BF BETTER FINANCE
The European Federation of Investors and Financial Services Users
Fédération Européenne des Épargnants et Usagers des Services Financiers

ESMA Consultation
Listing Act - MiFID II | Draft RTS on EU Code of Conduct (EU CoC) for issuer-sponsored research

BETTER FINANCE Answer to ESMA Consultation Paper on Draft regulatory technical standards for the establishment of an EU code of conduct for issuer-sponsored research

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Executive Summary

Following the Listing Act Package, BETTER FINANCE strongly supports ESMA's initiative to introduce an EU Code of Conduct (CoC) for issuer-sponsored research, developed under Article 24(3c) of MiFID II. The draft RTS is a long-awaited step toward standardising issuer-sponsored research, reinforcing investor protection, transparency, and research integrity across EU capital markets.

Introduced alongside other major reforms, including the re-bundling of research and execution costs, the CoC serves as a crucial safeguard against conflicts of interest. As issuer-sponsored research has expanded in response to declining independent research coverage, this framework must ensure it enhances market efficiency rather than becoming a selective promotional tool or restricting fair access to information. While supporting SME visibility is important, larger issuers must adhere to stronger transparency and disclosure requirements to prevent disproportionate market influence and uphold research objectivity.

ESMA's CoC sets a vital regulatory baseline, but reinforced safeguards are essential to prevent issuers from exerting influence over research content, ensure equal investor access, and establish issuer-sponsored research as a reliable and independent source of financial information. Strengthening transparency, enforcement, and research objectivity is critical to maintaining market fairness, particularly for retail investors.

Key Areas for Improvement:

- **Issuer transparency gaps:** The lack of mandatory disclosure on research agreements and payments risks enabling issuers to selectively commission research without oversight.
- **Fragmented enforcement:** The CoC applies only to MiFID investment firms, leaving non-MiFID research providers outside direct regulatory supervision and raising concerns over regulatory arbitrage.

- **Stronger research update requirements:** Clearer obligations are needed to prevent outdated research from misleading investors, with explicit criteria for when updates are required.
- **Equal access for all investors:** The CoC should mandate ESAP inclusion for all issuer-sponsored research and also prevent selective or overly delayed distribution favouring institutional investors or paid agents.

While BETTER FINANCE welcomes ESMA's initiative, reinforcing transparency, oversight, and accountability is crucial to ensuring issuer-sponsored research enhances market efficiency, fosters coverage and liquidity, and remains a trusted tool – aligned with market standards – rather than a vehicle for selective disclosure, hidden conflicts of interest, or undue issuer influence, particularly at the expense of retail investors.

⇨ For detailed recommendations, please refer to our full consultation response below.

Answers to ESMA's Consultation | Questions

Q1) - Existing Codes of Conduct: ***Are you aware of or adhering to another code of conduct for issuer-sponsored research that ESMA could take into account? If so, which specific parts of the code of conduct would be of added value to consider for the EU code of conduct? Please state the reasons for your answer.***

BETTER FINANCE strongly supports ESMA's establishment of a mandatory EU-wide code of conduct for issuer-sponsored research mechanisms. As representative of retail investors, we emphasised the need for such a harmonised framework to ensure this developing market practice (as evidenced by increased of issuer-sponsored research contracts) fosters investor trust, transparency, and equal access to information, while clearly distinguishing issuer-sponsored research from marketing communications and preventing conflicts of interest. Ensuring fair information for retail investors is paramount in this process.
We believe ESMA's approach that builds on the French 'Charter of Good Practices on Sponsored Research,' to be a solid foundation, yet key reinforcements are indeed needed to ensure the EU framework sets the highest standards of research integrity and independence while effectively preventing conflicts of interest. In this regard, the IOSCO Statement of Principles for Addressing Sell-Side Securities Analyst Conflicts of Interest provides valuable insights, particularly in strengthening research objectivity, analyst independence, and conflict-mitigation measures. These principles should further inform the EU code, notably by ensuring stronger firewalls between issuers and research providers to eliminate undue influence or implicit incentives and by mandating strict information barriers between research analysts and other divisions within firms. Beyond IOSCO's framework, Italy's AIM market and the UK's Investment Research Review (IRR) offer structural approaches to sponsored research. The former mandates SME research coverage, enhancing visibility but raising concerns over independence and issuer

influence, while the latter requires broker selection to ensure smaller issuers receive coverage, though its effectiveness in maintaining research quality remains debated. While not formal codes of conduct, examining their strengths and limitations could also offer valuable insights into balancing SME visibility with research objectivity and independence. We acknowledge that ESMA's consultation correctly prioritises the standardisation of issuer-sponsored research, yet further safeguards are necessary to ensure investor protection and research credibility. This includes tightening conflict-of-interest measures and ensuring issuer-sponsored research is systematically included in ESAP, making it publicly accessible to all investors. Standardising this research without guaranteeing full transparency would risk undermining its credibility and purpose.

<u>Q2) – ESAM's Preferred Approach to the CoC</u>: *Do you agree with the proposed approach? Please state the reasons for your answer.*

BETTER FINANCE supports ESMA's choice of option n° 3, building on the French 'Charter of Good Practices on Sponsored Research' while introducing targeted amendments, in line with its mandate and consideration of current market practices. This approach is pragmatic and may ensure continuity in standards, but we caution that necessary adaptations to align with the broader EU regulatory framework and investor protection needs must not be overlooked. In fact, there are concerns that ESMA's adjustments risk watering down the original French Charter, particularly by removing key safeguards on issuer accountability. While we support proportionality (especially to alleviate administrative burdens on SMEs), minimum transparency and accountability requirements should still apply for issuers – and particularly for larger ones. Without such reinforcements, issuer-sponsored research risks becoming a selective or promotional tool rather than a reliable source of investment information.

<u>Q3) – Regulatory Requirements Approach</u>: *Do you agree with the proposed approach? Please state the reasons for your answer.*

BETTER FINANCE acknowledges ESMA's decision to focus the EU code of conduct primarily on research providers rather than issuers, as research providers are responsible for ensuring the objectivity, quality, and independence of issuer-sponsored research. Given that only MiFID II investment firms are directly subject to the RTS, it is logical that compliance obligations fall mainly on them.
However, excluding issuers from any requirements creates transparency and accountability gaps. While ESMA aims to avoid deterring issuers from commissioning research, issuers still initiate, finance, and potentially influence these reports. The decision to keep the EU code as 'soft law' for non-MiFID research providers raises concerns about the effectiveness of its application, particularly if research providers operating outside MiFID II face no regulatory oversight in enforcing these standards.
BETTER FINANCE also supports ESMA's emphasis on ensuring MAR compliance, as issuer-sponsored research falls within the definition of investment recommendation under the Market Abuse Regulation (MAR). Ensuring that issuer-sponsored research meets MAR's requirements for fairness, clarity, and the prevention of misleading information is critical to maintaining market integrity. However, ESMA should explicitly

clarify how MAR compliance will be monitored, especially where issuers play a role in research commissioning but are not subject to RTS obligations.

Q4) – Minimum Contract Duration: ***Do you agree with a minimum initial term of the contract of two years? Or should the initial term be more, or less? Or should the code of conduct allow one-off reports, such as for initial public offerings? Please state the reasons for your answer.***

BETTER FINANCE supports ESMA's proposed two-year minimum contract, as it promotes continuity, prevents speculative short-term reports, and enhances credibility, benefiting retail investors who need reliable, long-term insights into issuers.
However, some flexibility is needed, particularly for SMEs and newly listed issuers. Allowing shorter initial contracts in IPO contexts could improve research accessibility while maintaining adherence to the EU code of conduct. Additionally, safeguards should prevent issuers from exerting pressure on research providers via contract renewals.
While one-off reports should not replace structured research, they should remain permissible for IPOs and exceptional cases, provided they follow strict conflict-of-interest safeguards.

Q5) – Upfront Payment Structure: ***Do you agree with a minimum upfront payment of 50% of the annual remuneration? Or should that percentage be more, or less? Please state the reasons for your answer.***

BETTER FINANCE supports ESMA's requirement that at least 50% of annual remuneration be paid upfront, as it effectively limits financial dependence on issuers and reduces the risk of research providers adjusting conclusions to secure continued payments. Reinforcing analyst independence is critical to ensuring retail investors can trust issuer-sponsored research as an objective and reliable source of information. We strongly support ESMA's prohibition on variable compensation tied to research outcomes, as it aligns with MiFID II conflict-of-interest rules and prevents research bias driven by financial incentives. However, stronger enforcement mechanisms are needed to prevent issuers from exerting indirect influence through alternative compensation models. If direct variable payments are restricted, other financial arrangements - such as advisory contracts or bundled services - could still create conflicts of interest if left unregulated. As stated previously, a clear firewall between investment services and research activities must be in place to eliminate any loopholes that could compromise research objectivity. While we agree with the upfront payment structure, limited flexibility could be considered for SMEs to address financial constraints without weakening safeguards against conflicts of interest. If ESMA considers such a tiered approach, it must ensure strict transparency and oversight measures so that lower upfront payments do not allow greater issuer influence over research content.

Q6) – Information Disclosure to Investment Firms: ***Do you agree with the information listed in Clause 7 of the code of conduct that research providers should make available to investment firms? Is there anything missing? Please state the reasons for your answer.***

BETTER FINANCE supports Clause 7 as a genuine step towards transparency, as disclosure requirements are key to ensuring investment firms can verify the integrity of issuer-sponsored research before distribution. However, further measures are necessary to close loopholes that could enable selective disclosure and undisclosed issuer influence.

To enhance compliance and prevent issuers from selectively commissioning or withholding research, systematic reporting should complement investment firms' ability to request information. Research providers and issuers alike should be required to automatically disclose key contractual details in a standardised format, ensuring full transparency on financial relationships and conflict-mitigation measures.

Moreover, issuers should be mandated to disclose research agreements and total payments in a centralised, publicly accessible manner (e.g. via ESAP and in their own documentation online). Without this, issuers could circumvent transparency obligations by commissioning multiple research providers without oversight, selectively promoting favourable reports while disregarding less favourable ones. This lack of disclosure creates a risk that issuer-sponsored research is used as a promotional tool rather than an objective source of analysis. Such targeted enhancements to issuer transparency would ensure that issuer-sponsored research remains objective, conflict-free, and equally accessible to all investors; particularly retail investors, who rely on independent analysis to make informed decisions.

<u>Q7) – Public Accessibility of Research:</u> ***Do you agree that only when the issuer paid fully for the research, it should be made accessible to the public immediately? Or should research partially paid for by the issuer also be made accessible to the public immediately? Please state the reasons for your answer.***

BETTER FINANCE strongly supports ESMA's requirement that fully issuer-funded research must be made publicly accessible immediately, ensuring that retail and institutional investors have equal access to key financial insights. However, we question the restriction of partially funded research, as limiting access to only contributing investors risks reinforcing information asymmetry and privileging select market participants. Instead, a structured disclosure framework should be introduced, ensuring eventual public accessibility within a reasonable timeframe.

Again, we call for ESAP to serve as the central repository for all publicly accessible issuer-sponsored research, complemented by availability on issuers' websites. This prevents selective distribution and ensures transparency, particularly for retail investors who lack access to institutional research.

While issuers or third-party investors may contribute to research funding, transparency should remain the guiding principle. Retail investors should not be excluded from market-moving information simply because they do not co-finance research. To maintain market fairness, ESMA should consider a phased public disclosure mechanism for partially funded research, ensuring that exclusive access is limited in duration and does not undermine broad investor confidence in the independence and availability of issuer-sponsored research.

<u>Q8) – Additional Requirements</u>: ***Do you think that any further requirements should be introduced in the code of conduct? Please state the reasons for your answer.***

BETTER FINANCE welcomes ESMA's proposed requirements on mandatory disclosures, conflict-of-interest policies, and research update expectations but highlights specific gaps that require further reinforcement.

One key loophole is the lack of clear reclassification of non-compliant research. Clause 6 currently mandates the removal of the 'issuer-sponsored research' label if a report no longer meets the Code of Conduct's standards. However, it does not require explicit reclassification of 'marketing material' under MiFID II, creating a risk that non-compliant reports continue circulating without proper transparency. To prevent misleading investors, ESMA should explicitly require that such research be relabelled as marketing material, ensuring it is clearly distinguished from objective analysis.

Additionally, issuer-side transparency remains weak. While research providers must disclose financial dependencies on issuers, issuers themselves face no obligations to disclose research commissions or payments across multiple providers. Without such transparency, issuers could selectively commission research to influence market perception without clear accountability. ESMA should mandate issuers to disclose all commissioned research agreements and payments via ESAP, ensuring public oversight. Furthermore, issuers should be required to document any modifications they request to research reports, ensuring transparency and preventing undue influence on final content.

ESMA's 'best efforts' (clause 6; and recital) requirement for research updates lacks clear enforcement. To prevent outdated research from misleading investors, a structured obligation should be introduced, defining: (i) what qualifies as a 'major event' requiring an update, (ii) reasonable timelines for updates, and (iii) issuer influence restrictions to prevent selective updates aligning with favourable market conditions. Research providers should also document when updates are triggered and whether they were requested by the issuer, ensuring that updates remain independent and fairly distributed – also to retail investors, as quickly as possible.

While the RTS applies to investment firms, enforcement may remain fragmented, particularly for non-MiFID research providers, where the Code of Conduct functions as soft law. To prevent regulatory arbitrage, NCAs should be required to monitor compliance and report on the application of the Code of Conduct, including for non-MiFID research providers. In addition, issuer-sponsored research should be made publicly available to all investors simultaneously, preventing selective pre-distribution to institutional clients. These measures would reinforce transparency and protect retail investors from selective disclosure, hidden issuer influence, and research distortions.