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European Securities and Markets Authority

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Re: Consultation on the amendments to the research provisions in the Markets in Financial Instruments II (MiFID II) Delegated Directive following changes introduced by the Listing Act

Dear Members of the Regulatory Consultation Team,

On behalf of Virtu Financial, we appreciate the opportunity to provide input on your consultation regarding proposed amendments to the research provisions in the MiFID II Delegated Directive.

In response to your invitation to market participants, we submit our answers to the questions outlined in Annex 1. This submission incorporates internal reviews and discussions involving our commission management team and other departments accross our firm. It also incorporates insights gained over the course of our regular engagement with the buy side, sell side and research providers operating both within the EU and globally.

Once again, on behalf of Virtu Financial, we thank you for the opportunity to contribute to this consultation. We wish you well in your next steps towards the publishing of the Technical Advice related to the payment for research and execution services.

Respectfully,

jack pollina

Jack Pollina

Global Head of Commission Management

ESMA Consultation ESMA35-335435667-5979:

Amendments to the research provisions in the Markets in Financial Instruments II (MiFID II) Delegated Directive following changes introduced by the Listing Act.

Virtu Financial consulation submission

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 agree with the proposed approach. We note the absence of a reference to regulatory harmonisation with other regulatory regimes within section 3.1, in relation to the approach taken (options 1, 2, 3). Our view is that the adoption of the 'option 3' approach aligns in spirit with the approach recently taken by the UK Financial Conduct Authority (FCA) in their recent Policy Statement 24/9 (PS 24/9). This harmonisation will likely benefit those pan-regional investment firms within the EMEA region.

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.

We agree in principle with the introduction of the new paragraph 1b, however we wish to share the following views with ESMA:

We have reviewed section 3.2, and Annex III, paragraphs 12-14. These clarify ESMAs desired approach (Option 2b) and the thought process behind adopting that approach. ESMA has commented that it is not fully clear on how the buy-side currently evaluates and assesses their research consumption (Annex III, pgh. 13). In our position as a global third-party RCCA/CSA aggregator, we work with numerous clients on their EMEA research payment workflows. These workflows must align with upstream research valuation processes (using in-house or 3rd party tools). Consequently, we often have visibility on the mechanics of those quality/value assessments. These are often carried out as rolling quarterly or bi-annual quality evaluations. We are aware of the lengths and efforts made by our buy-side clients, to ensure a fair and accurate evaluation of their research products consumed.

We are pleased to see ESMA propose the "where feasible" wording in relation to the comparison requirement for the proposed paragraph 1b. We believe this provides a degree of flexibility to the buy-side which is in line with the overriding goal of providing increased research payment optionality. The 2024 FCA CP24/7 consultation paper featured a similar proposal around research product benchmarking (specifically pricing); though the proposal was for a mandatory benchmarking. This 'mandatory' aspect created a high level of discourse amongst the buyside community. In its PS24/9 document, the FCA shared that it had received sufficient feedback from the buy-side around the challenges of implementing benchmarking, and it opted for a 'guidance' rather than a 'requirement' around price benchmarking.

Further, we note that while the “where feasible” wording is within the spirit of keeping the technical guidance uncomplicated, it may create an unlevel playing field for those smaller/capacity constrained buy side firms, which may not enable them to carry out these comparisons. This contrasts with those larger firms who may have a greater resourcing ability to follow the obligation to carry out those comparative assessments.

In addition, a firm may be incentivised by the “where feasible” language to prioritise it’s resourcing elsewhere other than to the management of those annual requirements, thus making it unable to run those comparison activities.

We believe that many buy side firms already go to great lengths at more frequent time intervals than is required by the annualised requirements under Article 24 9(c), and that we would hope that those firms do not feel that Article 24(9a)(c) along with the proposed Article 13 paragraph 1b leads them to believe they must carry out an additional annual comparison exercise.

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).

N/A.

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?

ESMA has stated in their Cost-Benefit analysis (Annex III) that it believes that the comparison activity will be relatively light in terms of internal resources. Importantly, internal capabilities/constraints were cited by the FCA as a reason it dropped its mandatory benchmarking proposal as part of its final rules (PS24/9). The FCA has kept a similar requirement for comparisons to be carried out, but this specifically applies to joint payments (COBS 2.3B.25(7)(b). Here we note a difference with ESMAs proposal: paragraph 1b appears to apply all investment firms, regardless of payment methodology. In our role as a third-party RPA aggregator, we are often privy to the friction and time incurred by our clients in setting up trials, with multiple internal stakeholders involved at the investment firms.

We do not fully agree on the wording for current comparison requirements within the proposed paragraph 1b. As we have stated in our response to Question 2, many buy-side firms which are passing the cost of research on to their clients (e.g. RPA research charge model) are engaged in periodic assessments per year of both the value and quality of their research consumption. We submit it would be unfair to ask these firms, who are highly engaged in their research process, to consider running additional comparison exercises. We understand that the comparison requirement for those firms currently not engaged in at least an annual assessment is arguably a good initiative.

As an alternative proposal, the comparison requirement could only be applied to firms who run one annual assessment while firms running multiple/periodic assessments per year ("quality, usability and value of the research used") could be exempt from the comparison requirement. This remains in the spirit of 'high-level' requirements from ESMA (option 3).

We would remark that from our experience, firms carrying out these assessments do experience the benefits described in the 'Benefits' field, within the Cost Benefit table (Annex III).

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.

We agree with its introduction; it acknowledges specifically the joint payment option, while reminding firms of their best execution obligations. We would like to see some amendments to paragraph 10, we discuss these in our Question 6 submission.

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 suggest that for the proposed paragraph 10 under Article 13, the wording could be amended to ensure that the investment firm can confidently make use of the joint payment method to pay a range of eligible research providers (e.g. Independent Research Providers). This aligns with the stated goal of "revitalis(ing) the market for investment research and to ensure sufficient research coverage of companies, in particular for small- and middle-capitalisation companies, . . . the research unbundling rules need to be further adjusted to offer 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" Directive (EU) 2024/2811 (4).

Under COBS 2.3B, the FCA's rules are deliberately worded in a more open-ended manner, to avoid the interpretation that a research component accrued with a third-party provider of execution services and research (a "Research Broker") can only be spent with that same Research Broker. The FCA clarified this intention in PS24/9, stating that while an investment firm may accrue a research component within a joint payment, it is not obligated to allocate it to the same Research Broker. This ensures their new joint payment option is not restricted to full bundling (page 30, FCA PS24/9).

We suggest that the proposed Article 13 (10) could be amended to read as follows:

10. Where an investment firm obtains research from third parties in exchange for remuneration through the use of a joint payment method 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.