complexity, the risk of non-compliance as well as the cost of producing this information without likely producing results that are truly comparable and, therefore, be of benefits for the retail investors.

- **Product cost information - Illustration of the cumulative effect of costs on return.** Both MiFID II Delegated Regulation (article 50(10)) and PRIIPs require this information, but only PRIIPs defines the methodology (RIY approach) and a standard illustration. While the cost methodologies for a one-year holding period is, with the revised RTS, aligned with MiFID disclosure (zero net return assumption), inconsistencies may remain when the investment horizon is longer: under PRIIPs framework, the cost disclosure (RIY approach) is linked to the results of the moderate performance scenario. We support the MiFID approach and recommend a change in PRIIPs to use a net growth rate assumption of zero for all time periods. This provides the most comparable cost presentation because it is free from the effect of different assumptions or the outcome of the moderate scenarios for PRIIPs and enable an alignment between PRIIPs and MiFID II.

- **Product performance information**. There are substantial inconsistencies in how MiFID and PRIIPs calculate and disclose performance information. Essentially, MIFID II (through its delegated act (EU) 2017/565) requires product manufacturers to provide investors with an explanation on the "functioning and performance of the financial instrument in different market conditions, including both positive and negative conditions" (article 48). Furthermore, information on past (real or simulated) performance (article 44(4) and 44(5)) and on future performance (article 44(6)) is optional. If a past performance is shown, it must carry a clear warning to investors highlighting that past performance does not constitute future returns. If a future performance is shown, the information should not be based on or refer to simulated past performance (as it might be with the revised PRIIPs RTS for new funds where a benchmark or a proxy should be used if an insufficient historical period of the product is available); in addition, a prominent warning will inform that such forecasts are not a reliable indicator of future performance. On the other hand, the PRIIPs Regulation makes the presentation of future performance scenarios mandatory. It defines detailed criteria (not condition to satisfy) that may also imply the use of simulated past performance (not possible under MiFID as explained before) and introduce a monthly publication of the performance scenario calculations that may cause information overload to clients. Since we believe that MiFID II suits for purpose, we recommend the review of the concept of "appropriate performance scenario" in the PRIIPs Regulation to have greater flexibility in the illustration of performance in line with MiFID II, including the possibility to show only past results for open-ended non structured funds.

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

This Association considers the following information to be vital to an investment decision: the objectives of the product, its main characteristics, costs, "performance", and risks. In particular, we believe that **only** past performance information for open-ended non-structured funds is essential for a retail investor's understanding of these products.

**Q6: Which are the practical lessons emerged from behavioural finance that should be taken into account by the Commission and/or ESMA when designing regulatory requirements on disclosures? Please provide details and practical examples.**

We believe that some types of disclosure exacerbate risks not strictly connected to a specific type of investment. We refer, for example, the provision of a comprehension alert for products aimed at retail investors that are normatively defined at European or national level (in terms of investment limits, access and redemption methods), such as retail AIFs. In accordance with article 8(3)(b) of the PRIIPs Regulation a comprehension alert (i.e "'*You are about to purchase a product that is not simple and may be difficult to understand*") is requested for a PRIIP which does not meet the requirements laid down in points (i)-(vi) of article 25(4)(a) of Directive 2014/65/EU (MiFID II).

In addition, disclosure standards focus on presenting information in a single paper format thus failing to recognise the breadth of cognitive diversity across the population. Consumer testing has too frequently focused on a single preferred presentation rather than focusing on how a common data set can be presented in different ways and reaching to a much wider population.

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**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.**

As underlined by the Authority itself in par. 28 of this Call for evidence, we believe that one of the greatest challenges that should be taken into consideration in the MIFID context (and with specific regard to the information to the clients), concerns the contribution by the use of digital technologies, taking into account, in any case, the target client to whom the information in question is intended (in this regard, please consider the answers given to the following questions).

**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.**

We do believe that in the future the integration of the MiFID disclosure legislation should take into consideration the risks and criticalities related to the use of new technologies such as AI or DLT. In this regard, it could be assumed that, as part of the MiFID disclosure, the intermediary illustrates to the customer the characteristics of the type of investment made using the new technologies mentioned above. In the same perspective, it is believed that an important role should be entrusted to the regulator in the supervisory activity. In this latter regard, reference should be made to the considerations detailed below (e.g., see the answer to Q16).

**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?**

This Association believes that, with regard to the disclosure on sustainability risks and factors, a timely systematization of the discipline is essential in order to correctly apply it. In our opinion, this systematization cannot be separated from an alignment of the timing relating to the application of level 1 and level 2 measures. This aspect is particularly relevant for the purposes of a correct implementation of the rules that manufacturers and distributors must comply with. This implementation, in fact, will require the latter to make significant changes in terms of target market and suitability assessment, for the purpose of identifying and taking into account the sustainability clients' 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?**

[No answer]

**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 answer]

**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.**

This Association believes that, in line with what is happening in other sectors, even in the financial sector, the younger investors generations seem to be the ones most inclined to use digital means for their purchases, including investments.

**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.**

[No answer]

**Q14: Would it be useful to integrate any of the approaches set out in paragraph 27 above in the MIFID II framework? If so, please explain which ones and why.**

[No answer]

**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.**

As expressed in the response to the European Commission Consultation on the review of the MiFID II/MiFIR regulatory framework, this Association believes that, in order to adapt the MiFID II disclosure discipline to the use digital tools, the gradual elimination of information provided on paper in favor of an increasingly digital disclosure (while allowing investors who request it to receive the paper format) is needed. The possibility of requesting the paper format is of fundamental importance as not all retail investors have access to Internet or are accustomed to the use of digital tools. The electronic format, therefore, should be the default solution while the paper one should represent a specific choice of the customer. An example worth mentioning is the PEPP KID. In the wake of this, it is believed that, since the current static paper format of the KID no longer meets the needs of investors, they should be able to access interactive digital formats with more accessible layered information.

This Association believes that in the future the ways in which the information is conveyed could be reviewed, using, for example, not only the paper or online format but also video or voice messages (possibly translated simultaneously), that are closer to the ways of operating of the new generations.

**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.**

This Association believes that it is of fundamental importance to equip the supervisory authorities with tools to control these new digital technologies. Think, for example, of the same information on tokens that nowadays can reach end-clients in the same way as traditional information. In a blockchain, therefore, there should be a control node participating in it. Another case to take into consideration concerns the use of social networks. Here, in our opinion, should be provided for the regulator the possibility to follow what happens on the social network. To this end, in our opinion, it is essential to provide the legislation of a high degree of flexibility, which allows the regulator to adapt - from a supervisory perspective - to the needs arising from these instruments.

**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.**

[No answer]

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

A barrier to the development of automated financial advisory tools is related to the difficulty for manufacturers to understand the sources of information used by robo-advisors to consider different financial instruments in their selection process. It is therefore believed that greater transparency in their selection process could incentivize firms to use these tools. This in turn would benefit investors' understanding of automated advice, encouraging its use in the future.

**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.**

We do believe that there are many reasons connected to a limited use of robo-advisors. At the first place, the difficulty of identifying what this phenomenon consists

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of: the differences between the different types of robo-advisors (i.e., between the hybrid model/the robo4advisor model / the model relating to the entire process) are not easy understandable by retail investors and this can lead to a certain reluctance of the latter to seek automated advice. Secondly, in our view, there is still greater confidence in human advice which appears to be more reassuring to investors during investment decision making. However, we believe that this mistrust in automated consultancy can be mitigated by financial literacy thanks to which they can better understand the ways in which robo-advisors operate as well as the arrival of new generations on financial markets, accustomed to not relying on human interaction in the use of new technologies. Lastly, the difficulty, both for investment firms and for retail investors, of identifying the regulatory regime applicable to this type of advice and the applicable safeguards.

**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 answer]

**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.**

In relation to the risks that investors may incur in the use of robo-advisors as information distribution channels, it is certainly believed that those highlighted in the Call for evidence represent most of them. However, it is believed that these cannot be considered exhaustive. In the opinion of this Association it would be appropriate to consider, given the rapid change to which the phenomenon of robo-advisors is subject, ways to monitor this evolution and, at the same time, provide for a system as flexible as possible, in which it is possible to take account of any such changes.

Another profile to underline is the one related to the guarantee of a level playing field: in fact, it is considered important that equal conditions are established as regards the provision of advice in order to mitigate damage to consumers. Third-service providers wishing to offer advice should be regulated in the same way as any other investment firm or intermediary and subject to the same threshold conditions. Equally, where any regulated advice is given, investors need to be assured that the same standards of consumer protection apply to this as to any other kind of advice.

**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.**

On the adequacy of the current regulation on robo-advisors in guaranteeing investor protection as well as on the existence of current barriers that may hinder their use, this Association believes that the operation of robo-advisors should be incorporated into the MiFID II disciplinary framework where, by virtue of a principle of technological neutrality, the provisions apply regardless of the means used to provide the service. Furthermore, we do believe additional requirements for robo-advisors should not been introduced, but rather it should be paid attention to certain profiles that could be of particular importance in case of provision of services through fully or semi-automated tools, such as a) the provision of additional information that firms should give to clients regarding the level and extent of human intervention within the automated process, b) the drafting and sending of questionnaires in which information about the clients is collected, c) the tools that firms should adopt in order to prevent a risk of overvaluation by the client, d) the verification and periodic monitoring of the algorithms that help to determine the adequacy of the transactions recommended or undertaken on behalf of the clients and e) the training of the personnel involved in the definition of automated consulting tools.

**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.**

With regard to the units or shares of investment funds (UCITS and AIFs), it is believed, as already expressed in the response to the Commission's Consultation on a Retail Investment Strategy for Europe, that the MiFID distribution/advisory rules are applicable regardless of whether a fund is sold online or not. This Association believes it is essential that the same level of investor protection is applied, regardless of the distribution channel. At the same time, it is considered imperative to ensure that retail investors have access to and benefit from high quality investment advice.

Given the growth in participation of retail investors in investment funds through the use of online brokers (and digital advisors), it is believed that these developments need to be monitored constantly and in greater detail.

**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.**

[No answer]

**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.**

[No answer]

**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.**

[No answer]

**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.**

[No answer]

**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.**

[No answer]

**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.**

[No answer]

**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.**

As highlighted by our National Supervisory Authority (Consob), it is believed that among the aspects that the European Commission and ESMA should evaluate there is the one relating to the compatibility between the so-called "payment for order flow" (PFOF) - that is the remuneration that financial intermediaries receive for the routing of orders for the execution of trades – as well as the European regulations relating to "best execution" and incentives. Then, with regard to the need for regulatory amendments to the current discipline concerning the payment for order flow, we believe that, on the basis of the current MiFID regulatory framework and, specifically, on the basis of the rules about the conflicts of interests, inducements and best execution adopted by some Member States (including Italy), the practice of payment for order flow can be considered, albeit in an interpretative way, prohibited. However, as already expressed in the response to the European Commission Consultation on a Retail Investment Strategy for Europe, should it be deemed necessary to intervene on the existing regulatory framework, in our opinion, the changes should be aimed at introducing an explicit prohibition in this sense.

**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).**

[No answer]

**Q32: Do you have any information on "zero-commission brokers" business models, e.g., their main sources of revenue and the incidence of PFOF on their revenue? If so, please provide a description.**

[No answer]

**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.**

[No answer]

**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?**

[No answer]

**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.**

Provided that the interests of retail investors are adequately protected, this Association believes that increased provision of cross-border services can be beneficial to consumers. However, it is considered essential to emphasize the role played by financial education in guaranteeing retail investors adequate training, strictly focused on the characteristics of individual markets.

**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?**

It is undeniable that the use of social media in various sectors is constantly increasing, as highlighted by the European Commission itself in the context of the European Commission Consultation on a Retail Investment Strategy for Europe. As it is well known to ESMA, the sharing of certain information on social media can have a significant influence on those who make use of these information channels. The example of the GameStop case confirmed the fears of the European Commission, leading ESMA to issue, in February 2021, a statement in which it brought to the attention of investors the risks associated with making investment decisions using only the information provided by social media.

**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?**

This Association believes that the risks associated with the use of social media are manifold, as also highlighted by ESMA in a recent statement on recommendations for investments on social media. The presence of entities or individuals, such as influencers, without any (or limited) experience in the financial world often leads the investor, in particular the retail one, to follow the recommendations of entities or individuals that are not subject to any regulatory obligation, with the consequent risk for the investor to invest their capital or part of it in financial instruments that are not suitable for him/her.

The GameStop case brought to light the problem of the reliability of social networks and online platforms as sources of information. In particular, the possible qualification of some information disseminated by social media as investment recommendations could raise problems in relation to the compliance with the rules relating to the procedures for the correct presentation of recommendations and conflicts of interest.

While it is important to point out that people offering investment recommendations online are covered by the Market Abuse Regulation (MAR) discipline, it is believed that all those trading in the market should be properly regulated and licensed regardless of whether they are in an online environment. In this sense, it is considered important to emphasize that the same level of investor protection must, in our opinion, apply to sales on digital channels and any semi-closed forums, social media groups or third parties should be carefully monitored as part of the MiFID II discipline.

Furthermore, Assogestioni believes that there are a number of technical and practical issues that need to be addressed when considering social media channels, not least the online versus the offline form of the communication channel used.

In particular, the description of the risks and benefits must reflect the constraints of the various communication channels. While agreeing that, regardless of the type of communication, businesses must ensure that all communications are compliant, it is important to maintain the necessary flexibility as regards the manner in which the requirements are enforced. Please consider the different number of characters available for communications made online or offline. In detail, platforms such as LinkedIn / Instagram / Twitter have a limited number of characters available for each communication, unlike what is provided for channels such as YouTube or even for communications made on paper. Therefore, it is believed that recommendations on how to manage these differences and, therefore, describe the risks and benefits through these different channels are desirable.

However, it should be remembered that although social media platforms can be a channel for the dissemination of false information relevant under the MAR, there is a growing awareness that information on Internet can be “fake news” and, therefore, it is believed that, with particular reference to investment funds, the applicable MiFID regime (regardless of the type of distribution channel) guarantees an adequate level of protection for retail investors.

However, one cannot fail to underline the importance of focusing attention on financial education, which could represent a useful complement to investor protection through greater awareness of the risks deriving from investment decisions based on information provided through social media.

**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?**

From a discussion with its members, Assogestioni learned that they generally make use of consultants for media partnerships, leaving the content to be supervised by the compliance of the companies, with subsequent communication to Consob.

**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.**

From a discussion with its members, Assogestioni has learned that at the state of the art it is not yet possible to make this type of assessment.

**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.**

From a discussion with its members, Assogestioni has learned that there are no elements to highlight in relation to asset management products on this aspect.

**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 answer]

**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.**

This Association believes that the issue of risk warnings is a complex topic. If on the one hand it is argued that making the investor aware of the risks associated with a given investment is correct and it represents an important added value in the decision-making process of the investor in question, on the other hand it is considered that, in certain cases, the issue of risk warnings could generate excessive concern in the investor and have a deterrent effect on the investor's willingness to invest, please consider the hypotheses in which an investor wants to invest in non-complex products. In order to limit this effect, it is considered appropriate to differentiate the risk warnings on the basis of the related product, highlighting the specific risks, in order not to generate unfounded concerns in the customer or potential customer or, alternatively, a scarce concern about products with a higher risk level.

An additional aspect to be assessed concerns the risks associated with topics of new relevance, such as digital technologies and sustainability. The risks associated with investments relating to these phenomena should be clearly explained as they are not yet sufficiently known to retail investors.

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A fundamental role in the management of risk warnings, in our opinion, is played by the advisory activity, thanks to which the risks associated with a specific investment are analyzed by the advisor together with the investor and explained by the first in a clearer and more specific way, taking into account the degree understanding of the investor himself.

**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.**

In relation to the topic concerning open finance, Assogestioni believes that it has the potential to bring great benefits, in particular for retail investors. Indeed, the latter could benefit more than others from the procedural simplification associated with its development. Onboarding processes for new customers, for example, are currently considered excessively long and complex. The development of open finance could simplify them by guaranteeing access to customer data thanks to a digital investment ID. In addition, access to client-specific data, such as those ones pertaining to previous suitability or appropriateness assessments, could allow intermediaries to provide retail investors with potential investment solutions much faster than is currently the case, simplifying access to capital markets by retail investors.

In this perspective, we believe that any data that helps to build as complete a picture of an individual's financial position is of significant importance in the offer of financial products. An individual's financial position is a network of interrelated assets, liabilities, preferences and goals. Opening access to sources of data necessary to help consumers to build a better picture of their financial position and then to make recommendations or suggestions is potentially extremely valuable for a consumer.

However, a framework for open finance in the field of retail investment should be very carefully designed to avoid mis-selling and ensure data protection. First, it is believed that the latter may be subject to serious risks related to their protection, especially if consumers do not fully understand the destination and object of their consent. Having more and more copies of citizens' data on the Internet will exponentially increase the risks to customer privacy and, consequently, the risks for managers linked to the probable increase in identity theft and fraud.

Secondly, while we agree that open finance could produce a faster assessment of an individual's financial position, it is important to establish a level playing field in the provision of advice in order to mitigate harm to consumers. TPPs seeking to offer advice should be regulated in the same way as any other investment firm or broker and subject to the same boundary conditions; when regulated advice is provided, investors need to be confident that the same consumer protection standards apply to such advice as for any other type of advice.

**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.**

Assogestioni believes that, in the face of the aforementioned benefits, there are a number of risks, as well as feasibility problems (i.e., barriers) and costs associated with the development of open finance.

This Association believes that the main risks are related to data protection. First of all, it is necessary for the investor to understand the consequences of giving their consent to the use of the data in question. Added to this are the risks associated with the management of customer data and, therefore, with the confidentiality of such data. Managers of such data should ensure continuous supervision over them and provide themselves with high protection systems since, given that the essence of open finance consists in sharing the data in question, the possibility of fraud and identity theft increases exponentially with the enlargement of the subjects with whom they are shared.

In addition to this, undoubtedly, there is a risk linked to the exclusion of a slice of consumers who do not have access to IT systems and cannot take advantage of digital tools.

If, with reference to the first aspect, Assogestioni believes that careful supervision of the data management processes by the European Authorities can reduce the risk of breach of the confidentiality of the data, on the other aspect Assogestioni believes that, with reference to the second case, it is necessary that the European Authorities ensure that accessibility to digital tools is always guaranteed to every category of investor.

**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)?**

For the purpose of a broader and more complete development of open finance in the field of asset management, Assogestioni considers that the customer data to be shared - with his/her explicit consent - are those relating to the financial position, the risk profile, the assessment of suitability/appropriateness, the investments previously made and the preferences in terms of sustainability. Sharing such data could lighten the investment process of excessive administrative burdens currently present, making it faster. The time savings linked to the single operation could represent an incentive for the customer to carry out further transactions and therefore a boost to greater participation in the capital market.

The development of a portable digital identity, therefore, would allow the individual investor to operate more easily on the market. Furthermore, it must not be forgotten that a simplification of procedures would entail a significant reduction in costs for investment firms.

**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.**

[No answer]

**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.**

This Association shares the recent initiatives of the Commission aimed at developing a portable digital identity. In fact, Assogestioni believes that the adoption of digital identity and data portability should be encouraged as they would make it possible to break down the procedural and time barriers often linked to investment processes which, in many cases, discourage investors themselves. The access by companies to certain customer data (such as, for example, the financial situation, or the results of the suitability / appropriateness assessment) would allow companies to provide investors with investment solutions more quickly. Furthermore, thanks to the portability of data, investors would be able to move on the market more easily, please consider the hypothesis in which this portability concerns the assessment of suitability. The same should not be done by every company to which the investor turns but once it is done by a first single company, the same could be used by the investor freely on the market, allowing him to turn to other players and comparing, with greater ease, the different offers.

This Association, however, is well aware of the existence of significant risks associated with the development of open finance, primarily those ones relating to the protection of personal data. These risks, however, could - in the opinion of this Association - find a barrier in the explicit approval by the customer to access and use its data.

**Q48: Do you consider that regulatory intervention is necessary and useful to help the development of open finance? Please outline any specific amendments to MiFID II or any other relevant legislation.**

[No answer]

**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.**

Assogestioni believes that, in order to encourage the development of open finance, it is necessary to work on the perception that consumers have of this reality. At the moment, in fact, consumers seem not to fully understand the benefits associated with open finance. The consequence of this is a reluctance on the part of consumers to share their data. This reluctance is accompanied by the fear related to the absence of control of their data once shared. On the other hand, as regards the point of view of market participants, Assogestioni believes that these should develop systems able to clearly explain the advantages that sharing their data can bring to consumers' lives, including, for example, automated comparison of financial products; such a comparison would not be possible if the individual investors do not want to give to the company the access to their personal data necessary to understand their individual situation.

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