

## **Call for advice to the European Securities and Markets Authority (ESMA) regarding certain aspects relating to retail investor protection**

### **Context**

In the September 2020 new Capital Markets Union Action Plan, the European Commission announced its intention to publish a strategy for retail investments in Europe in the first half of 2022. Our aim will be to seek to ensure that retail investors can take full advantage of capital markets and that rules are coherent across legal instruments. An individual investor should benefit from: (i) adequate protection, (ii) bias-free advice and fair treatment, (iii) open markets with a variety of competitive and cost-efficient financial services and products, and (iv) transparent, comparable and understandable product information. EU legislation should be forward-looking and should reflect ongoing developments in digitalisation and sustainability, as well as the increasing need for retirement savings.

As part of our evidence gathering, the Commission launched in May 2021 an extensive three month [public consultation](#) on a wide array of aspects related to retail investor protection. Last year, the Commission also launched an [extensive study](#), focusing on the different disclosure regimes, the extent to which advice given to prospective investors is useful and impartial and the impact of inducements paid to intermediaries. It will involve extensive consumer testing, to ensure that any future changes to the rules will be conceived from the perspective of what is useful and necessary for consumers. The study is due to be finalised in October 2021.

The Commission is aware that ESMA has already carried out, or is in the process of carrying out, a substantial amount of work in areas related to retail investor protection, including:

- On general principals and information to clients (including on inducements and costs and charges disclosure) under MiFID II;
- On suitability and appropriateness assessment under MiFID II as well as on execution-only requirements;
- On product governance requirements under MiFID II;
- On digital finance (in particular with relevance to platforms);
- On draft regulatory technical standards to amend the PRIIPs KID (as part of the joint committee work);
- On payment for order flows, short selling and market abuse in light of recent events surrounding the trading of GameStop shares.

Finally, the Commission also notes the work by the Joint Committee with respect to the new PRIIPs Regulatory Technical Standards. We would like to stress that by issuing this call, the Commission would not wish to put into question the continuation of that important work.

## Scope of the request to ESMA

With this Call for Advice, and with a view to assisting the Commission in the preparation of legislative proposals implementing aspects of the retail investment strategy, the Commission invites ESMA to provide advice on a number of focused areas:

- **Addressing and enhancing investor engagement with disclosures:** identification of any significant overlaps, gaps, redundancies and inconsistencies across investor protection legislation that might have a detrimental effect on investors (i.e. which might confuse or hamper decision-making or comparability), in addition to those already identified and addressed by the recent PRIIPS level 2 work, how the different legal frameworks fit together and options as to how to remedy any identified shortcomings. We would especially appreciate to receive a supervisor's perspective on these issues, and in particular how and whether the current rules help retail investors to take well-informed investment decisions. In addition, it would be helpful to understand what might be considered the vital information that a retail investor should receive. We would also invite ESMA to reflect on how the rules work from a retail investor perspective - including on whether they have fully attained the objective of ensuring that consumers can make informed choices and adequately reflect behavioural insights, avoid information overload and overly complex information, and the specific challenges for different types of products. Conversely, are there areas where investors may not receive adequate and accurate, streamlined and clear information and in an appropriately standardised form, before investing, and are there any potential blind spots?
- **Drawing out the benefits of digital disclosures:** an assessment of how regulatory disclosures and communications can work best for consumers in a digital, and in particular smartphone, age, and proposed options as to how existing rules might be adapted, such as allowing layered information.
- **Assessing the risks and opportunities presented by new digital tools & channels:** an assessment of both risks and opportunities with respect to retail investing stemming from both the increasing availability of digital tools and the increasing levels of direct investor participation, in particular via online trading platforms and robo advisors. It would consider in particular whether the existing regulatory requirements continue to be appropriate given these new risks, with a focus on the efficiency of safeguards such as best execution requirements and risk warnings provided to clients (e.g. as in the GameStop case). This assessment would, in addition, explore whether and how far value chains should be 'opened' up by the sharing of specific investor data amongst investment firms and third party providers, and how far new markets for services, such as advice via platforms, might be expected to develop, bearing in mind, on the one hand, the need to protect investor rights, but also to bring down cost and allow for innovation in products and services.

## **Procedure**

The technical advice of ESMA will be a key input to the Commission's work to develop a strategy for retail investments and to make appropriate adjustments to the legislative framework. The technical advice received on the basis of this mandate will not prejudice the Commission's final decision in any way. In accordance with the established practice, the Commission may consult other experts or seek other inputs. The European Parliament and the Council will be informed about this request, which will be available on the website of the Directorate-General for Financial Stability, Financial Services and Capital Markets Union once it has been transmitted to ESMA.

In parallel to this call for advice, the Commission services have sent a call for advice to EIOPA on similar but not identical aspects regarding the protection of retail investors (investing in insurance-based investment products). ESMA is invited to coordinate closely with EIOPA with respect to the elements that are common to both calls for advice.

## **Final Considerations**

The Commission requests ESMA to deliver the report to the Commission services by 30 April 2022.

The Commission invites ESMA to consult as widely as possible within the available timeframe. In case the short timeframe available to prepare this advice places constraints on this exercise and restricts the ability of ESMA to allow the full length of time normally allocated for the consultation of stakeholders and to explore in depth the issues set out in this call, then ESMA should highlight these limitations in its final report.