European Forum of Securities Associations

28th January 2025

EFSA comments on ESMA's Consultation on the amendments to the research provisions in the MIFID II delegated directive in the context of the Listing Act

EFSA welcomes the opportunity to provide comments on the above ESMA Consultation Paper as detailed here below.

Question 1: Do you agree with the proposed approach? Or would you prefer a more or less detailed approach? Please state the reasons for your answer.

We are in favour of a light, hi-level approach, allowing financial research providers and asset managers to identify for themselves how to comply with the MiFID II level 1 requirements. As regards ESMA's preference for Option 3, we hold the view that some of the amendments proposed in the consultation paper to the Commission Delegated Directive (EU) 2017/593 are not consistent with ESMA declared intention to adopt a hi-level approach. This is particularly true with regard to (i) the requirement on investment firms to make comparisons with alternative research providers when assessing the quality of the research they receive and (ii) to agree with their research providers methodologies for remuneration of the research they receive which would prevent them from paying this research more when it is charged to them bundled than if they were to pay directly for it.

As a matter of fact, such detailed requirements were not considered necessary by the EU legislator, neither when the currently in-force provisions on unbundled payments were introduced by MiFID II (and by the relevant delegated directive adopted by the European Commission), nor when the Capital Market Recovery Packaged in 2021 allowed for bundled payments of research on issuers whose market capitalisation does not exceed EUR 1 billion.

As no market failure has been so far reported as to the way investment firms have been complying with the current unbundled as well as bundled (from 2021) payments of financial research, we cannot identify any reasons to make the administration of such payments more complex. In fact, by adding additional layers of requirements to those currently in place, ESMA risks disincentivizing asset managers from using financial research and, even worse, asset managers from reverting to the previously permitted bundled payments of the research.

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Question 2: Do you agree with the introduction of new paragraph 1b in Article 13 of Commission Delegated Directive (EU) 2017/593? Please explain why.

We do agree that when assessing the quality of the research they purchase, investment firms should base this assessment on robust quality criteria. However, we do not agree that these criteria should include a comparison with alternative research providers. First of all, such detailed approach would be inconsistent with ESMA's stated intention to maintain a high-level approach when regulating at Level 2 the conditions under which financial research can be considered a legitimate incentive.

The main point however is that under the Level 2 provisions currently in place, investment firms operating an RPA are already required to assess the quality of the research they purchase. Still, when the European Commission introduced this requirement in 2017, it did not consider it necessary to require a comparison with alternative research providers to carry out this assessment. Since then, it has been up to each investment firm to develop its own methodology. And we are not aware of any market failures that have occurred ever since that would justify the imposition of costly, burdensome and time-consuming comparisons which may unnecessarily delay the acquisition of research from new providers and the very possibility of investing (or disinvesting) in the financial instruments which are the subject of this research in a timely manner.

Question 3: If you do not agree with the introduction of new paragraph 1b in Article 13 of Commission Delegated Directive (EU) 2017/593, please provide alternative suggestions and/or explain how investment firms operating a research payment account currently assess the quality of research purchased (Article 13, point 1(b)(iv) Delegated Directive).

Since the entry into force of the Commission Delegated Directive (EU) 2017/593 each investment firm has developed its own methodology to assess the quality of the research it purchases, thereby complying with the provision currently in Article 13(1)(b)(iv) of the aforementioned Delegated Directive. To this end, some of them rely on evaluations and rankings carried out by independent third parties (such as Extel), some other have developed in-house methodologies which allow them to select in a timely manner the financial research providers which meet their specific investment needs and client demands and which are based on cost-efficiency criteria. All of them also carry out ongoing assessments of the relevance of the financial research purchased in developing their investment strategies and the impact on clients' performance of the investment strategies developed on the basis of this research. To this specific end, some of them periodically meet their providers as well, to discuss specific concerns which may arise.

Question 4: Do you agree that, when conducting the annual assessment provided in new Article 24(9a)(c) of MiFID II, an investment firm could be required to include a comparison with potential alternative research providers? Please state the reasons for your answer. Please also provide feedback on the availability of free trials for research services and why they may or may not be appropriate for investment firms to fulfil their obligations under

Article 24(9a)(c). If free trials are not appropriate, which other methods could be used for comparison?

We do not agree that when assessing the quality of the research they purchase, investment firm should carry out a comparison with alternative offers available from other research providers. As already stated in our answers to previous questions, in the absence of a proven market failure, we do not see any need to impose additional requirements on the provision of financial research, which would end up resulting in costly and time-consuming procedures that are not compatible with the speed which characterize the operation of financial markets. As such, subjecting the acquisition of research from providers not jet included in the research-provider list to lengthy procedures may also cause economic damages to clients. Ultimately, these market surveys appear to impose a burden (if not harm) that is disproportionate compared to any benefits they might bring, as investment firms have already developed effective methodologies to assess the quality of research

Question 5: Do you agree with the introduction of new paragraph 10 in Article 13 of Commission Delegated Directive (EU) 2017/593? Please state the reasons for your answer.

Once again, we consider that the detailed approach in the new paragraph 10, letter (a) in Article 13 of the Commission Delegated Directive would be inconsistent with ESMA's stated intention to maintain a high-level approach when regulating at Level 2 the conditions under which financial research can be considered a legitimate incentive.

We understand that the provision in Article 9a(i)(a) requiring investment firms to enter into agreement with third-party research providers establishing a methodology for remuneration, applies to both bundled and unbundled payments. Accordingly, bundled payments would be disincentivized if the Commission made only these payments subject to the condition that they did not result in the investment firm paying substantially more than it would if it used another payment method.

Still, we are firmly convinced that neither bundled nor unbundled payments should be made subject to such a condition. In fact, we do not agree with ESMA that this requirement can be drawn from the provision in Article 24(1) MiFID II which requires investment firms to act in the best interest of their clients. If it were to be the case, we wonder why the Commission has not mandated it also under the regulation of research currently in place. Neither we are aware of any market failure which can justify its introduction at this stage.

Nevertheless, we feel it is worth mentioning that, precisely because of their obligation to act in the best interests of their clients, each investment firm has obviously already developed their own internal methodologies for keeping the price of the financial research they purchase under control, so as not to jeopardise their own profitability and that of the clients who may pay for it, whenever it is the case. Accordingly, mandating a ban to enter into contracts which do not explicitly provide for these very-complex methodologies would be a disproportionate requirement.

Question 6: Do you think that any further requirements or conditions applicable to investment research provided by third parties to investment firms should be introduced in the proposed amendments to Commission Delegated Directive (EU) 2017/593? Please state the reasons for your answer.

Consistent with our support for ESMA's commitment to a high-level approach, we believe that no further requirements should be introduced as well as that the requirements in the new paragraphs 1b and 10(a) of Article 13 of Commission Delegated Directive (EU) 2017/593 should be removed.

About EFSA

EFSA is a forum of European Securities Associations gathering, the French Association of Financial Markets (AMAFI), the Spanish Asociación de Mercados Financieros (AMF), the Italian Association of Financial Markets Intermediaries (ASSOSIM), Capital Market Denmark (CMD), the German Association Bundesverband der Wertpapierfirmen (bwf), the Belgian Association of Stock Exchange Members (ABMB-BVBL), the Polish Chamber of Securities' Brokers (IDM) and the Swedish Securities Markets Association (SSMA).