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ESMA35-335435667-6290

Final Report

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

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1 Executive Summary

Reasons for publication

The European Securities and Markets Authority ("ESMA") received a request from the Commission on 6 June 2024 to provide technical advice on the implementation of the amendments to the Prospectus Regulation, Market Abuse Regulation and MiFID II in the context of the Listing Act[1]. This technical advice focuses on the changes in MiFID II[2] related to the payment for research and execution services.

Contents

Section 2 explains the relevant background for this technical advice. Section 3 sets out the feedback statement relation to ESMA's advice on how to amend the MiFID II Delegated Directive[3]. Annex I includes the relevant extract from the Commission's request for advice. Annex II presents the cost-benefit analysis. Annex III includes relevant extracts of the advice received by ESMA from the Securities and Markets Stakeholders Group (SMSG). Annex IV shows the proposed amendments to the MiFID II Delegated Directive.

[1] The following regulation and directives were published in the Official Journal on 14 November 2024 (i) Regulation (EU) 2024/2809 (the Listing Act Regulation) (ii) Directive (EU) 2024/2810 (The Directive on multi-vote share structures) (iii) Directive (EU) 2024/2811 (the Listing Act Directive).
[2] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.
[3] Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits.

2 Background

2.1 Research regime in force

1. Currently, MiFID II and the MiFID II Delegated Directive[4] set out the conditions that the provision of research by third parties to investment firms must meet in order not to be regarded as an inducement.

2. Previously, MiFID II only allowed payments for research by an investment firm out of its own resources or payments from a separate research payment account.

3. The current regime results from changes to the research regime in MiFID II made in 2021 as part of the Capital Markets Recovery Package[5]. A new paragraph (9a) inserted in Article 24 introduced the possibility for joint payments for execution services and research covering issuers whose market capitalisation did not exceed EUR 1 billion.

2.2 New payment option and conditions for research not to be treated as an inducement

4. As a result of further regulatory evolution, the Listing Act Directive[6], as approved in 2024, has made possible joint payments for execution services and research irrespective of the market capitalisation of the issuers covered by the research.

5. However, 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 has been entered into between the investment firm and the third-party provider of execution services and research, establishing a methodology for remuneration, including how the total cost of research is generally taken into account when establishing the total charges for investment services;

[4] Respectively, Article 24 of MiFID II and Article 13 of the MiFID II Delegated Directive
[5] Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis (OJ L 68, 26.2.2021, p. 14).
[6] OJ L, 2024/2811, 14.11.2024

b) the investment firm informs its clients about its choice to pay either jointly or separately for execution services and research 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 pursuant to Article 23 when applying a joint payment method for execution services and research;

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.

6. In addition, where the firm chooses to pay separately for execution services and third-party research, the provision of research by third parties is received in return for either i) direct payments by the investment firm out of its own resources; or ii) payments from a separate research payment account controlled by the investment firm.

2.3 Request for technical advice from the Commission

7. On 6 June 2024, ESMA received from the Commission a request to provide technical advice on the implementation of the amendments to the Prospectus Regulation, Market Abuse Regulation and MiFID II Delegated Directive in the context of the Listing Act.

8. The deadline to submit the technical advice is 30 April 2025.

9. This final report focuses solely on the changes to the MiFID II Delegated Directive related to the payments for research and execution services. The relevant extract from the Commission's request is included in Annex I.

Public consultation

10. On 28 October 2024, ESMA published a Consultation Paper (CP)[7] on the draft technical advice in order to explain the rationale of its proposals and gather input from stakeholders. The consultation period closed on 28 January 2025.

11. ESMA received a total of 25 responses, 3 of which are confidential. The answers received are available on ESMA's website unless respondents requested otherwise.

[7] With Ref: ESMA35-335435667-5979

ESMA also sought the advice of the Securities and Markets Stakeholder Group's (SMSG). The SMSG advice is included in Annex III.

Final report

12. This Final Report summarises and analyses the responses to the CP and explains how the responses, together with the SMSG advice, have been taken into account. ESMA recommends reading this report together with the CP to have a complete view of the rationale for the technical advice.

3 Feedback Statement

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.

13. A majority of respondents, including the SMSG, agreed with the global approach proposed, consisting of high-level requirements, as this aligns with the objective of the Listing Act. However, some of those respondents stated that they find the proposed changes to the Delegated Directive too detailed and thus in fact not as high-level as desired.

14. Few respondents disagreed with the proposed global approach and called for more detailed requirements in order to solve some of the deeper issues in the research market, which will not be addressed properly by high-level requirements.

15. In ESMA's view, an approach with high-level requirements prevents being too prescriptive and thus aligns with the objectives of the Listing Act. ESMA does not share the view of some respondents that the proposed changes to the Delegated Directive are too detailed.

16. In its advice, the SMSG stated that it would be important to monitor the market developments, for instance on the adoption of the new payment option and the quality and availability of research. ESMA agrees with the SMSG that it is relevant to monitor market developments. The Listing Act Directive also requires ESMA to prepare a report with a comprehensive assessment of the market developments by 5 December 2028. The opinion of the SMSG shall be taken into account when drafting this report.

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.

17. Most respondents disagreed with the introduction of paragraph 1b as drafted in the CP. The disagreement mostly relates to the possible comparison with alternative research providers in light of the annual assessment. The SMSG also expressed concerns on the possible comparison. The responses on this comparison will be further elaborated and replied on in response to question 4 below.

18. Some of the respondents that disagreed also noted that the reference to "robust quality criteria" should not be included. Some respondents also mentioned that the assessment should not be performed every year, but only once every three years, as a yearly exercise would be too burdensome and would not reveal much new information. The SMSG stated that in certain cases a yearly assessment would only be a formality and an

unnecessary cost item, for instance where no alternatives exist for the specific research used.

19. The few respondents that (partially) agreed, noted that universal objective criteria could facilitate better assessments. However, they mentioned that the "robust quality criteria" alone would not be sufficient and additional criteria might be included. It was also stated that the assessment criteria could be different depending on the payment method and whether the research comes from an independent research provider.

20. In view of the responses to question 2, as well as those summarised in reply to question 4, ESMA has deleted the reference to "*a comparison with potential alternative research providers*" in paragraph 1b. Instead, it now solely refers to the more high-level "*robust quality criteria*" that was already included in the existing Article 13. ESMA does not share the view that the latter requirement should also be deleted as expressed by some respondents. The requirement that the annual assessment be based on robust quality criteria is already included in the Delegated Directive in respect of research payment accounts. Since the Listing Act Directive makes the annual assessment mandatory for all research - irrespective of the payment method -, it makes sense to make this requirement applicable for all payment methods.

21. With respect to the frequency of the annual assessment, since an annual assessment is required by the Level 1, ESMA sees no room to provide for a less frequent assessment in the Delegated Directive.

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).

22. A majority of respondents stated that firms use internal methodologies that are tailored to their specific circumstances and needs. Some respondents, including the SMSG, referred to the use of rankings of research providers published by third parties.

23. Some respondents also noted free trials as a practical tool and few mentioned that they should be encouraged. Others, however, noted that the use of free trials should not be required. Few respondents also mentioned that if free trials are allowed, they should remain limited in duration and frequency to prevent that they just become an inducement in the form of free research.

24. ESMA takes note of the responses and observes that it is important for firms to have flexibility to set up their own internal assessment methodologies tailored to their specific circumstances and needs. As the responses did not reveal any widespread practices

that could be of use for the delegated directive, ESMA did not include any additional criteria or measures in its technical advice. On free trials, ESMA would like to point out that the analysis included in ESMA_Q&A_1800 on the conditions for free trials to qualify as minor non-monetary benefits[8] is still valid after the date of application of the Listing Act Directive.

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?

25. As mentioned in paragraph 17, most respondents do not agree with the requirement to perform a comparison with alternative research providers as part of the annual assessment. The reasons stated are that this would be too prescriptive and too burdensome, especially for smaller firms with limited resources, that alternatives are not always available and that the current assessment practices of firms are already sufficient.

26. The SMSG also expressed concerns, stating that the draft as included in the CP risks introducing unnecessary complexity, especially for smaller firms. Additionally, it may not always be feasible in the absence of comparable research from alternative providers. The SMSG also points out that the same objective could be achieved in other ways than with a direct comparison, for instance via rankings from third parties.

27. ESMA would like to clarify that “where feasible” was specifically included in the draft to highlight that a comparison was not required in all cases. Where no suitable alternative would exist, or where the comparison would be too costly or burdensome, it was not expected that such comparison should took place. However, in light of the feedback received, ESMA considers it appropriate to not include the possible comparison in its technical advice, as also anticipated in paragraph 20.

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.

28. The SMSG noted that both criteria included in paragraph 10 are justified and expressed in convenient terms, avoiding being overly prescriptive. Specifically, on point (b), it is

[8] https://www.esma.europa.eu/publications-data/questions-answers/1800

noted that this is a useful reminder of the existing best execution requirements, which is also noted by some respondents.

29. Other respondents agreed with the introduction, noting, inter alia, that this is already market practice or something the market would adjust to. It was also noted that this paragraph deals with two key points that come with joint payments. Notably, the introduction of paragraph 10 is welcomed in protecting asset managers' and their clients' interests. Specifically on point (a) it is also noted by a respondent that this should be considered fulfilled following the assessment of the value of the research.

30. Some other respondents disagreed noting that firms already have a competitive incentive to not overpay for research and thus any additional requirements are unnecessary. Some respondents also expressed concerns that any additional requirement would make joint payments less attractive, thus going against the objective of the Listing Act. It is also noted by few respondents that the introduction of point (a) would be difficult for sell-side firms, as they would need to implement two separate pricing mechanisms (joint payments and another mock payment method to allow the comparison).

31. Few respondents stated that the availability of research could be a factor for best execution analysis, with the aim to incentivise the availability of research for SMEs. To the contrary, few other respondents stated that research and best execution should remain separated, as the provision of research should not be regarded as relevant for execution quality.

32. Regarding point (a) of the proposed new paragraph 10, ESMA is of the view that this requirement is consistent with the level 1 text. Article 24(9a)(a) of MiFID II states that, when entering into an agreement, a firm must establish a methodology for remuneration, which includes determining *"how the total cost of research is generally taken into account when establishing the total charges for investment services".* This entails that, before entering into the agreement, the total costs of the research component should already be known to the firm. In addition, point (c) of the same subparagraph requires firms to assess, among others, the value of the research used, thereby indicating that an ex-post assessment is also necessary. Consequently, in line with the level 1 text, firms should have the capacity to prevent paying significantly more when entering into an agreement for joint payments.

33. In ESMA's view, point (a) also does not imply that sell-side firms that provide research and execution services should have two separate pricing mechanisms. Obviously, they are free to offer joint and separate payment options. However, as explained in the previous paragraph, when entering into an agreement the total costs of the research should already be known in accordance with the level 1 text.

34. Concerning point (b) of the proposed new paragraph 10, ESMA is of the view that this is a useful reminder of the existing best execution requirements as noted by some respondents. The provision of research is not a relevant factor to assess whether a firms obtains the best possible results for its clients. Therefore, to be able to conduct best execution assessments, an already existing requirement, firms must know the costs that are directly relating to the execution of the order, meaning that the research component of the joint payments should be separated from the execution costs for this assessment.

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.

35. Most respondents, including the SMSG, stated that no additional requirements are necessary. However, some respondents – representatives of independent research providers – stated that a differentiation could be made between assessments for research provided by independent research providers, and (global) brokers that provide research and execution services given the differences in potential conflicts of interest.

36. Few respondents also stated disclosures as an area for further details. However, the remarks of respondents on what could exactly be achieved in this area differed. Proposals ranged from less disclosures in specific situations such as when the firm pays directly for the research out of its own resources to additional disclosures where the full research budget is allocated to research providers with potential conflicts of interest.

37. In light of the responses, ESMA did not include further requirements in its technical advice. ESMA takes note of the idea to make a distinction in the assessment of research based on the type of research provider. However, in ESMA's view it would be more appropriate to deal with such matters in guidelines instead of the Delegated Directive, especially since new Article 24(9a)(c) of MiFID II mentions that ESMA may develop guidelines for investment firms for the purpose of conducting the annual assessment of the research.

4 Annexes

4.1 Annex I - Relevant extract from the Commission's request for advice

Article 24.9a of MiFID II specifies that the provision of research by third parties to investment firms providing portfolio management or investment or other ancillary services to clients shall fulfil the obligations for a firm to act honestly, fairly and professionally and shall be in the best interest of the client. The Listing Act amends the text of MiFID II by introducing the option for investment firms to pay either jointly or separately for execution services and for research (retracting the previous obligation to pay for those services separately – so called "unbundling regime"). The Listing Act, consequently, introduces new conditions for firms to comply with in order to be regarded as fulfilling the above-mentioned fiduciary duties, notably they have to:

1) inform their clients about their choice to pay either jointly or separately for execution services and research;

2) make available to their clients their policy on payment for execution services and research, including the type of information those clients can be provided depending on the firm's choice of payment method and when a joint payment method is selected by the firm, how such firm prevents or manages conflict of interest;

3) enter into an agreement with the third-party provider of research and execution services establishing a methodology for remuneration, including how the total cost of research is generally taken into account when establishing the total charges for investment services;

4) assess on annual basis the quality, usability and value of the research used, as well as the ability of the research used to contribute to better investment decisions; and

5) where they choose to pay separately for execution services and third-party research, receive the research from the third party in return for either direct payments out of the firm's own resources or payments from a separate research payment account controlled by the firm.

Where known to them, investment firms must also keep a record of the total costs attributable to third-party research provided to them and upon request, such information shall be made available on an annual basis to the clients of the firms.

Considering that those new conditions have an impact on Article 13 of Delegated Directive (EU) 2017/593, which only describes conditions associated to the unbundling regime, such delegated act will have to be amended in order to supplement the application of the new optional regime. **The Commission invites ESMA to provide technical advice on the**

amendments of such delegated directive taking into account the new payment regime for research and execution services, ensuring harmonisation in their application and fostering research on companies/issuers.

4.2 Annex II - Cost-benefit analysis

Impact of the recommendations in Annex IV

1. As per Article 16(2) of Regulation (EU) No 1095/2010, any recommendations developed by ESMA are to be accompanied by an analysis of '*the related potential costs and benefits of issuing such guidelines and recommendations*'. Such analysis shall be "*proportionate in relation to the scope, nature and impact of the guidelines or recommendations*".

2. The following section outlines ESMA's assessment of the main policy options included in the recommendations on payments for research.

Problem identification

3. The research regime laid down in MiFID II required investment firms to separate payments which they receive as brokerage commissions from the compensation received for providing investment research (the "research unbundling rules"), or to pay for investment research from their own resources and assess the quality of the research they purchase based on robust quality criteria and the ability of such research to contribute to better investment decisions. In 2021, those rules have been amended by the Capital Markets Recovery Package to allow for bundled payments for execution services and research for small and middle capitalisation companies below a market capitalisation of EUR 1 billion.

4. The Listing Act Directive further adjusts the research unbundling rules to offer investment firms more flexibility in the way that they choose to organise payments for execution services and research.

5. However, 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 a number of conditions for the provision of research not to be regarded as an inducement (please see paragraphs 5 and 6 of section 2.2 hereto). It includes some new conditions introduced by the Listing Act Directive.

6. Those new conditions have an impact on Article 13 of the MiFID II Delegated Directive, which only describes conditions associated to the unbundling regime. Thus, this delegated act will have to be amended in order to supplement the application of the new optional regime. The Commission asked ESMA to provide technical advice on desirable amendments to the delegated directive taking into account the new payment regime for

research and execution services, to ensure harmonisation in their application and to foster research on companies/issuers.

7. When drafting the recommendations, ESMA's objective was thus to ensure that: i) amendments to the delegated directive reflect the new research regime resulting from the Listing Act and ii) to strike a balance between the revitalisation of the market for investment research and the need to protect investors.

Policy objectives

8. The objective of these recommendations is to help revitalise the market for investment research whilst balancing this objective with investor protection. To reach such objective, the recommendations further clarify the conditions that must be met by payments for research so that research may not be considered as an inducement.

Baseline scenario

9. In a baseline scenario, with no amendments to Article 13 of the Delegated Directive:

    i) Article 13 of the Delegated Directive is, in part, redundant with the level 1 text resulting from the amendments to the research regime by the Listing Act;

    ii) no further specifications to the regime set out in level 1 are provided giving rise to uncertainty and little harmonisation.

10. The above would lead to:

    i) an unclear regime; and

    ii) investor detriment.

Options considered and preferred options

Policy issue 1: global approach

11. ESMA has considered 3 options for the global approach for the changes to Article 13 of the MiFID II Delegated Directive. As described in paragraphs 10 to 13 of section 3.1 of the CP, ESMA opted for Option 3 that proposes to include some high-level requirements in Article 13 to:

    a) better align the level 2 legislation with the new options offered in the level 1 text;

b) strike a balance between the revitalisation of the market for investment research and the existing wider framework for inducements and the proper management of conflicts of interests.

12. ESMA however made some adjustments to its recommendations to take into account the feedback received and limit further the costs implications of the new regime.

Policy issue 2: annual assessment of the research used

13. ESMA has considered 2 options:

Option 2a. As such assessment is included in the level 1 text and is now applicable to research in general, not just when the firm is using a research payment account, one option was to remain silent and leave firms to entirely decide how to carry out the assessment.

Option 2b. To ensure that the annual assessment is used by firms as an opportunity to ensure the quality, usability and value of the research used, as well as the ability of the research to contribute to better investment decisions, it could be useful that firms stay informed of alternatives available on the market. As such, one option is to require, where feasible, that the annual assessment includes a comparison with alternative offers available on the market.

14. In the CP, ESMA adopted option 2b. Based on the feedback received, ESMA finally opted for a third option which is to confirm, as already suggested in the CP, that the annual assessment required in point (c) of Article 24(9a) of MiFID II must be based on robust criteria but to delete the reference to the possibility to undertake, as part of such assessment, a comparison with potential alternative research providers, where feasible.

15. ESMA is of the view that this third option is the most cost effective as the requirement that the annual assessment be based on robust quality criteria is already included in the Delegated Directive in respect of research payment accounts. Since the Listing Act Directive makes the annual assessment mandatory for all research - irrespective of the payment method -, it makes sense to make this requirement applicable for all payment methods.

Policy issue 3: requirements applicable to the joint payments method

16. ESMA has considered 2 options:

Option 3a. The first option is not to specify further the requirements set out in the level 1 text resulting from the Listing Act.

Option 3b. Further specify the following requirement "*establishing a methodology for remuneration, including how the total cost of research is generally taken into account when establishing the total charges for investment services*" as well as how the firm should consider its best execution obligations when considering using joint payments.

17. Option 3a would leave much room for interpretation and lead to little harmonisation. How the total cost of research should be taken into account when establishing the total charges for investment services would remain unclear.

18. Option 3b on the other hand, whilst still leaving flexibility to firms as to the remuneration methodology they choose, would ensure that choosing the joint payments method would not lead to investor detriment in that clients would be paying more for research (if, ultimately, they bear the costs) than they would if the firm had chosen a different payment method.

19. For the above reasons, ESMA chose Option 3b.

Cost-benefit analysis

20. The recommendations are expected to result in limited costs for investment firms and research providers, but also in some benefits for investment firms and investors.

21. The costs described hereafter are mainly attributable to Level 1 regulation, which already sets in the level 1 text the requirements applicable for research not to be considered as an inducement. Some very limited costs may however be expected where firms have to conduct the annual assessment of the research used, as well as for initially agreeing on the remuneration methodology for research where using joint payments.

Costs

22. Investment firms are expected to incur limited costs where they conduct the annual assessment of the quality, usability and value of the research used based on robust quality criteria, as well as the ability of the research used to contribute to better investment decisions. Such costs would, however, already be expected based on the Level 1 regulation. Additionally, the annual assessment may also be an opportunity to reevaluate research agreements or find better value offers and therefore, ultimately, to lower costs.

22. Investment firms may also incur some limited costs where they set up the remuneration methodology to comply with the requirements of paragraph 10 of the Delegated Directive. However, such costs should be limited and one-off and are, in any case, directly entailed by the Level 1 requirements.

Benefits

23. The introduction of paragraph 1b in Article 13 of the Delegated Directive promotes investor protection and may potentially entail gains for firms as it is meant to ensure that investment firms use robust quality criteria irrespective of the payment method used.

24. The introduction of paragraph 10 in Article 13 of the Delegated Directive would also promote investor protection by lessening the risk of investors ultimately being charged substantially more for the same research, depending on the payment method used.

Table: costs and benefits

Stakeholder groups affected	Costs	Benefits
Investment firms	Limited one-off and/or recurring costs to carry out the annual assessment, and to establish a remuneration methodology preventing that they pay more for research if they choose joint payments (compared to another payment method).	Ensuring that the research they use is of adequate quality and value. Ensuring that the cost of research does not depend on the payment method chosen.
Competent authorities	Ongoing cost of supervision that firms comply with the research regime resulting from the amendments introduced by the Listing Act.	Leave enough flexibility for investment firms as to how they comply with the new research regime requirements. Better outcome for investors.
Investors	None	Better value
Research providers	Limited costs to agree on a remuneration methodology as part of the (price) negotiations that are already taking place.	Increased competition if the annual assessment shows that the research used from the current provider(s) does not provide enough quality, usability or value.

4.3 Annex III - Advice of the Securities and Markets Stakeholder Group (SMSG)

1. As provided by Article 16(2) of the ESMA Regulation[9], ESMA sought the advice of the SMSG.[10]

2. The SMSG made the following remarks concerning the general approach:

   ''The SMSG agrees with the global approach adopted for the proposed amendments to the Delegated Directive, that consists of integrating high level requirements in article 13, as this approach (i) responds to the mandate set by Level 1, (ii) is consistent with the affirmed intention of European authorities to limit and reduce as much as possible the administrative burden for European companies and (iii) keeps a level of flexibility that will be welcome for entities envisaging to use the new payment option for the research they receive.

   Considering the impact that changes in the payment modalities may have on the availability and quality of research, as demonstrated above, the SMSG considers that the approach to amend the Delegated Directive should come with an approach aimed at monitoring, ab initio:

   - *the adoption of the joint payment method,*
   - *the evolution of budgets for research on EU underlyings, notably for those entities having adopted the joint payment method,*
   - *the evolution of the availability of non-sponsored research, ideally with a distinction by market cap, and*
   - *the quality of research, as measured through objective indicators (EPS surprises, price informativeness, etc.).''*

3. The SMSG made the following remarks concerning the annual assessment of the research:

   ''Under the current MiFID II Delegated Directive, an investment firm using a research payment account for the payment of research is required to "regularly assess[..] the

[9] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC

[10] The full SMSG's response has been published on the ESMA website (Ref: ESMA24-229244789-5256)

quality of the research purchased based on robust quality criteria and its ability to contribute to better investment decisions.". It is our understanding that ESMA proposes to make this requirement more generic but also more informative, by replacing the current wording by a 12 separate paragraph 1.b. stating that the assessment "shall be based on robust quality criteria and include, where feasible, a comparison with potential alternative research providers.".

However, as currently drafted, the provision potentially also risks introducing some unnecessary regulatory complexity, particularly for smaller firms. Indeed, such a comparison may not always be feasible (for instance due to lack of available comparable research) or the assessment of the quality of the research could be established by means other than a direct comparison with other providers (for instance via rankings published by third parties). Furthermore, it should be considered whether annual review obligation is reasonable for all research providers. In case the research firm covers only few companies or few small markets, an annual review (often without any competitors in the market) would be a formality and unnecessary cost item. The final text should ensure there is sufficient flexibility for these types of situations to be taken into account by supervisory authorities.''

4. The SMSG made the following remarks concerning the requirements applicable to the joint payment method:

''ESMA proposes to introduce a new paragraph 10 in Article 13, stating that: "Where an investment firm pays jointly for execution services and research, Member States shall ensure that the investment firm shall enter in an agreement for joint payments when the methodology for remuneration: (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".

The SMSG considers that both criteria are justified (point (b) being a useful reminder of a pre-existing regulatory obligation) and expressed in convenient terms, that avoid being overly prescriptive.

In particular, the SMSG does not believe 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''

4.4 Annex IV - Proposed amendments to Commission Delegated Directive (EU) 2017/593

Article 13 of Commission Delegated Directive (EU) 2017/593
1. ~~Member States shall ensure that the provision of research by third parties to investment firms providing portfolio management or other investment or ancillary services to clients shall not be regarded as an inducement if it is received in return for either of the following:~~ ~~(a) direct payments by the investment firm out of its own resources;~~ ~~(b)~~ Where an investment firm operates ~~payments from~~ a separate research payment account as referred to in Article 24(9a)(d)(ii) of Directive 2014/65/EU, ~~controlled by the investment firm, provided~~ it shall ensure that the following conditions relating to the operation of the account are met: ~~(i)~~(a) the research payment account is funded by a specific research charge to the client; ~~(ii)~~(b) as part of establishing a research payment account and agreeing the research charge with their clients, investment firms set and regularly assess a research budget as an internal administrative measure; ~~(iii)~~(c) the investment firm is held responsible for the research payment account; ~~(iv) the investment firm regularly assesses the quality of the research purchased based on robust quality criteria and its ability to contribute to better investment decisions.~~ 1a. ~~With regard to point (b) of the first subparagraph,~~ ~~w~~Where an investment firm makes use of the aforementioned research payment account, it shall provide the following information to clients: (a) before the provision of an investment service to clients, information about the budgeted amount for research and the amount of the estimated research charge for each of them; (b) annual information on the total costs that each of them has incurred for third party research. 1b. The assessment provided in point (c) of Article 24(9a) of Directive 2014/65/EU shall be based on robust quality criteria. 2. Where an investment firm operates a research payment account, Member States shall ensure that the investment firm shall also be required, upon request by their clients or by competent authorities, to provide a summary of the providers paid from this account, the total amount they were paid over a defined period, the benefits and services received by the

investment firm, and how the total amount spent from the account compares to the budget set by the firm for that period, noting any rebate or carry-over if residual funds remain in the account. For the purposes of point ~~(b)(i)~~(a) of paragraph 1, the specific research charge shall:

(a) only be based on a research budget set by the investment firm for the purpose of establishing the need for third party research in respect of investment services rendered to its clients; and

(b) not be linked to the volume and/or value of transactions executed on behalf of the clients.

3. Every operational arrangement for the collection of the client research charge, where it is not collected separately but alongside a transaction commission, shall indicate a separately identifiable research charge and shall fully comply with the conditions set out in ~~point (b) of the first subparagraph of~~ paragraph 1 and ~~in the second subparagraph of~~ paragraph 1a.

4. The total amount of research charges received may not exceed the research budget.

5. The investment firm shall agree with clients, in the firm's investment management agreement or general terms of business, the research charge as budgeted by the firm and the frequency with which the specific research charge will be deducted from the resources of the client over the year. Increases in the research budget shall only take place after the provision of clear information to clients about such intended increases. If there is a surplus in the research payment account at the end of a period, the firm should have a process to rebate those funds to the client or to offset it against the research budget and charge calculated for the following period.

6. For the purposes of point (b)~~(ii)~~ of ~~the first subparagraph of~~ paragraph 1, the research budget shall be managed solely by the investment firm and shall be based on a reasonable assessment of the need for third party research. The allocation of the research budget to purchase third party research shall be subject to appropriate controls and senior management oversight to ensure it is managed and used in the best interests of the firm's clients. Those controls include a clear audit trail of payments made to research providers and how the amounts paid were determined with reference to the quality criteria referred to in paragraph 1b ~~(b) (iv)~~. Investment firms shall not use the research budget and research payment account to fund internal research.

7. For the purposes of point ~~(b)(iii)~~(c) of paragraph 1, the investment firm may delegate the administration of the research payment ac-count to a third party, provided that the arrangement facilitates the purchase of third-party research and payments to research providers in the name of the investment firm without any undue delay in accordance with the investment' firm's instruction.

8. For the purposes of ~~point (b) (iv) of~~ paragraph 1b, investment firms shall establish all necessary elements in a written policy and provide it to their clients. Where an investment

firm uses a separate research payment account, it ~~It~~ shall also address the extent to which research purchased through the research payment account may benefit clients' portfolios, including, where relevant, by taking into account investment strategies applicable to various types of portfolios, and the approach the firm will take to allocate such costs fairly to the various clients' portfolios.

9. An investment firm providing execution services shall identify separate charges for these services that only reflect the cost of executing the transaction. The provision of each other benefit or service by the same investment firm to investment firms, established in the Union shall be subject to a separately identifiable charge; the supply of and charges for those benefits or services shall not be influenced or conditioned by levels of payment for execution services.

10. Where an investment firm pays jointly for execution services and research, Member States shall ensure that the investment firm shall enter in an agreement for joint payments when the methodology for remuneration:

(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.