

6 November 2017

European Banking Authority  
One Canada Square  
Canary Wharf  
London E14 5AA

**Re: Discussion paper on the EBA's approach to financial technology (fintech).**

Dear Sir/Madam,

CFA Institute appreciates the opportunity to comment on the EBA's discussion paper on the regulatory approach to fintech.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behaviour in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 140,000 members in 150 countries and territories, including 133,000 Chartered Financial Analyst® charterholders, and 147 member societies.

### **Specific Comments**

#### **Section 4.1 Authorisation and registration regimes and sandboxing/ innovation hub approaches.**

**Q1: Are the issues identified by the EBA and the way forward proposed in section 4.1 relevant and complete? If not, please explain why.**

In section 4.1, the EBA observes that differential regulatory regimes, such as sandboxes or innovation hubs, may cause fintech firms offering similar financial services to experience different regulatory treatment, which could result in level playing field issues and an incentive on the part of fintech firms to pursue regulatory arbitrage. CFA Institute agrees with this concern and supports, as one of its core advocacy priorities, efforts to maintain market fairness, which implies a level playing field. Similar financial products or services should be subject to similar regulatory treatment, including in the application of sandboxes or innovation hubs.

To our knowledge, regulators operating sandbox regimes are aware of the dangers of regulatory arbitrage and attempt to alleviate this issue through strict sandbox admission criteria. In particular, admission to a sandbox is typically allowed only if the business model is genuinely innovative and provides a step change in consumer cost and experience, or business scale. Further, admission to a sandbox typically necessitates a sandbox exit plan to be in place that provides a roadmap for the sandbox participant to switch its operations to a traditional regulatory regime on a finite schedule. It should be possible to tailor these kinds of admission hurdles to discourage regulatory arbitrage and ensure that financial innovation can be supported by regulators without skewing the playing field for competitors.

CFA Institute supports the proposed report into national regulatory regimes, including the features of sandboxing regimes, and innovation hubs. We think this is a good time to research this issue as the so-

called first generation of sandboxes are beginning to yield results, and EBA's report may yield lessons that could be adopted in the next generation of fintech regimes. We suggest the report should explore the possibility of creating an EU-wide sandbox, and investigate the benefits and challenges of this regime, which could be a helpful contributor to the Capital Markets Union agenda. There is recent precedent for this, with the European Commission exploring the concept of an EU-wide peer-to-peer lending regime in its latest Inception Impact Assessment<sup>1</sup>.

#### **Section 4.4 Consumer protection and retail conduct of business issues.**

##### **Section 4.4.1 Unclear consumer rights due to unclear regulatory status.**

**Q10: Are the issues identified by the EBA and the way forward proposed in section 4.4.1 relevant and complete? If not, please explain why.**

In Section 4.4.1, the EBA notes that the authorisation status of fintech firms is often unclear to consumers. This may make it difficult for consumers to understand the extent of their rights. CFA Institute agrees that this is an area of concern both in the sense that consumers may not know what the regulatory status of a fintech firm is, but also that they may assume an incorrect regulatory status of a firm and the consumer rights stemming from the status. If consumers are unsure of their rights, they may lose trust in the firms or their products and services. In turn, they may choose not to engage with the technology being offered.

CFA Institute believes that this issue should be a key component of the investigative report proposed by the EBA in Section 4.1.

##### **Section 4.4.2 Unclear consumer rights in the case of cross-border provision**

**Q11: Are the issues identified by the EBA and the way forward proposed in section 4.4.2 relevant and complete? If not, please explain why.**

In section 4.4.2, the EBA highlights the heightened concern around cross-border issues with fintech businesses because the nature of the technology facilitates remote customer relationships. CFA Institute agrees that this is likely to cause confusion for consumers. One example can be seen with Bitcoin wallets, which are typically online websites that track, record, and display a user's holdings of Bitcoin, as well as facilitate buying and selling of Bitcoin for fiat currency. In many cases it is not clear for the consumer from which jurisdiction the wallet operates. Further, to purchase Bitcoin for fiat currency it is typical for a user to be asked to send a wire transfer to the Bitcoin wallet's correspondent bank. This bank is usually one that operates under the Single Euro Payments Area (SEPA) system, but is not necessarily, or even likely, based in the same jurisdiction as the wallet provider. This structure creates confusion for the client in terms of understanding their consumer rights, as well as the relevant complaints procedures.

##### **Section 4.4.4 Inadequate/ insufficient disclosure to consumers in a digital environment.**

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<sup>1</sup> [http://ec.europa.eu/info/law/better-regulation/initiative/124034/attachment/090166e5b61525a3\\_en](http://ec.europa.eu/info/law/better-regulation/initiative/124034/attachment/090166e5b61525a3_en)

**Q15: Are the issues identified by the EBA and the way forward proposed in section 4.4.4 relevant and complete? If not, please explain why.**

In section 4.4.4, the EBA notes that new innovations allow market participants anonymity, there is a lack of transparency regarding the use of consumers' data, there can be difficulty in understanding new types of products, and there is a lack of transparency in pricing models, all of which are exacerbated by a lack of face-to-face contact. This information asymmetry can result in consumers making unsuitable decisions when using automated tools. CFA Institute agrees that fintech disclosure is often lacking and has recently advocated for updating disclosure requirements to meet the needs of automated advice providers<sup>2</sup>. We agree with the EBA's proposal to investigate the effectiveness of information disclosure provided through digital channels, and in particular mobile devices. Our 2017 report<sup>3</sup> 'Designing a European Summary Prospectus using Behavioural Insights' highlights some of the issues surrounding the effectiveness of information disclosure in the context of prospectuses, with the issues and recommendations being transferrable to most types of disclosure documents.

**Section 4.4.6 Financial exclusion associated with artificial intelligence and data-driven algorithms.**

**Q19: Are the issues identified by the EBA and the way forward proposed in section 4.4.6 relevant and complete? If not, please explain why.**

In section 4.4.6, the EBA outlines the risks related to the ethics of algorithmic financial tools, particularly the intentional and unintentional use of non-ethical criteria for decision-making (i.e. data-driven discrimination). Almost all recent developments in so-called artificial intelligence are driven by developments in machine/deep learning, which at its core finds clusters of patterns in large amounts of input data that it can use to make predictions about the likelihood of outcomes. This could take the form of extremely granular customer segmentations leading to price discrimination, as well as non-transparent credit scoring limiting access to financial services for certain customers. CFA Institute agrees that these issues will be of increasing concern and supports the joint work of the European Supervisory Authorities (ESAs) on the topic of Big Data. We note that the introduction of the General Data Protection Regulation (GDPR) in May 2018 should give consumers of all kinds of digital services in the EU more control over their personal data, but there will likely be further work required to ensure that the spirit of this regulation is fully converted into reality in the provision of digital financial services

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<sup>2</sup> See our comment letter on ESMA's consultation document on certain aspects of MiFID II suitability guidelines <https://www.cfainstitute.org/Comment%20Letters/20171013.pdf>

<sup>3</sup> <https://www.cfainstitute.org/learning/products/publications/ccb/Pages/ccb.v2017.n2.1.aspx>

**Concluding Remarks**

We welcome this opportunity to comment on this discussion paper on the EBA's approach to fintech. Please do not hesitate to contact us should you wish further elaboration of the points raised.

Yours faithfully,



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