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Finance Finland's response to ESMA's Discussion Paper on MiFID II investor protection topics linked to digitalisation

Finance Finland welcomes the opportunity to respond to ESMA's Discussion Paper on MiFID II investor protection topics linked to digitalisation.

We would like to highlight three points:

- Digitalisation brings great opportunities to provide retail investors with relevant information in a clear and structured manner which is easily accessible in a format suitable for the client.

- Existing legislation already covers marketing activities e.g. in MiFID, and hence we question the need for additional regulation. It should be carefully considered whether additional regulation in digitalisation is needed.

- We see that financial literacy is of fundamental importance to increasing retail investors' engagement in the EU capital market. The digital environment also serves a great purpose from an educational point of view, with the aim of enhancing investor protection.

1. Do you already layer information provided to (potential) clients?

Digitalisation brings great opportunities to provide a large amount of information for clients in a manageable format. Retail investors are often faced with information overload, and it is not always easy to find relevant information when making investment decisions. As mentioned in ESMA's Discussion Paper, it is possible to mitigate information overload with the help of digitalisation.

Layering techniques are a good example of how to manage the large amount of information investors are faced with. Our members use layering to provide a better client experience and to mitigate information overload for the client. Layering techniques are especially helpful in certain online disclosures, where a lot of information needs to be presented to clients, and where layering is a good way to clarify that information. Layering information is also recommended for improving accessibility following Web Content Accessibility Guidelines WCAG 2.

2. Do you create bespoke content and information for existing clients based on their preferences, risk profile and/or investment objectives?

It is not common to create bespoke content and information based on the preferences or suitability assessment of a client. The same information is available to all clients, meaning that companies provide general marketing material and information to all clients in the same manner. It is not appropriate to aim online marketing only to clients who have carried out the suitability assessment.

In addition, personalised and targeted content is created based on available client and online data. Our members have identified a need for different types of content depending on the client's level of knowledge and interest in investing.

We see that various sales and marketing methods that are already approved in MiFID should be maintained, not hampered and restricted by new digital disclosure and marketing rules.

3. What type of information would you deem vital to show in the first layer of information to investors with regard to the different instruments you offer?

We see that only the most important information should be included in the first layer. It should be presented in a clear manner and adhere to the Web Content Accessibility Guidelines WCAG 2. The first layer should include information to educate and inform investors about services and products, including fees, charges and potential risks.

4. What type of information do you observe your clients treat as the most important? (if known)

Based on online data from some of our member companies' website visitors, the main value proposition and general cost information are regarded as the most essential information for clients.

5. Which information on costs and charges 'belongs in the first layer'?

Information on costs and charges is particularly suited to be layered in a digital environment. However, when it comes to the inclusion of this information, a distinction must be made between the requirements arising from general marketing rules and the mandatory disclosure requirements in MiFID II.

In accordance with ESMA's statement, it is important to focus on the most important and easily understandable information in the first layer. In the context of costs and charges, the majority of clients place most focus on the total costs for a relevant transaction or recommendation, and not on individual cost components. Therefore, the first layer should only contain the total aggregated cost amount and percentage (i.e. aggregating all product costs and service costs into one sum and one percentage).

The second layer could then include information in accordance with the existing structure as outlined by article 50(2) in the MiFID II Delegated Regulation (EU/2017/565), i.e. showing a specification of aggregated service costs and product costs respectively and with a separate itemisation of third-party payments. An optional third layer could then include an itemised breakdown.

By structuring the layering in this way, clients would get immediate knowledge about the total costs and charges and could easily dig into the more detailed information if they wanted to.

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6. Do you provide interactive or other graphic representations of information on financial instruments or investment services to your clients? Do clients perceive them as useful aids?

Some of our members use graphic representations to provide product information and to show e.g. the portfolio and product performance, whereas other use them for educational purposes. Clients find graphic illustrations and interactive elements very useful, and they have received valuable feedback.

7. Should the vital information need to be the same for all MiFID financial instruments, or can it be different depending on the type of instrument? If so, how?

It is more important to ensure that the information provided to clients is relevant for the type of product and the type of client in question, than to impose identical rules for all products. The client's ability to understand the information is more important than the comparability between products, and comparability at the cost of precision and adequate information must not be the result. Trying to define requirements which would apply in the same way to all types of products in the name of comparability leads to unintended consequences with the outcome that certain information is not understood and/or the information does not fit with the nature and characteristics of the product in question. Therefore, the information should not have to be the same for all financial products.

These examples illustrate what we mean in practice:

1. There is a principal difference between financial instruments used for investment purposes (i.e. products meant to generate a return on investment) and financial instruments used for hedging or risk management purposes. Firms should be able to take into account the difference in nature between these two product types when designing online disclosures, simply because information that is relevant for financial instruments used for investment purposes is not necessarily relevant for financial instruments used for hedging or as means of payment. This could, for example, relate to how product information is shown and to the data used to provide the information.
2. Different instrument types carry different cost components. In the context of cost disclosures, and bearing in mind that information should be easy to read and understand, it is important that the disclosures only focus on the cost components that are actually charged. One example that currently presents a challenge is the ESMA Q&A 35-43-349, chapter 9, Q&A 20, which requires the disclosure of cost components which are zero. In light of the attempt to simplify and make information easier to understand for retail clients, it would be advisable that ESMA revokes this type of Q&As.

8. Do you already provide visual aids (support) to (potential) clients in order to help them better understand complex financial concepts, for example the use of a glossary? If you do, please mention which and explain.

Some of our members provide graphs, video material and calculators for educational purposes. Visual aids are also used in digital and human-assisted investment advice sessions to illustrate e.g. long-term benefits of monthly saving in funds. Some companies use visual graphs and a glossary to help clients understand certain financial products.

9. How do you measure the effectiveness of the online disclosures you provide to clients? Do you identify problems clients encounter with language or structure of your disclosures? What are the most common issues identified?

In our experience, clients sometimes perceive the language of disclosures difficult to grasp. Language used in disclosures should strive to be as accessible as possible.

10. What is your positive and negative experience with layering information?

Layering information can provide a better customer experience. Layering is recommended for mitigating information overload and improving accessibility, required by Web Content Accessibility Guidelines WCAG 2.

Negative effects can occur if clients do not find the information in lower layers due to technical issues (broken links) or because they have failed to interact with the layered elements. There is also the possibility of a risk if a client does not want to read other information besides the information presented in the first layer. On the other hand, the same risk exists if all the information is presented as a single long page, because then it may be difficult to find relevant information.

12. How do you ensure that marketing communications only reach the intended target market (especially in the case of higher risk/higher complexity products)?

We would like to highlight that the term ‘target market’ in MiFID context can only mean the formal target market under the product governance rules and can therefore only refer to the target market for financial products. There is no requirement to ensure that marketing is solely provided to the clients for which the financial product is intended to be distributed (the marketing and information strategy is one aspect of the distribution strategy). The requirement is to ensure that distribution (i.e. buy/sell) is made to the target market.

We acknowledge that marketing communications can and should have a target audience. However, in contrast to the defined target market for a financial product, ‘targeted audience’ is not defined by MiFID, and it should in any case be possible for firms to view the targeted audience in a different manner than a financial product’s target market. Any other view to this would severely restrict a firm’s ability to do marketing in EU markets and would stand in the way of attracting new types of clients.

Also, to be able to respond properly to this question, and for any related regulation to serve its purpose, terms such as ‘complex’, and ‘risky’ need to be clearly defined.

14. Do you review your marketing practices if complex and risky products are seemingly marketed outside the determined target market for these products?

To be able to respond properly to this question, and for any related regulation to serve its purpose, terms such as ‘complex’, ‘particularly complex’ and ‘risky’ need to be clearly defined.

Our members ensure that their marketing is fair, clear and not misleading for all product offerings. For some communication, in connection with events, for example, the audience is pre-selected based on the identified target market (i.e. MiFID target market), but for certain channels such as podcasts it would be difficult to restrict and check if the audience corresponds with the identified target market.

It should be considered that such communication may serve the purpose to make the investors better understand the risks, costs and triggers for expected returns and consequently able to make an informed investment decision. We would also like to emphasise that relevant checks (e.g. appropriateness and suitability) are required before an actual trade can be placed.

16. What kind of educational material do you produce and publish?

Our members publish diverse types of educational content. The digital environment also works well in an educational sense. It is important to produce and publish educational material for clients to increase their understanding and knowledge of investment products and their own finances, while also educating them about risks associated with investing.

17. Do you have educational material available to investors in which you actively promote specific instruments and/or firm(s)?

Our members have educational material about investing and investment products in general. More specific educational materials may refer to specific products, such as certain funds.

18. Do you use content marketing on social media or in other types of video material?

Some of our members use content marketing on social media and other media to promote educational and inspirational content. The materials have included content in text and video format.

29. Do you use gamification techniques for client engagement? If so, what type of gamification techniques do you use and for what purpose (training, educational content, subscription process, other – if so, please explain)?

We see benefits in using gamification techniques in investor education initiatives (in educational format only) to increase engagement in financial learning. Such gamification techniques serve the investor’s best interest and enable them to make informed investment decisions in the future.

On the other hand, we agree that gamification techniques may not be appropriate in relation to financial decision-making/actual trading and that if gamification techniques are used, they need proper internal governance.

31. If you use nudges, please provide information on the process implemented to determine, validate and control these nudges.

In general, we see that architecture is best designed when it offers clients the possibility to find more relevant information as effortlessly as possible.

To ensure as informative, relevant and well-functioning a customer journey as possible, it would be important to enable the use of customer activity related analytics.

36. What kind of push-notifications do you send?
- For example, what type of information is included, are the push notification bespoke to the consumer?

Push notifications are used for customer service related matters, and the number of notifications is usually restricted. Push notifications can be sent to clients e.g. from their mobile bank only if the clients have given their consent.

38. Do you use or have you encountered any positive nudging in the interest of the client? Could you provide some examples?

Some companies use positive nudging, for example via technical restrictions, when clients purchase investment products. In such situations it is impossible for the client to complete the trade without seeing the legally required documents, and clients are always nudged to reading the required documents before the actual decision-making.

40. Do you have any (other) observations with regard to the topics covered under this discussion paper that you would like to share with ESMA?

We have general comments and observations related to the discussion paper.

We find that the scope of the discussion paper (DP) is not entirely clear. The timing is parallel with the Retail Investment Strategy, which also contains proposals about marketing (although noting that the proposals should be disregarded for this purpose), and it is not clear if the DP only relates to retail clients or if some of the remarks also apply to other investors.

The unclear and undefined terms such as ‘marketing’, ‘finfluencer’ and ‘complex and risky products’ in the DP enable individual interpretations and thus ambiguity in the value of the responses. It is important that any future legislative development and practical guidance ensures that such terms are clearly defined to ensure harmonisation.

We strongly disagree with the statements that risky and/or complex products should not use marketing communications that are likely to be received by a broad range of clients, or that such instruments should not be marketed through finfluencers. It should be sufficient to assess if this is appropriate whilst ensuring that the marketing is fair, clear and not misleading.

Companies must be allowed to use their webpages and different marketing practices. For example, a podcast can serve two purposes: marketing as well as educating and informing clients of risks and cost. Placing general marketing restrictions on these types of instruments would be a clear disadvantage and could potentially limit the product offerings to retail clients.

Lastly, we would like to point out that the definition of ‘finfluencer’ should only include third parties. If internal employees publish information on social media channels, they should not be seen as finfluencers. A distinction should be made between third parties and employees of financial institutions, as the latter are already subject to various legislation covering marketing and hence also supervision and supervisory actions.