Consultation Response

AFME Response to Draft technical Advice Draft Technical Advice to the European Commission on the amendments to the research provisions in the MiFID II Delegated Directive in the context of the Listing Act

28th January 2025

Questions

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.**

One of the guiding principles of the incoming Commission's work for the next mandate is simplification of regulation and burden reduction for EU companies. We are fully supportive of these principles, which should inform all levels of the Lamfalussy procedure.

With this in mind, AFME supports ESMA's adoption of "Option 3 – High level requirements", as outlined in section 10 of the policy background. This is consistent with the approach delineated in the MiFID – Level 1 text published in the OJEU in November.

We note, in particular, Recital 4 MiFiD which states that the research unbundling rules need to be further adjusted to offer investment firms "more flexibility in the way that they choose to organise payments for execution services and research, thus limiting the situations where separate payments might be too cumbersome."

We also observe that there is no mandate in Level 1 which indicates ESMA should propose more detailed requirements in Level 2 with regards to the new payment option.

A flexible and proportionate framework for the new payment option will stimulate its adoption and ensure that the EU is not a competitive disadvantage compared to other jurisdictions.

That said, we stress some of the ESMA's proposals are inconsistent with the high-level approach which ESMA is purportedly pursuing. These proposals risk depriving research of the practical effectiveness of important and positive developments under the EU Listing Act Package.

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

Article 13 (1b) of Commission Delegated Directive (EU) 2017/593 states that "The assessment provided in point (c) of Article 24(9a) of Directive 2014/65/EU shall be based on robust quality criteria and include, where feasible, a comparison with potential alternative research providers."

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*AFME proposes to replace "and include, where feasible" with "**which may include**" for the reasons that follow:*

- *Our drafting suggestion more accurately reflects the nature of research, which is not a comparable commodity as its value to customers will depend on their investment strategy and portfolio manager decisions which are specific to each firm's internal assessment.*
- *We emphasise the need for consistency with international practices to ensure firms operating in the EU are not at a competitive disadvantage compared to their peers in other jurisdictions. A comparison introduces unnecessary procedural complexity with no commensurate benefits or value.*
- *As we explain further in our response to Question 3 below, allowing flexibility for fund manager is of utmost importance as key is the fund manager's value for money assessment, irrespective of the payment arrangement.*

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).

We do not support ESMA's proposal, in the way currently drafted.

Our alternative drafting aims to reflect current practice whereby asset managers have in place internal mechanisms with the goal to assess – on a dynamic basis and leveraging also on rankings published by external independent providers, where appropriate – the quality of the research provided by third parties. This is normally done with particular reference to the compatibility of this research with the asset manager's specific needs as well as their clients' demands e.g. i) compatibility with their investment strategies ii) adequacy of costs' levels, and iii) impact in terms of value added for clients.

Annual mandatory comparison risks being not practical for smaller or specialized firms. As alternative solutions, we deem it preferrable:

1) *to encourage firms to perform "bottom-up" and "internally driven" reviews based on their needs and their clients' demands*
2) *to promote the use of free trials coupled with short-term contracts with new providers to assess research quality. This would allow firms to test other providers and to ensure that the research at issue really meets their needs before entering long-term contractual relationships. Free trials are a valid tool for asset managers to asses the quality of research produced by other providers and to explore, at the same time, investment opportunities in financial instruments which are not covered by the research produced by the providers included in their broker lists.*

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?**

Free trials are an essential feature of research markets and it is important to preserve their availability. To this extent, it is important to extend ESMA Q&A 12 to all payment options.

The fund manager needs to be able to demonstrate the use of free trials as means to assess alternative options and robust internal value for money assessment on existing providers. If fund managers are able to demonstrate these two assessments, then a further assessment, in the form of a comparison with potential alternative providers, is unnecessary.

Promoting the use of free trials would allow firms to test other providers and to ensure that the research at issue really meets their needs before entering long-term contractual relationships; free trials are a valid tool for asset managers with a view to assessing the quality of research produced by other providers and to explore, at the same time, investment opportunities in financial instruments which are not covered by the research produced by the providers included in their broker lists.

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.**

In our view, the drafting in ***letter a*** *indicates that firms are not required to take a mathematical approach to identifying the exact amount that might have been paid had a different option been chosen, but should instead focus on whether the cost is likely to be clearly and substantially more (or not) taking into account the information available to the manager. If it becomes clear that joint payments have, over time, become substantially more expensive, then the manager would be expected to react to this conclusion (for instance, in determining its approach to costs in next year's decision on research consumption).* ***In our view, provided that there is a stand-alone assessment on value for money (irrespective of the payment structure) the criterion in letter a) should be considered fulfilled.***

In our view, the drafting in ***letter b*** *suggests that managers cannot route orders to a firm that would not have received those orders under its best execution policy in order to access its research. We do not consider this guidance to be a change in practice under the existing best execution rules but is instead a useful reminder to firms of a factor they should be taking into account.*

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.**

We are wary of additional requirements for investment research since these risk jeopardizing the goals of the Listing Act, and reintroducing unnecessary and disproportionate rigidity.

In particular, we deem it as a priority:

1. *To ensure the highest degree of alignment with the Listing Act goals, to encourage investment research and to reduce restrictions.*
2. *To avoid any unnecessary form of prescriptive over-regulation, without sound, tangible added value for clients (in particular, the new requirements in Article 13(1b)).*
3. *To promote accessibility to research and to encourage the coverage of a wide range of sectors and issuers.*

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AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

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