BNP PARIBAS

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BNP Paribas' response to 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

BNP Paribas welcomes the adoption of the Listing Act that has come into force on 4th December 2024. It represents a significant step towards a more comprehensive Capital Markets Union that will serve all savers and investors across the European Union and which we push for as a leading European investment bank.

BNP Paribas fully supports the objective to ensure that European companies, including SMEs, have facilitated access to diversified financing options, including listed stock markets. We believe that enabling active and deep equity markets for IPOs and subsequent capital increases is key to the development of private equity and venture funding that need a credible exit for their investments as well as for managements that can develop long term growth plans based on a listed status.

It is also positive that can rely upon the safety and transparency that only listed companies offer to investors in addition to constant liquidity. A large number of family-owned companies in Europe may benefit from easy access to equity funding through deep equity markets.

We also believe that sound capital markets will benefit from strong independent sector-focused research, where investors could rely on deep expertise across equities. Contrary to many other segments of investment banking, which is dominated by American peers globally and in Europe, equity research is closely linked to its local footprint, where European players are leading in their domestic markets, among which BNP Paribas Exane that ranks #1 for industry research in developed Europe[1].

The development of equity research will be even more essential as part of the completion of the Saving and Investment Union, necessary to finance the "double transition" (green / digital) and to improve European competitiveness.

As part of the Listing Act, numerous amendments have been introduced into several European legal acts, including amendments to the Market in Financial Instruments Directive ('MiFID II") where joint payments for execution services and research will be made possible irrespective of the market capitalisation of the issuers covered by the research.

Whatever payment option an investment firm may choose in relation to its payments for research (out of its own resources, payments from a separate research payment account or joint payments for research and execution services), it should always adhere to the following conditions for the provision of research not to be regarded as an inducement:

- (a) an agreement between the investment firm and the third-party provider of execution services and research, establishing a methodology for remuneration;
- (b) investment firm informs its clients about its choice to pay either jointly or separately, and makes available to them its policy on payments for execution services and research, including the type of information that can be provided depending on the firm's choice of payment and, where relevant, how the investment firm prevents or manages conflicts of interest;
- (c) the investment firm assesses the quality, usability and value of the research used, as well as the ability of the research used to contribute to better investment decisions, on an annual basis.

BNP Paribas is pleased to contribute to this assessment by responding directly in our own name, reflecting its different business lines acting in the listing cycle (Investment Banking, Research, Asset Management), and indirectly via trade associations such as AFME. We would also be keen to engage even more closely with ESMA to share our insights as market player connecting daily with our clients.

[1] BNP Paribas Exane has been ranked #1 for industry research in developed Europe by the Institutional Investor Survey for seven years.

1/ Global approach adopted for the proposed amendments to Commission Delegated Directive (EU) 2017/593

Q1: Do you agree with the proposed approach? Or would you prefer a more or less detailed approach? Please state the reasons for your answer.

Of the three different approaches related to the changes to Article 13 of Delegated Directive (EU) 2017/593, BNP Paribas agrees with ESMA and supports the adoption of the Option 3 "High-level requirements", as the intermediate option to "no changes" (option 1) that would leave too much legal uncertainty and to "detailed requirements" (option 2), that would lack the necessary flexibility for the market participants to define the most suited arrangements while preserving transparency.

We believe that defining high-level requirements is more aligned with the objective to allow 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.

Avoiding unnecessary additional complexity will better serve the Commission's objective of simplification and competitiveness.

We are also mindful that the necessary flexibility will allow market participants to define market driven arrangements that would be operable in various jurisdictions and will then reduce the risk of regulatory fragmentation and the risk to put EU trading venues at competitive disadvantage compared to other jurisdictions.

We believe such arrangements could be in the form of already well-established Commission Sharing Agreements that should be operable in different jurisdictions.

2/ Annual assessment of the research used

Q2: Do you agree with the introduction of new paragraph 1b in Article 13 of Commission Delegated Directive (EU) 2017/593? Please explain why.

We have well noted that ESMA proposed new paragraph 1b of Article 13 as follows: 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.

We agree with AFME to replace "where feasible" with "which may include", as "research" is not an easily comparable "commodity" and there is a need for consistency with international practices to ensure firms operating in the EU are not a competitive disadvantage against their peers in other jurisdictions.

A comparison introduces unnecessary procedural complexity with no commensurate benefits, and will not serve the objective of simplification and competitiveness for the European economic environment.

Q3: 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.

Market participants have all adapted to the MiFID II regulatory framework. Asset Managers have developed internal mechanisms to assess the quality of the research provided by third parties, on a dynamic basis and leveraging also on rankings published by external independent providers where appropriate, with particular reference to the compatibility of this research with their specific needs as well as their clients' demands.

We believe that introducing an annual mandatory comparison would not bring additional benefits and would risk being not practical for smaller or specialised firms.

As alternative solutions, we deem it preferrable to encourage firms to perform "bottom-up" and "internally driven", reviews based on their needs and their clients' demands; and where appropriate, to

promote the use of free trials coupled with short-term, flexible contracts with new providers to assess research quality (see further our response to Q4 below).

Q4: 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?

As stated in Q3, we believe that introducing an annual mandatory comparison would not bring additional benefits and would risk being not practical for smaller or specialised firms.

Free trials are an essential feature of research markets and it's important to preserve their availability. To this extent, it is important to extend ESMA Q&A 12 to all payment options. However, while we agree that free-trials are an important feature of research markets, there are also limitations in terms of their effectiveness to assess incumbent provider performance, on an ongoing basis.

Given the mandatory time constraints imposed in respect of free trials and the fact that these trials are primarily intended to assess the quality of research content of a potential new provider, with a view to proceeding to a full paid-for subscription at the expiry of the 3-month trial, it may prove impracticable to use this mechanism to assess the value of a long-term provider, on an ongoing basis and therefore managers should have the flexibility to use free-trials as one of a number of methods to fulfil their Art 24 (9a) (c) obligations.

We would strongly oppose any measures that required research providers and/or their clients to disclose commercially sensitive information.

3/ Requirements applicable to the joint payments method

Q5: 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.

We have well noted that ESMA proposes to introduce a new paragraph 10 related to conditions to be met for joint payments for execution services and research, that requires Member States to ensure that the investment firm shall enter in an agreement for joint payments when the methodology for remuneration that (a) prevents that the investment firm would pay substantially more for the research component than the costs of the research when the firm would have paid directly for it; (b) does not impede the firm's ability to comply with the best execution requirements.

We agree with AFME's view of the new provisions:

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, and 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) this criterion should be considered fulfilled.

A clear objective of the changes put forward under the Listing Act is to increase the availability of high-quality investment research available within the EU. therefore, we would not be supportive of any measures that could have the unintended consequence of further depressing research budgets and disincentivizing specialized research providers from growing their businesses, which, over time. could have the opposite effect on this market.

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.

Q6: 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 we fear that they risk jeopardizing the goals of the Listing Act, and reintroducing unnecessary and disproportionate rigidity.

In particular, we agree with AFME and also consider a priority:

- To ensure the highest degree of alignment with the Listing Act goals, to encourage investment research and to reduce restrictions.
- 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) and Article 13(10)(a) of Commission Delegated Directive (EU) 2017/593).
- To promote accessibility to research and to encourage the coverage of a wide range of sectors and issuer.