RETAIL INVESTORS: MAKE TARGETED ADJUSTMENTS TO THE EUROPEAN FRAMEWORK TO IMPROVE THEIR ACCESS TO CAPITAL MARKETS

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In the context of the Capital Markets Union (CMU), encouraging the participation of retail investors in EU capital markets is a key priority. In this respect, a review of the EU framework for retail investment should aim at breaking barriers to cross-border investments and providing long-term investment options to European households, while making sure that they have access to good quality advice and strong investor protection.

Savings accumulated during the pandemic and the currently low level of returns offered by low-risk investments provide an additional window of opportunity. In France for instance, amid the turmoil of the pandemic, 150,000 new retail clients invested in equities for the very first time. This development should nonetheless be carefully monitored, since some intermediaries' business models deserve deep scrutiny.

The French AMF therefore welcomes the European Commission's consultation on a retail investment strategy. Overall the AMF's assessment is that the existing European regulatory framework is solid, coherent and satisfactorily protective, and that no deep regulatory overhaul is warranted. Yet, some targeted adjustments could be made in response to recent developments within the financial industry and as a means to spur retail participation in capital markets, particularly in equity markets. The AMF would suggest that rules be reviewed in the following three areas:

- **Further ensure investor protection for safe cross-border investments within a digital European market;**
- **Meet the needs of investors in terms of products to incentivise their participation in capital markets;**
- **Empower investors with the adequate information, advice & knowledge to support their investments.**

☐ Further ensure investor protection for safe cross-border investments within a digital European market

While aiming to empower retail investors and better meet their investment needs, it remains essential to ensure a high level of investor protection, strengthening trust to boost European households' participation in capital markets. This is particularly true in the **current context of digitalisation and growing cross-border provision of financial services**. A strong and harmonised supervision of market participants in all Member States is a key objective going forward, to ensure a consistent level of protection to investors across the EU. Whereas the European framework has already improved the level of investor protection, some issues remain to be addressed in the light of recent market developments.

Limit regulatory arbitrage, for a genuine single market offering the same level of protection to all EU retail investors.

In March 2021, the French AMF published a report listing over 200 complaints received over the two previous years from French retail clients of European investment firms operating on a 'freedom to provide services' basis in France ('European passport'). The complaints collected were about aggressive – if not illegal – marketing behaviour from firms selling complex products (e.g.CFDs) to retail clients. More than 60% of all claims and losses reported concerned entities based in Cyprus, which do not fall under the supervision of the French regulator. This experience shed light on the difficulty of allocating powers between home and host authorities in the context of the cross-border provision of investment services, and the lack of effective coordination mechanisms to respond quickly to service providers acting irregularly under the European passport. Although overall the passport has contributed positively to the single market, it is not underpinned, for the time being, by a single supervisory model. This allows for regulatory arbitrage between Member States and differences in investors' rights in the various jurisdictions. Therefore, **improvements should be made to the passporting framework** to ensure higher and more harmonised protection in the absence of unified supervision. The coming MiFID II review offers a chance to strengthen coordination measures between home and host authorities in situations where firms infringe upon the rules in host jurisdictions while acting under the EU passport. No genuine single market/CMU can be established unless confidence is restored in cross-border investment services for retail clients.

Going forward, the report published in July 2019 by the Joint Committee of the European Supervisory Authorities (ESA) should serve as a reference: it put forward possible ways to improve the passport's functioning, and specifically recommended **clarifying the criteria to determine in which jurisdiction an investment service should be deemed to be provided**. This is essential in the context of digitalisation, as the increasing use of technology makes it difficult to allocate the provision of an investment service to a given host Member State. This is key to determine which rules apply and which competent authority is responsible for their enforcement. As basic principle, an investment service should be deemed to be provided in the country where the retail client targeted by the service is located.

Also, to ensure further supervisory convergence and establish the same level of protection for individuals investing across Member States, it is important to reduce inconsistencies resulting from the adoption of national measures regarding product intervention. In this field, the ESAs have already been given pan-European powers to temporarily prohibit or restrict the marketing, distribution or sale of certain types of contracts, of which ESMA has already made good use to prohibit binary options and certain types of CFDs. The **ESAs' pan-European product intervention powers should be strengthened**, by granting the ESAs the power to issue **permanent** prohibitions/restrictions.

Strengthen the framework protecting retail investors, to adapt to new digital tools and practices.

In order to properly address the risks associated with the development of **online advertising of financial products**, the best approach would be to apply investor protection rules relating to information and marketing to any person involved in the online advertisement of a given financial product. As an example, French regulation targets all participants in the advertising chain (media/ad space companies/buyers, ad sales broadcasters…) and bans any direct or indirect electronic advertisement for highly speculative financial products which target retail investors. Furthermore, marketing documents should always be translated into the official language of the jurisdiction where the product is marketed/distributed. Such an approach could also be upheld in EU law, under a minimum harmonisation principle. In addition, where large digital market players are involved in the marketing/distribution of highly speculative products to local investors, the ESAs should be empowered to engage with these international players on matters regarding the application/enforcement of applicable EU marketing rules (or at the very least to support national competent authorities in such engagement). More generally, **in a growingly digital environment the ESAs should be given a greater role** in the monitoring of social media, influencers and cross-border platforms.

Ultimately, and even more so in a context where electronic cross-border transactions are facilitated, **retail investors must have access to rapid and effective redress procedures**, in their own language, should they have a complaint about their investment. This is particularly important to foster investors' confidence when they invest in another Member State.

☐ Meet the needs of investors in terms of products, to incentivise their participation in capital markets

In order to participate in capital markets more actively, not only must EU citizens trust the level of protection they will be afforded, but also have access to an attractive range of investment products, ie. diversified and competitive. Retail investors need to invest in products they understand, that are simple, transparent and adapted to their needs. They should also feel confident that the products that are offered for investment are cost-efficient.

Adjust EU rules to facilitate retail investor access to simple products, tailored to their needs.

To facilitate retail investor access to investment products, proportionate amendments to the MiFID II framework should be considered, in order to foster retail clients' interests in investing in capital markets and meet their investment needs. In particular, the **product governance obligations** - under which investment firms must review the products they manufacture or distribute, notably by assessing their target markets and client types - **should be adapted** when a service is provided under the sole initiative of the client, without any solicitation or active marketing by the financial institution. If such is the case, the preliminary assessment of the product's 'target market' by the firm will be of limited interest, and engender nnecessary/unwarranted costs, especially because firms will not be in a position to assess the criteria of the identified target market against information they are not required to ask of clients. In such a situation, product governance requirements should be limited to the definition by the firm of its broad distribution policy (services/channels per categories of clients and per products/markets/venues). This would result in greater empowerment and access to products for retail investors. Moreover, product governance requirements should be better calibrated for shares and vanilla corporate bonds, to encourage retail participation in these products, thus providing long-term investment opportunities for European households and benefiting the financing of the EU economy as a whole.

To address the issue of conflicts of interest, investment firms should be **strictly prohibited** from receiving **payment for order flows**, ie. any remuneration or benefit for routing client orders to a particular trading or execution venue.

Focus on cost efficiency and develop the concept of the "value for money" for the individual investor.

To be attractive to retail investors, investment products must also be cost-efficient. In this respect, the AMF calls for the **introduction of the concept of 'value for money' in the European legislative framework**, at least for some products (eg. structured products). Such a concept, to be introduced into specific requirements, would allow investors to benefit from products whose payout is not undercut by undue cost structures, especially in case of closed-architecture models.

☐ Empower investors with adequate knowledge, information and advice to support their investments

The objective of improving the offer of, and access to, financial products for retail investors is intrinsically linked to the development of financial literacy. Financial knowledge is indeed essential for EU citizens to get the most out of the investment products and services available to them. In order for them to be incentivised to invest, EU individuals should benefit from relevant, fair and proportionate information: in this field, work should be done to adjust the existing disclosure requirements to make them more meaningful and tailored to investors' needs, hence more understandable. Ultimately, for less sophisticated investors, information will not be sufficient, and high quality advice will be needed.

Undertake EU level actions for financial education to enhance retail investors' knowledge and autonomy.

The prioritisation of financial literacy in the European Commission's CMU action plan is most welcome, and its joint initiative with OECD to build a financial literacy competence framework is a positive step forward that is to be supported. Knowledgeable investors capable of making informed decisions are key to the construction of a dynamic single market in financial services. Notwithstanding Member States' competence in the field of education, there is room to **develop European initiatives to ensure coherence and coordination within the EU.** In particular, it would make sense to establish pan-European financial literacy campaigns targeting retail investors **on matters of common interest** across Member States. Several topics of cross-border relevance would benefit from messages conveyed at EU level: the risks and performance of financial products, which are of crucial importance for retail investors to make well informed decisions and also to avoid scams (a major problem in many Member States); and the different time horizons of projects and investments offered. In addition, EU wide multi-channel campaigns would be useful to raise awareness on typical scam techniques, to reach the highest number of European consumers/potential investors.

Take better account of the client's interest: offer high quality advice to less expert/autonomous investors.

Providing more information/disclosures may not be sufficient for less expert/autonomous retail investors who lack the knowledge to understand technical product charateristics and the impact of their investment (risks, returns…). For these individuals to invest in capital markets safely and adequately (ie to choose the most suitable products to meet their needs), it is essential to maintain access to high quality and reliable advice, including for investment in shares. Savers should have the choice between professional advised and non-advised services, depending on their profile and needs and as long as they have received clear information on these services and their features, so that they understand their differences as well as the extent of their autonomy. Besides, access to advice should never be conditional on the size of the client's financial portfolio. Investment advice is indeed often the only way to fill the knowledge gap for less financially educated persons. It is also a key element to protect vulnerable clients' interests.

The certification of financial advisors is one way to ensure the quality of advice. In this field, it could be useful to **develop a broad European framework for advisors' certification**, defining common themes to test these professionals, while still allowing for local markets' specific characteristics. Such a framework could also entail a form of equivalence between Member States' national certification systems which are already well-established (as shown by the AMF's experience in France for instance). This would be more appropriate than developing a pan-EU label for financial advisors, which would have limits if voluntary, and would entail difficulties in terms of criteria definition, governance and legibility for investors.

Financial advice is evolving in an environment where digitalisation and sustainability significantly impact financial investments. **Robo-advisors** are being developed to meet the needs of some retail investors (notably the youngest), but there are still a number of regulatory barriers to their further development, that should be assessed to improve their efficiency/added value for retail clients. On the other hand, studies conducted by the AMF also show that most investors in France still rely on direct interaction with an advisor. Therefore, maintaining a multi-channel approach seem efficient for most retail investors. As regards **sustainable investments**, guidance could be developed for use by financial advisors, to help them guide clients through sustainability concepts and match products with their investment preferences.

Benefiting from high quality financial advice also means that retail investors should have access to unbiased advice. In this respect, for services where the client relies on an expert as is the case forindependent advice or portfolio management, MiFID II prohibits firms from paying/receiving benefits. For other services, these benefits are allowed under the condition that they are designed to enhance the client's service quality, and provided they do not prevent firms from acting in the client's best interests. Going forward, to ensure that investors effectively receive unbiased advice, **the comprehensibility of inducement disclosures should be enhanced**; ESMA's recent technical advice contained proposals to improve the clarity of inducement disclosures which should be supported (layman's terms explanation on inducements; harmonised methodology of disclosures).

Conversely, the AMF does not support introducing a general ban on inducements as this would have a detrimental effect on retail investors by depriving them of access to proper advice (at least in some Member States like France). Such a ban would have the unwelcome effect of boosting the sale of in-house products by banking networks (who could use other remuneration schemes not captured by a ban, eg. for intra-group money flows) to the detriment of open architectures.