Response to the ESMA consultation on 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

Assogestioni[1] welcomes the opportunity to contribute to the consultation regarding the amendments to the research provisions under Article 13 on "inducement in relation to research" in the MiFID II Delegated Directive in the context of the Listing Act.

We generally welcome ESMA's high-level approach, as it enhances clarity and offers a suitable balance between investor protection and operational flexibility, particularly for investment firms that, in line with their own policies, will choose to adopt the new payment option introduced by the Listing Act (i.e. joint payments for research and execution services). This aligns with the broader objective of promoting greater efficiency and accessibility in investment research to ensure sufficient research coverage of companies, in particular for small- and middle-capitalisation companies, fostering a competitive market environment and ultimately benefitting investors.

However, it appears premature to introduce detailed provisions on research quality in the MiFID II Delegated Directive. We strongly encourage ESMA prioritizing the development of industry-led practices before formalizing such measures, reflecting the Listing Act's emphasis on guidelines rather than binding Level 2 rules. It is important to note, that any decision to adopt the new proposed payment mechanism will depend on each investment firm's business model and client engagement, requiring, in any case, time and resources to ensure a smooth transition.

Moreover, we remain concerned that research fully funded from firms' own resources could be unnecessarily subjected to additional quality and disclosure obligations, contrary to the current rules that was designed to ensure transparency and avoid conflicts of interest without imposing unnecessary requirements on investment firms that opt to pay with their own resources.

A more flexible approach that reflect who will bear the research will help to ensure effective and proportionate implementation without imposing unjustified burdens.

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 appreciate the general high-level approach outlined by ESMA in Option 3, as it brings greater clarity regarding the application of the new framework and conditions introduced by the Listing Act directive. Furthermore, it appears to strike a suitable balance between protecting investors, revitalizing the market for investment research, and providing investment firms with the necessary flexibility.

Nonetheless, we have reservations concerning the proposals related to research quality. We believe that further clarification on specific aspects of the payment options set out in the

[1] Assogestioni is the trade body for Italian asset management industry and represents the interests of members who manage funds and discretionary mandates around € 2,400 billion (as of December 2024).

Level 1 text would be highly beneficial. Such clarification would help ensure consistent interpretation, especially with respect to scenarios in which an investment firm directly pays for third-party research from its own resources. Since the scope of the Level 2 provisions on research quality depends on how the Level 1 text is interpreted, we also encourage ESMA to consider whether it would be appropriate to seek clarification at Level 1. This would help guarantee consistency and avert any unintended outcomes where investment firm bears the cost of the research rather than the client.

Additional details on our views are provided in our responses to Questions 2 and 6.

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.

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

In addition, Paragraph 8 is amended as follows: "*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****, i~~I~~t 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.*"

We have two observations on these proposals: the scope and the conditions imposed. Based on these observations, we propose certain adjustments to the new Paragraph 1b and the revised Paragraph 8.

<u>Scope</u>

First, we seek clarification on the scope of application, as it appears that the annual assessment of research to avoid classification as an inducement could apply not only when an investment firm pays for third-party research through a separate research payment account or via joint payments for research and execution, but also when the firm funds third-party research entirely out of its own resources. Unlike other paragraphs of new Article 13, ESMA does not specify which payment option this requirement applies to; instead, ESMA indicates in point 16 of the Consultation that the new paragraph 1b applies to research in general, in line with Article 24(9a)(c) of MiFID II[2].

We understand that this interpretation could also stem from recital 4 of Directive EU) 2024/2822, which states: "*Regardless of the selected payment method, the investment firm should also perform an assessment of the quality, usability and value of the research it uses to ensure that such research contributes to enhancing the investment decision process of the firm's clients, where that research is distributed directly to them or where used by the portfolio management services of the firm.*"

[2] Article 24(9a)(c) of MiFID II as amended by Directive EU) 2024/2822. "*c) the investment firm assesses on an 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; ESMA may develop guidelines for investment firms for the purpose of conducting those assessments*".

In our view, research paid for entirely out of an investment firm's own resources should be expressly excluded from the scope of Article 13, which deals with inducements. Where no costs are passed on to the client, the research should not be considered an inducement and thus should not be subject to additional conditions such as quality assessments.

This exclusion would ensure continuity with the prior framework and aligns with our understanding of the rationale underlying the Listing Act revisions—namely, to promote a more flexible and competitive market for investment research and to introduce an additional payment option (i.e., joint payments for research and execution) that may pass the research costs to the client under specific conditions. This revision does not appear to have been intended to impose additional obligations in situations where the investment firm fully funds the research. Such an approach is also consistent with the original objectives behind unbundling rules, which were designed to ensure transparency and avoid conflicts of interest without imposing unnecessary requirements on firms that opt to pay with their own resources.

In our knowledge, investment firms that pay third-party research with their own resources already evaluate the value of research paid as a part of their broader responsibility to act in the best interest of their clients and ensure the efficiency of their operation. This process aligns with the general principles' investment firms are expected to follow, including the duty to provide optimal services, manage costs effectively, and assess the quality and utility of external research in enhancing their decision-making processes.

From a business perspective, such evaluations are inherently tied to the firm's strategic objectives of achieving the best possible outcomes for their clients while optimizing internal resources.

However, the use of trials, as it is suggested by ESMA (please see also our comment below), it is made not as an end in itself but it is a possible tool to evaluate the potential addition or substitution of a research provider. Mandating such comparative activities, however, would risk creating a counterproductive framework. A trial conducted solely for comparative purposes may not serve its true utility, which is to measure a competitor's suitability for potential integration or replacement as a provider.

For investment firms with a broad range of research providers, such obligations would add unnecessary complexity without clear benefits. In contrast, firms with fewer providers are likely to optimize their budgets to achieve the best possible outcome—balancing research quality and cost—without the need for prescriptive comparisons. This aligns with the principles of economic efficiency and best selection, where firms aim to maximize the utility of their research spend by achieving optimal results at the lowest cost.

Such an obligation could inadvertently reduce the overall expenditure on research, as firms may respond to increased administrative burdens by scaling back their engagement with research providers. This outcome would run counter to the objectives of the Listing Act, which aims to promote broader access to high-quality research, particularly for smaller issuers, and revitalize the market for investment research. By imposing unnecessary obligations, the proposed measures risk undermining the very goals of fostering a competitive and dynamic research ecosystem.

Thus, the decision to conduct such evaluations should remain a business-driven choice tailored to the firm's specific needs and operating model. While guidance may encourage

firms to periodically review their research providers, imposing a rigid comparative framework would undermine flexibility and could create inefficiencies. Any requirement should therefore be utility-driven, supporting firms in achieving optimal outcomes rather than mandating compliance with a one-size-fits-all approach.

Since the applicability of an annual quality assessment hinges on the interpretation of Level 1, we encourage ESMA to consider whether a Level 1 clarification is needed to ensure the same interpretation, a consistent application and avoid unintended effects on both L2 and L1 provisions.

In any event, if ESMA concludes that a quality requirement should also apply when the investment firm itself bears the cost, we believe the quality standards should vary depending on whether the cost is borne by the firm or by the client. Only in the latter case should it be reflected in paragraph 1b of Article 13. This distinction would better reflect the varied potential impacts on clients and adhere more closely to the principle of proportionality emphasized in the revised framework.

Condition for Quality Assessment

Although maintaining research quality is crucial when its costs are passed on to the client, we do not agree with introducing specific conditions at Level 2 at this stage such as the provision requiring the inclusion, where feasible, of a comparison with potential alternative research providers.

Given the limited experience and evolving expectations in this area, we believe it would be premature to codify requirements now. A more cautious approach, in our view, would allow market practices to develop before enshrining them in the MiFID II Delegated Directive. This would facilitate organic evolution of practical frameworks, thereby supporting more effective and adaptable implementation.

Furthermore, considering that the Listing Act directive encourages developing guidelines rather than binding Level 2 provisions, we believe ESMA should avoid recommending additional requirements to the European Commission at this stage. We note that the separate research payment account model (where it is currently request to regularly assesses the quality of the research purchased based on robust quality criteria and its ability to contribute to better investment decisions), which seems to have inspired the co-legislators in the Listing Act, has had limited uptake in practice; ESMA itself acknowledges that there is insufficient clarity on how firms currently assess research quality. This creates uncertainty about the model's applicability, effectiveness, and proportionality for diverse market participants.

We therefore recommend affording the industry sufficient time to develop practices and guidelines organically prior to identifying any proposed conditions. This approach would be more effective in meeting objectives without creating disproportionate compliance costs. It would also preserve flexibility, enabling firms to adapt their research payment and quality assessment frameworks to their particular circumstances. A one-size-fits-all approach could undermine adaptability and increase administrative burdens without commensurate benefits.

In this light, we suggest that ESMA initially refrain from mandating a comparison with potential alternative research providers ("where feasible") in paragraph 1b.

Should ESMA choose not to remove this requirement, we recommend adding the notion of "appropriateness" alongside "feasibility." Indeed, any requirement should be appropriate and proportionate to the size and complexity of the investment firm, taking into account factors such as the asset classes covered or the volume of assets under management. For instance, in scenarios where a single product covers a particular geographic area, it would be neither feasible nor necessary to have multiple research providers for that product.

Disclosure

In line with the principle of proportionality, we recommend ESMA to differentiate the disclosure addressed in Article 24(9a)(b)[3] depending on whether the cost is borne by the firm or by the client.

Where research costs are fully funded by the investment firm and not passed on to the client, we believe that informing the clients of this decision should be sufficient.

In such cases, requiring firms to include all necessary elements regarding the assessment of the quality of third-party research in written policies, which should be provided to clients, would impose unnecessary obligations without providing any tangible benefits to clients.

Proposed Amendments

In light of above, we propose the following amendments:

Paragraph 1b

- *When 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 or pays jointly for execution services and research t~~T~~he assessment provided in point (c) of Article 24(9a) of Directive 2014/65/EU shall be based on robust quality criteria*
    - Option 1 (preferred)
        - ~~*and include, where feasible, a comparison with potential alternative research providers.*~~"
    - Option 2
        - *and include, where feasible or appropriate, a comparison with potential alternative research providers.*"

Paragraph 8

- *For the purposes of Article 24(9a)(b) of Directive 2014/65/UE ~~paragraph 1b~~, investment firms shall establish all necessary elements in a written policy and provide it to their clients. Where investment firm make direct payment for third-party research out of its own resources, it will be sufficient to provide the client with information on the choice of payment. Where an investment firm uses a separate research payment account, it shall also address the extent to which research*

[3] Article 24(9a)(b) of MiFID II as amended by Directive EU) 2024/2822. *"b) the investment firm informs its clients of 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 method 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;"*

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."

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).

Please refer to our response to Question 2 for our position and suggested alternatives.

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?

As mentioned in our response to Question 2, we recommend deleting the requirement for a comparison with potential alternative research providers, even if it is written "where feasible".

If ESMA decides to retain this requirement, we suggest adding "appropriateness" alongside "feasibility."

For further information, please see our response to Question 2.

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.

[No response provided]

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.

We do not believe additional requirements are necessary at this stage.

Instead, we recommend that ESMA clarify in Article 13 any conditions that should apply to the different payment options by expressly referring to the MiFID II provisions as amended by the Listing Act.

In particular, the deletion of point (a) of Article 13(1), which previously excluded from inducements any direct payment for third-party research by an investment firm out of its own resources, raises significant concerns.

We understand that this deletion was intended to align with Level 1 and prevent any redundancy.

However, this clarification is critical to ensuring consistency between Level 1 provisions on inducements and the Level 2 delegated acts under consultation, legal certainty in this area is paramount. As ESMA noted in paragraph 10(b) of the consultation paper, direct payments by an investment firm from its own resources do not constitute inducements under the Listing Act. Therefore, we recommend making this point explicit, for example, retaining point (a) of Article 13(1) to ensure coherence throughout the regulatory framework.

Furthermore, we propose amending points 4 and 5 to include an explicit reference to payments for research made via a separate research payment account controlled by the investment firm, as referred to in Article 24(9a)(d)(ii) of Directive 2014/65/EU. This would provide greater certainty regarding the conditions under which a research budget is required and clarify how the specific research charge may be deducted from client resources over the course of the year.