



Frankfurt am Main,
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BVI position on the AMF's consultation paper (CP) regarding on the new rules for the funding of research by investment firms under MiFID II

The new rules regarding research according to MiFID II will change the landscape for the provision of research and prove to be a major challenge for asset and fund managers throughout Europe. The access to high-quality research is essential for asset managers. The MiFID II rules bear the risk of jeopardising such access. We support the AMF's approach not to extend the rules to AIF and UCITS fund managers since they are not tailored for the particular needs of collective asset management. However, despite the exemption of collective investment schemes and their managers from MiFID, the rules will impact their business.

First, (MiFID) brokers who are directly impacted will not be able to provide bundled services going forward to funds. Second, a fund management company or an investment firm providing asset management functions as delegated services for a fund administered by another management company is considered providing discretionary portfolio management according to MiFID.

BVI¹ therefore gladly takes the opportunity to present its views on the AMF's CP. The AMF's CP offers helpful guidance for asset managers regarding implementation of the MiFID rules regarding research in implementing these rules in practice. We therefore encourage the AMF to use the guidance as a model for further questions and answers within the ESMA's Q&As on investor protection.

Definition of Research

We agree with the AMF's analysis that general information (e.g. journalistic content) as well as (macroeconomic) research which are widely distributed should not be considered as substantive research and therefore constitute a minor non-monetary benefit. This was/is often the case with macroeconomic research.

However, generally speaking **any research that is widely made accessible** to a wider audience cannot be defined as research for which valuable sources have been allocated to any given portfolio manager.

In addition, asset managers often receive unsolicited research from brokers with whom they neither have nor intend to have business relations. It seems fair that an asset manager assumes that research he received on an unsolicited basis from a broker with whom he has no relationship is considered to be widely distributed research. In this respect, the unsolicited provision of research may not impair the asset manager's duty to act in the client's best interest. While we believe that the processes around the provision and consumption of research in response to the MiFID rules will change, it is generally impossible to avoid that such research is being sent as often brokers distribute research widely to enhance their chances of acquiring new customers. Where brokers are proactively providing unsolicited research to the buy-side, it is our view that once the investment manager has made reasonable and appropriate efforts to switch off such unsolicited activity, including simply deleting unwanted content, their MiFID II obligations will be satisfied. We believe that the obligation would fall on the broker to comply with the MiFID II obligations not to provide inducements.

¹ BVI represents the interests of the German investment fund and asset management industry. Its 96 members manage assets of some EUR 2.8 trillion in UCITS, AIFs and discretionary mandates. As such, BVI is committed to promoting a level playing field for all investors. BVI members manage, directly or indirectly, the assets of 50 million private clients in over 21 million households. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.



Furthermore, we agree with the AMF's distinct approach regarding **corporate access**.

Events where issuers may meet asset managers and vice versa without any intellectual input from the broker who just brings together the parties cannot be considered as research because the service itself does not explicitly or implicitly recommend or suggests an investment strategy or provides an opinion as to the present or future value or price of such instruments or assets. This understanding is in particular important for smaller asset managers who might not be able to get access to issuers without such events. In this regard and for the sake of protecting a level playing field across larger and smaller market participants it is crucial that the Delegated Directive acknowledges conferences as minor non-monetary benefits.

We appreciate the AMF's openness to proposals regarding **fixed income research**. As the relevant market participants discuss the new requirements and the impact predominately on the equity business, it is quite unclear what types of risks and collateral damage this may have on the fixed income business, therefore enhancing the legal uncertainty in this business area.

We generally see the risk that the availability of fixed income research will decrease even more going forward. Therefore, a practical solution or guidance in this respect would really be appreciated throughout Europe.

Some approaches for the determination of the value of fixed income research have been discussed (e.g., the decomposition of the spread into a meaningful execution component and a research component). However, no feasible solution has been presented so far.

As we understand that the resources spent on the production of fixed income research is - by and large - a fraction of the overall resources spent on the provision of research, we believe that it should be acceptable for firms falling under the new requirements to provide for a general budget process how fixed income research cost are arrived at, e.g., as a percentage of the total AuM of the respective fixed income/mixed asset portfolios managed by the firm or as a percentage value of the overall research spent and agreed with the provider of such research.

Establishing of a research budget

We agree with the AMF's understanding that the MiFID rules do not define whether the asset manager has to set up its budget bottom up or top down. We also agree with the approach considering that costs may also be allocated based on the value of the client's portfolio. Furthermore, the asset manager should be able to base the general allocation of research costs to portfolios according to the investment strategy. The level of detailed requirements should be set proportionally and provide the right balance between fairness and practicability. The more detailed such allocation is, the more complex it is to implement such an approach.

The allocation of research to portfolios could for example follow the definition of investment strategies that are commonly distinguished in the marketplace and that are often used within investment statistics or similar publications. It should be understood that a more detailed breakdown would generate only marginal additional value for investors, while adding substantial additional cost to firms being subject to MiFID II and potentially make the RPA operationally inefficient.

Ex-ante vs ex-post pricing by research providers

We recommend the AMF to provide further clarity on the obligation that brokers providing execution services as well as research services must identify separate charges that only reflect the cost of executing the transaction while the provision of other benefit or service must be subject to a separately



identifiable charge. In the market there are currently several pricing models proposed by brokers that provide also research services that include ex-ante as well as ex-post research pricing components. There is the business requirement to evaluate research services received (i.e. with a separate research vote) and reflect the quality of services within the total payment to the research provider. Therefore, we recommend to clarify that variable payments can be included as a quality adjustment mechanism within the pricing models of research providers.

Interrelation between CSAs and MiFID rules regarding research

The MiFID rules do not prohibit the use of Commission Sharing Agreements (CSAs), however, if asset managers use CSAs, they still have to comply with all the rules provided for in the Delegated Directive. In this regard, we agree with the AMF's interpretation that the text rather indicates the use of CSAs by allowing for the research charge to be collected alongside a trading commission. In practice, we understand that one broker could be responsible for collecting the research charge and allocating this to other research providers. Charges paid alongside trading commissions will be paid by the client and will have to match the research budget. Prior to any budget excess, the asset manager would have to increase the budget or would no longer be able to receive research.

However, it would be welcome if the AMF going forward will provide further guidance how to implement the CSA model in practice.

Intra-group sharing of research

We welcome additional guidance how to deal with research that is shared within different legal entities belonging to the same asset manager. In practice it is often the case that opinions and views on investment strategies are shared within teams with colleagues working for different legal entities within the same group. Because MiFID II does not include an express intra-group exemption, asset managers face the issue to introduce cumbersome internal pricing and invoicing processes to ensure that portfolio managers providing discretionary portfolio management services do not receive research without payments. The regulatory requirements should address the potential conflict of interests between the buy- and sell-side but should not add further administration burdens in case where no conflict of interest can arise. Thus, we recommend a review of the research requirements with a view to ensure that intra-group exemptions from otherwise applicable requirements are granted, where there is little need to address conflicts of interest that could be detrimental to the interests of clients.

Third-country research

We finally suggest the AMF to provide further clarity for asset managers dealing with brokers outside Europe. As most brokers in third countries will not be subject to MiFID II there will be circumstances where those brokers do not or are not able to offer unbundled execution rates (i.e., in case when local business practice do not provide this type of pricing). There should be clear guidance how this type of execution services, especially from US brokers, can be received by European asset managers who while complying with MiFID II inducement requirements related to research also need to achieve best execution based on the local market know-how of third country brokers.