Association for Financial Markets in Europe

Consultation Response

AFME Response to ESMA's Draft Regulatory Technical Standards for the establishment of an EU code of conduct for issuer-sponsored research

18 March 2025

AFME members reviewed ESMA's proposals for the establishment of an EU code of conduct for issuer-sponsored research (ISR).

In lieu of a detailed response to each of the eight questions in the consultation document, on this occasion we are submitting the following high level considerations to inform ESMA's work in this area.

For the purposes of this paper, we use the term independent research to indicate investment research as defined in Article 36(1) Commission Delegated Regulation (EU) 2017/565 ("MiFID Org Reg") .

Legal status and Key Characteristics of Issuer Sponsored Research vis à vis Independent Research

ESMA's stated policy objective in its cost-benefit analysis is to "enhance investor protection by setting standards of independence and objectivity, and specify procedures and measures for the effective identification, prevention and disclosure of conflicts of interest, whilst also promoting issuer-sponsored research by not imposing deterring requirements."

To meet this objective, Recital 6 of the draft RTS provides that ISR providers "shall ensure that the sponsored nature of the research does not affect how the research is produced with adequate organisational measures and arrangements."

Clause 2 of the Annex states that "the sponsored nature of the issuer-sponsored research shall not undermine its independence and objectivity."

Our understanding is that ESMA seeks to create a new legal construct for ISR, which is distinguished from investment research pursuant to Article 36(1) of the MiFID Org Reg.

We observe that it is important to acknowledge that ISR, which is being paid for entirely or primarily by the issuer, can never held up to be fully independent, no matter its qualities or objectivity.

Therefore, it is essential to clearly and unequivocally distinguish between "investment research" which, to qualify as such, must be independent and objective. from ISR which is produced in accordance with a Code that requires it to be objective but which should not be presented as independent.

Clarification about pre-deal investor education reports

Pursuant to Article 24(3b) MiFID, as amended by the EU Listing Act, ISR: "Investment firms providing portfolio management or other investment services or ancillary services shall ensure that the **research they distribute** to clients or potential clients which is paid for, in full or in part, by an issuer shall be labelled as "issuer-sponsored research" only if it is produced in compliance with the EU code of conduct for issuer-sponsored research referred to in paragraph 3c."

Therefore, our interpretation is that **relevant payments are those the issuers makes in relation to the research itself, and not its distribution**. AFME would recommend a clarification in the EU Code of Conduct to prevent any confusion with respect to independent pre-deal investor education material, which is produced in compliance with existing MiFID independence requirements versus sponsored research.

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Pre-deal investor education reports are educational material which is produced for investors who are the firm's clients participating in the IPO process that assist in the efficient functioning of the IPO marketplace.

Those reports provide an accessible overview, and understanding, of relevant markets and companies and ultimately contribute to an efficient pricing process. Unlike underwriting or placing services, it is not commissioned by the issuers and issuers do not pay for the costs of creating pre-deal reports and accompanying investor education, which may include analysis time, other production costs and travel.

However, issuers often do pay for printing and distribution costs, such as the mailing of hard copies and specialised distribution platforms for pre-deal research. There is a long standing industry practice that issuers pay or reimburse for the sending of pre-deal investor education material as it is selectively disseminated outside firms ordinary channels.

Ordinary course research is simultaneously distributed to firm clients globally to ensure equality of information flow on publicly listed companies.

However, pre-deal investor education for IPOs must be selectively distributed as legal and regulatory restrictions effectively prevent dissemination in certain jurisdictions, such as Japan and the United States.

Therefore, we think a clarification would be beneficial to ensure the EU Code of Conduct is not misinterpreted as casting a net wider then intended.

AFME suggests a clarification would be helpful to make clear that sponsored research is *"issued at the direction of and on behalf of the issuer".*

Call for a flexible approach to the selected clauses in the EU Code of Conduct

Recital 5 of the Listing Act Directive states that, to improve the research coverage of SMEs, issuers should be allowed to pay for ISR to make such research more visible to the public **by giving issuers the possibility** of submitting such research to relevant collection bodies. Such optionality is confirmed by Article 24(3d) which says "**when** submitting that research to the collection body".

Therefore, Clause 5 in the proposed Code of Conduct, which mandates the publicity free of charge of ISP when it's fully paid by the issuer, goes beyond the intention of the Level 1 text, and relevant mandate therein. Clause 5 should be revised accordingly.

In our view, providing research (generally meant for institutional investors) to the public would create significant liability otherwise generated by distributing wholesale-targeted research to retail. A key risk is that information might be misconstrued as investment advice. These creates high legal and liability risks, especially for firms operating across jurisdictions.

For this reasons, **we strongly recommend that firms are given the option to comply with Clause 5 on "Dissemination of issuer-sponsored research" on a voluntary basis, based on their business models and internal risk appetite**.

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