

BVI¹ position on the Listing Act, MiFID – rules on payment for research and execution services (delegated act)

The BVI¹ gladly takes the opportunity to present its position to the DG FISMA Consultation on the Draft Delegated Directive (EU) 2017/593.

The Draft Delegated Directive (EU) 2017/593 requires firms to inform their clients about how they pay for research and execution services and outlines the transparency requirements associated with this choice.

1. Paying from own resources (P&L) research payment option

However, the draft Delegated Directive (EU) 2017/593 does not mention expressly the paying from own resources (P&L) research payment option. It only talks in passing about “joint” (e.g. Commission Sharing Agreement (CSA) based) payment options and details only the separate research payment account (RPA) model provisions, whereby the research costs are charged to the client.

The Directive (EU) 2024/2811, however, offers besides the two options to pay either separately or jointly for execution and research services, also the P&L based payment option. We at BVI support all three options, particularly the option for the payment of research from of a firm’s own resources (P&L funded research), where the ultimate payer is the firm.

Firstly, to provide legal certainty, the option to pay research from own resources should be expressly mentioned in the draft regulation.

Secondly, it needs to be clarified that research paid for with the investment firm’s own resources does not constitute an inducement under Article 24 of MIFID II.

Thirdly, the annual quality assessment under Art 13 (10) should apply only where the cost of research is effectively borne by the end client, i.e. in the case of separate (RPA) or joint (CSA) payment options. Where research is funded with the firm’s own resources no client monies are at stake. Therefore, the general duty to act in the client’s best interest is sufficient to address any investor protection concerns, and the quality assessment under Art 13(10) should therefore not be an obligation for the users of the P&L based research payment option.

2. Separate (RPA based) vs joint (CSA based) payment of research

With respect to separate (RPA based) vs joint (CSA based) payments of research the scope of application of the conditions laid down in Article 13(1)– (9) should be limited to cases where research is paid for separately through a Research Payment Account (RPA). Opting for joint (CSA based) payment should not trigger an obligation to operate an RPA, as firms applying this option would in any event remain subject to the Level 1 safeguards and the quality requirements set out in Article 13(10).

¹ BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 116 members manage assets of EUR 4.7 trillion for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 26%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.