

## **Discussion Paper on MiFID II investor protection topics linked to digitalisation**

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#### **1. – Target participants**

The public consultation is primarily of interest to competent authorities, firms that are subject to MiFID II and their clients. Due to its focus on investor protection issues, this paper is therefore addressed to investor and consumer organisations; to investment firms and credit institutions providing investment services and activities; to UCITS management companies and external Alternative Investment Fund Managers (AIFMs) when providing investment services; and to any relevant trade association. The paper may also be of interest to firms that provide the digital engagement practices described in the paper.

#### **2. - Information Note**

The purpose of the Discussion Paper (DP) is to consult stakeholders and consumers, in an open and transparent manner, on the various examples and views expressed towards the topics listed in this DP that covers investor protection topics linked to digitalisation.

The first part of the DP presents introductory remarks including further details regarding the reasons for publication as well as background information on recent developments and research published. The DP continues with presenting the various topics including observed practices, relevant literature etc. followed by first ESMA suggestions.

The DP topics include online disclosures, more specifically exploring ways in which this information can be improved by making use of techniques available to create more bespoke and interactive information to investors. Furthermore, the DP covers sections on marketing communications and practices used by firms, for instance on social media and through the use of third parties such as affiliates and *finfluencers*. Finally, the DP explores various digital engagement practices that are or can be used by firms, such as nudging techniques and design of choice architecture, the use of gamification techniques, push notifications and possible dark patterns to be aware of.

ESMA will use the feedback to this discussion paper to develop a position on the use of digital engagement practices, such as gamification, as well as on the use of marketing practices (including social media and affiliates) by firms, and in particular to assess whether a regulatory response may be needed.

#### **3. - Submission of comments**

The deadline for submitting comments is **14 March 2024**.

Respondents may send their comments through ESMA's website: [www.esma.europa.eu](http://www.esma.europa.eu). Both the discussion paper and the response form are available on [ESMA's website](#) (place the cursor on the word to obtain the link).

Likewise, please send a copy of your answers to the CNMV to the following email address: [documentosinternacional@cnmv.es](mailto:documentosinternacional@cnmv.es)

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