

**Submission Date**

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### **Additional Information**

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#### **Level 1 Regulation**

Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

#### **Topic**

Inducements (research)

### **Subject Matter**

Inducements

#### **Question**

How should research related to fixed income, currencies or commodities (FICC) be treated for the purposes of the MiFID II inducements restriction for firms providing portfolio management or independent investment advice (Article 24(7) and (8))?

23-03-2018

Original language

[ESMA 35-43-349 MiFID II Q&As on Investor protection Ch. 7, question 9]

MiFID II inducements restrictions in Articles 24(7) and (8) do not provide any carve out for third party analytical work on fixed income, currencies and commodities (FICC) or other assets. However, depending on its nature, specific material relating to FICC markets may be capable of being either research that would be acceptable if received in accordance with Article 13 of the MiFID II Delegated Directive, or a minor non-monetary benefit under Article 12 of the same.

ESMA acknowledges that the current lack of established market practices and mechanisms for investment firms to pay for FICC research separately from execution costs may limit certain operational arrangements firms can adopt to comply with Article 13. Primarily, FICC markets do not currently have explicit execution commissions and mechanisms that allow research charges to be deducted alongside transaction fees. ESMA notes that firms still have the option to pay for research themselves, or using a research payment account that is funded by a direct charge to the client, which could be facilitated by a third party such as a depositary or custodian, rather than alongside a transaction.

Given the commonalities between some forms of written macro-economic and FICC research, ESMA considers that in some cases written FICC research could be capable of being priced and paid for through a subscription agreement (see Q&A 8). However, firms would need to document how they arrive at their pricing structures and ensure there is no inducements risk in order to comply with Article 13(9).

There also is the option for research providers to make FICC material openly available to all investment firms or the general public, on a similar basis to that set out in Q&A 8, or for firms to receive FICC material if commissioned and paid for by a corporate issuer or a potential issuer. In this case, the analytical input will qualify as a minor non-monetary benefit as set out in Article 12(3)(b) of the MiFID II Delegated Directive. Some types of FICC material may also

lack substantive analysis and instead represent information about financial instruments and short-term market commentary that meets the minor non-monetary exemption in Article 12(3)(a) and Recital 29 of the MiFID II Delegated Directive. The examples provided in Q&A 6 will be equally relevant to material on FICC instruments.