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EU MiFID II: ESMA consults on EU code of conduct for issuer-sponsored research

ESMA has published a consultation paper setting out proposed Regulatory Technical Standards (RTS) establishing an EU code of conduct ("EU CoC") for issuer-sponsored research. The EU CoC supplements new provisions in MiFID II in respect of issuer-sponsored research following the EU Listing Act package of reforms. The EU CoC aims to set standards of independence and objectivity for issuer-sponsored research providers and specifies procedures and measures for the effective identification, prevention and disclosure of conflicts of interest, with the view to enhancing the trust in and use of issuer-sponsored research. Investment firms will be expected to ensure that all issuer-sponsored research that they produce or intend to distribute to potential clients complies with the EU CoC, or otherwise to distribute non-compliant research as a marketing communication.

Among other things, ESMA proposes that:

- *research providers should establish, implement and maintain an effective conflict of interest policy;*
- *issuers and research providers should only enter into an agreement where the minimal initial term of the contract is two years and where, at a minimum, 50% of the annual remuneration is paid upfront;*
- *research providers update issuer-sponsored research during the contract period; and*
- *research that is fully paid for by the issuer should be made public free of charge immediately.*

Background

Article 1(2)(a) of the Listing Act Directive introduces new paragraphs 3a to 3e in Article 24 of MiFID II. In accordance with the new provisions, issuer-sponsored research must be fair, clear, and not misleading. It should be clearly identified as such. The research must meet all relevant conditions outlined in the MiFID II Delegated Regulation. In addition, investment firms must use the label "issuer-sponsored research" only if the research complies with the EU CoC for issuer-sponsored research.

ESMA's proposed approach

- As a basis, ESMA is proposing to use the commitments included in the existing code of conduct which has already been developed in France (the only national code of conduct that ESMA has identified) but with targeted amendments, adapting it to the broader EU regulatory framework.
- The terms of the proposed RTS would require investment firms wishing to distribute issuer-sponsored research to existing or potential clients to verify with the issuer-sponsored research provider that research has been produced in accordance with the new EU CoC. ESMA proposes not to include the EU CoC itself within the enacting terms of the RTS, but to include it as an Annex. This means that the EU CoC will be "soft law" for research providers. However, providers will effectively need to comply with the EU CoC in order to enable investment firms to distribute the issuer-sponsored research labelled as such. Non-compliant research will need to be be treated as marketing communications for the purposes of MiFID II and identified as such.
- ESMA explains that investment firms can still use research partly or fully paid by the issuer and that is not produced in compliance with the EU CoC, for instance as input for their portfolio management services, as long as they do not distribute the research to clients or potential clients while labelled as "issuer-sponsored research".
- ESMA also reminds investment firms and research providers that issuer-sponsored research falls within the definition of "investment recommendation" under the Market Abuse Regulation.

Proposals in the EU code of conduct

's proposals include the following:

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- Providers of issuer-sponsored research must have **conflicts of interest policies** specifically in respect of issuer-sponsored research, alongside **registers** of actual and potential conflicts.

- There are specific requirements to ensure that **issuer-sponsored research and other research** are produced by the research provider **under the same conditions** (including, amongst other things, qualifications or relevant analysts and policies preventing personal dealing in relevant financial instruments or related instruments).

- The initial contract between an issuer and research provider should be for a **minimum term of two years (and a minimum renewal term of one year thereafter)**to ensure longer term coverage for the purposes of continuity and consistency, which in turn is expected to improve the attractiveness of the issuer-sponsored research and incentivise its use by investors. However, ESMA allows for earlier termination in situations, such as when the shares of the issuer are delisted or when the issuer repeatedly fails to make payments (presumably under the research agreement, although this is not expressly specified in the EU CoC).

- At least **50% of the yearly remuneration should be paid at the start of the contract** and at each contract anniversary. Any **variable component of the remuneration should not be linked to the content** of the research.

- **Research providers should provide certain information**, such as the agreement between the research provider and issuer, when requested by investment firms. This is to enable investment firms assess whether the research is produced in compliance with the EU CoC.

- Where the issuer paid fully for the research, the research should not be reserved for a limited group of investors but should be **made accessible to the public free of charge immediately**.

- The draft EU CoC also includes requirements on **mandatory information** that should be provided on issuer-sponsored research, such as a short summary that should state that the research was produced in accordance with the EU CoC, a reference to the conflicts of interest policy and whether the revenues that the research provider derives from its relationship with the issuer represent more than 5% of its consolidated gross revenues.

- Importantly, ESMA proposes that research providers should make their best efforts to **update the analysis** when important information has come to their attention or where major events occur that are likely to have a significant impact on the issuer's shares.

The proposed standards primarily (though not exclusively) target research providers, rather than issuers. This is because the research firms are responsible for producing the research and ensuring its quality, independence, and objectivity. This approach is also intended to avoid deterring issuers from commissioning issuer-sponsored research.

Timing and next steps

The consultation closes on **18 March 2025**. ESMA will prepare a final report and submit the final draft RTS to the European Commission for endorsement by **5 December 2025**.

The RTS and new EU CoC are set to apply from **6 June 2026**, which is the date on which the underlying changes to MiFID II Level 1 are set to apply.

Documents

ESMA's press release on the CP published on 18 December 2024 is here. The ESMA CP is here.

The Listing Act Directive pursuant to which the issuer-sponsored research provisions are introduced into MiFID II Level 1 is here. Further information on ESMA's mandates under the Listing Act Directive and the wider Listing Act package of reforms can be found on ESMA's dedicated webpage here.

Read our earlier client notes on the Listing Act changes to MiFID II Level 1 here and on ESMA's October 2024 consultation paper on Level 2 changes reflecting other investment research related changes made by the Listing Act Directive here.

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