

DUFAS response to the ESMA Discussion Paper on MiFID II investor protection topics linked to digitalisation

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To ESMA
From DUFAS (the Dutch Fund and Asset Management Association)

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Subject **ESMA Discussion Paper On MiFID II investor protection topics linked to digitalisation**

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DUFAS (the Dutch Fund and Asset Management Association) welcomes the opportunity to respond to the public consultation of ESMA on its 'Discussion Paper On MiFID II investor protection topics linked to digitalization' of 14 December 2024.

Introduction

In general we support ESMA's commitment to foster investor protection, and from that perspective we encourage ESMA's efforts to address the various investor protection topics linked to digitalization. For DUFAS, as trade association, we will comment on the consultation, i.e. call for evidence, in a more generic way, as most of our members may not make use of the various techniques described in the discussion paper, such as e.g, gamification. At the same time we do see the need of setting some ground rules in order to protect retail investors that invest in an online environment.

Please find below our generic comments and observations, most of which are aimed at the technique of layering, as this technique as described in ESMA's discussion paper is commonly used by our members, and at our concerns about the role of (f)influencers. More guidance hereof is therefore appreciated.

General comments

Layering:

- *General support:* DUFAS is supportive that firms should be allowed to layer the information provided to retail investors. Particularly, we support that additional layers of information could be provided through hyperlinks, QR codes, or other similar routes.
- *PRIIPs KID:* In addition, we do also advocate that information contained in **PRIIPs KIDs** may also be provided by means of layering instead of or in addition to the provision of a PRIIPs KID in a pdf format.
- *Vital information:* Furthermore, the **vital information** as described by ESMA in the discussion paper which need to be included in the first layer seems logical. The question, however, arises how much detail should that first layer entail. Should that be the same as in the PRIIPs KID? We believe that this should not be the case, otherwise using the layering technique would not have any benefits. In addition, as to vital information, ESMA could also consider adding the target market of the financial product into the first layer as part of the vital information.

- DUFAS members are also in the process of starting to implement the **European Accessibility Act**¹. This Act should ensure accessibility for people with disabilities for various products and services. We understand that the application of the technique of layering may be more difficult in connection to requirements under the European Accessibility Act. The Act may create an extra or more extra layers. From that perspective, we also would find it helpful to get guidance from ESMA in due course how the layering technique should be applied in connection with the relevant rules set forth in the European Accessibility Act.

Marketing communications and practices

- DUFAS agrees that educational material that includes (content) marketing and/or may nudge, attract or stimulate the investor to invest in a certain financial instrument and/or become a client of the specific firm, should be labelled as marketing material. However, one should be careful that labelling education or some sort of nudging may create a too low threshold. Moreover, we agree that it should be clear that education material does not constitute or contain investment advice or investment recommendations.

Use of (F)influencers.

- DUFAS agrees that firms should have clear policies and procedures in place for working with (f)influencers etc. Whenever a (f)influencer is remunerated to disseminate any type of marketing/advertising (or training) on behalf of the firm, this should indeed prominently be stated in addition to being compliant with MiFID II requirements. We do stress that (f)influencers should adhere and should observe to the same standards as applicable to investment advisors.
- DUFAS is furthermore quite concerned about the increasing influence of (f)influencers within the capital markets. It impacts and may have a negative effect on the trust from retail investors. From a recent research conducted by *‘Wijzer in Geldzaken’* in The Netherlands, it follows that many young people between the ages of 16 and 19 have been influenced by an (f)influencer when making financial investments decisions.² The report demonstrates that due to influencers, 39% of young people who follow influencers have made money, 46% saved money and 29% lost money. This research conducted among 1,005 16-19 year olds was done and published during the Dutch Money Week 2024 in March. The practice of (f)influencers is mostly related to investing in crypto assets. The result of this research has also been picked up in the Dutch political debate. This development demonstrates that strict regulation and enforcement is needed to protect the interests of especially young investors. As said, we do stress that (f)influencers should adhere and observe to the same standards as applicable to investment advisors. However in addition, possibly more specific and targeted regulation may need to be considered in order to address potential detrimental practices conducted by (f)influencers.

Gamification

- DUFAS agrees that firms using gamification techniques should focus on long-term investor outcomes depending on the investor’s profile and investment strategy (if known). Firms should not merely focus on high-risk investments, short-term outcomes and/or on individual transactions.

¹ See European Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services, L 151/70 Pb EU 7.6.2019.

² See publication from Wijzer in Geldzaken *‘Hoe ben jij je GELD de BAAS? Onderzoek onder jongeren van 16-19 jaar over omgaan met geld en hun financiële toekomst’*, February 2024 published on 11 March 2024.

Choice architecture/Nudging

- Yes, DUFAS believes that firms should be able to use certain defaults in their choice architecture to nudge investors. DUFAS agrees that firms should design the choice architecture of their interface to enable and support investors to make informed and sensible investment decisions.

More information

Would you like to respond, or should you have any questions? I would be pleased to hear from you. Please feel welcome to e-mail Randy Pattiselanno, DUFAS, manager strategy & regulatory affairs, at rp@dufas.nl.

DUFAS: Dutch Fund and Asset Management Association

Since 2003, DUFAS has been committed to a healthy asset management sector in the Netherlands. DUFAS has more than 50 members: from large asset managers who invest Dutch pension and insurance assets to smaller, specialist asset managers. DUFAS increases awareness of the social relevance of investing, helps to develop sector standards and represents the sector in the implementation of new laws and regulations. In addition, DUFAS is committed to a single European market with equal regulations.
