Comparative Table EU Listing Act vs (draft) FCA Payment Optionality Instrument 2024

Overall, the combination of the proposed safeguards, while producing another unbundled option, still introduces significant operational complexity which is similar to an RPA. The resulting lack of consistency of research payment structures across key jurisdictions may ultimately result in low take up and therefore mean that the key objectives of the HMT reforms are not achieved and that the FCA's secondary competitiveness objective is not achieved either.

	EU	UK	Comment
1. CSA account restriction	**N/A**	**Yes - COBS 2.3.B21R -** A *firm* must only use monies in a *research* payment account established under *COBS* 2.3B.3R(2) to pay for *research* or to pay a rebate to *clients* in accordance with COBS 2.3B.8R(3)(a)~~.~~, and must use the separately identifiable *research* charge of joint payments for *research* and execution services under *COBS* 2.3B.3R(3) only to pay for *research*.	The requirement to have a separately identifiable research charge is unique and not required in the EU. Other jurisdictions allow for more flexibility for a completely bundled payment. Members would not be supportive of a regime which would be unduly burdensome and undermine the flexibility of the FCA's proposals relative to other jurisdictions.
2. Policy for joint payments	**Yes, but more high level – Article 24(9a)(b) MiFID -** 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	**Yes – COBS 2.3B.25 R(1) –** the *firm* must have a formal policy on joint payments that: (a) describes the *firm*'s approach to joint payments, and how the firm will ensure	This requirement adds an extra layer of specificity which brings about additional administrative burdens and adds to the overall onerous architecture of the proposed UK framework, compared to recent EU rules.

	policy on payments for execution services and third-party research, including the type of information that may 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 providing joint payments for execution services research;	compliance with the requirements in *COBS* 2.3B.25R(2) to *COBS* 2.3B.31R; and (b) specifies how the *firm*'s governance, decision-making and controls in respect of third-party *research* purchased using joint payments operate, including how these are maintained separately from those for trade execution;	
3. Written agreement establishing methodology	**Yes, but more high level - Article 24 (9a)(a) MiFID -** an agreement has been entered into between the investment firm and 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.	**Yes - COBS 2.3B.25R(2) -** the *firm* must enter into written agreements with *research* and execution service providers which establish a methodology for how the *research* costs will be calculated and identified separately within total charges for such joint payments;	This requirement envisions separate identifiable charges, akin to a CSA structure. The FCA seems to be allowing for previous CSA agreements to become viable again rather than prescribing any additional documents.
4. Budgeting requirements	**N/A**	**Yes - COBS 2.3B.25R(5)** - the *firm* must set a budget for the purchase of *research* using joint payments: (a) based on the expected amount needed for third-party *research* in respect of investment	The EU rules do not prescribe budgeting requirements. The current FCA proposals are more similar to the RPA structure (which

		services rendered to its *clients*, and not linked to the expected volumes or values of transactions executed on behalf of *clients*; (b) at least annually and at an appropriately aggregated level (eg, for similar investment strategies or groups of clients who would benefit from the same *research*); **Yes – COBS 2.3B.26R -** If the amount of *research* charges to clients exceeds the budget set out under COBS 2.3B.25R(5), or the budget is increased, the *firm*'s policy must set out: (1) the relevant actions to be taken in such circumstances; and (2) the information to be disclosed to *clients*.	has not been taken up). We are concerned about the budgeting and disclosure requirements at client level, which is contrary to the objective of providing a payment option which alleviates operational burdens on firms, and should be removed.
5. Assessment of quality, use and value	**Yes – Article 24(9a)(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. ESMA may develop guidelines for investment firms for the purpose of conducting those assessments;'	**Yes - COBS 2.3B.25R (7) (a) -** the *firm* must periodically, but at least: (a) assess the value, quality and use of *research* purchased using joint payments and its contribution to the investment decision making process;	Letter a) is broadly aligned with relevant EU Listing Act provisions. However, the benchmarking requirement in letter (b) is problematic, see below.

6. Benchmarking	**N/A**	**Yes - COBS 2.3B.25R (7) -** the *firm* must periodically, but at least: (a) omissis … and (b) undertake benchmarking of prices paid for *research* services purchased using joint payments against relevant comparators, to ensure the amount of *research* charges to *clients* are reasonable compared to those for comparable services; and	The new requirement in letter (a) above is broadly aligned with relevant EU Listing Act provisions. However, the benchmarking requirement in letter (b) is problematic as mistakenly treats investment research as a commodity, without recognising that the value to customers will vary depending on their investment strategy and portfolio manager decisions, which are idiosyncratic to each firm's internal assessment. Also, the nature of the research may vary in terms of depth, scope and level of interactions. It is therefore inappropriate to require a comparison amongst different providers. This is another example of additional specificities with no clear justifications or commensurate benefit. For this reason letter (b) should be removed.
7. Ex ante and ex post disclosures	**N/A**	**Yes - COBS 2.3B.30R (3) and (5)** - For the purposes of the disclosures in *COBS*	There will be cases in which it is appropriate to attribute research expenditure, and therefore to

	[Record keeping requirements but very high level - Article 24(9a) new subpara – 'Where known to them, investment firms shall keep a record of the total costs attributable to third-party research provided to them. Upon request, such information shall be made available on an annual basis to the investment firm's clients.]	2.3B.25R(8), the *firm* must disclose to relevant *clients*: (1) *omissis* (2) *omissis* (3) the expected annual costs to the *client*, provided as part of ex ante disclosures on costs and charges, and based on both: (a) the budget-setting and cost allocation procedures set out in COBS 2.3B.25R(5), COBS 2.3B.25R(6) and COBS 2.3B.27G; and (b) the actual costs for prior annual periods disclosed under COBS 2.3B.30(5); (4) *omissis* (5) the total costs incurred by the *client*, disclosed on an annual basis, reflecting the total payments made for *research* purchased using joint payments over that period, and provided as part of ex post reporting on costs and charges; and	disclose, at firm level. The rules should make it clear that this is possible where the firm considers it appropriate given the type of research and its client base. This has been recognised in the recent EU Listing Act. Attribution at firm level will give investment managers the flexibility as to how they should disclose to their investors and mitigate operational obstacles, ensuring a proportionate and therefore more effective level of disclosure and transparency.

8. Disclosure of the most significant research provider	**N/A**	**Yes - COBS 2.3B.30R (4) -** For the purposes of the disclosures in *COBS* 2.3B.25R(8), the *firm* must disclose to relevant *clients*: (1) *omissis* (2) *omissis* (3) *omissis* (4) the most significant *research* providers (measured by total amounts paid), and the benefits and services received from such providers, at an appropriate level of aggregation relevant to that *client* (eg, for similar investment strategies or groups of *clients* who benefit from the same *research*); (5) omissis (6) omissis	This requirement has no equivalent in other jurisdictions. It places an onus on firms, with no clear benefit, which hinders the attractiveness of the new payment option. It is not clear what benefits this commercially sensitive information would bring for end investors. Their primary interest is in an investment manager's ability to deliver investment returns, rather than needing to specifically understand which research providers the investment manager has purchased research from to make investment decisions. An unintended, and likely, consequence of this guardrail is the concentration into the largest providers, which we see as unhelpful.

AFME contact:

Giulia Pecce, Head of MiFID Policy: giulia.pecce@afme.eu