EU CODE OF CONDUCT FOR ISSUER-SPONSORED RESEARCH

ESMA'S CONSULTATION ON DRAFT RTS

AMAFI's answer

AMAFI is the trade association representing financial markets' participants of the sell-side industry located in France. It has a wide and diverse membership of more than 170 global and local institutions notably investment firms, credit institutions, broker-dealers, exchanges and private banks. They operate in all market segments, such as equities, bonds and derivatives including commodities derivatives. AMAFI represents and supports its members at national, European and international levels, from the drafting of the legislation to its implementation. Through our work, we seek to promote a regulatory framework that enables the development of sound, efficient and competitive capital markets for the benefit of investors, businesses and the economy in general.

AMAFI welcomes the opportunity to answer ESMA's consultation on its proposals for the establishment of regulatory technical standards related to an EU code of conduct for issuer-sponsored research, as part of the Listing Act (*Directive 2024/2811*).

It provides hereafter some general comments before answering the detailed questions of the consultation.

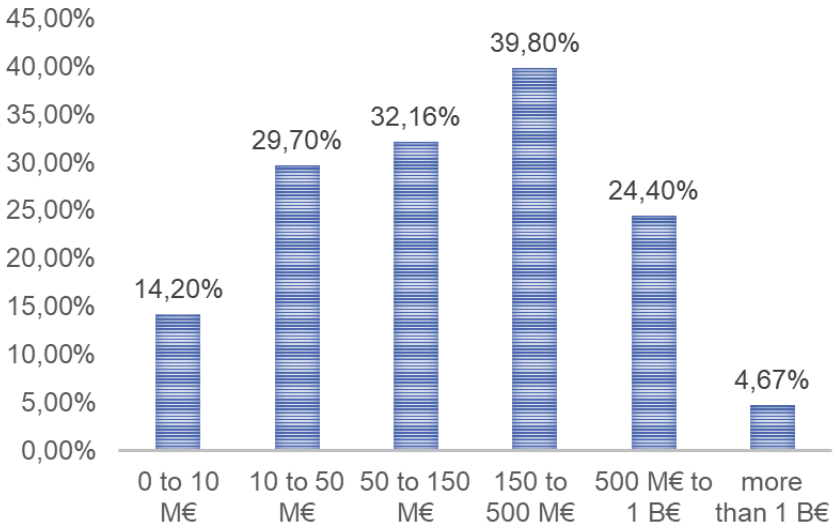
I. GENERAL COMMENTS

As mentioned by ESMA, a "*Charter of good practices for sponsored research*" was established in France in May 2022 by 3 associations, including AMAFI and is now in force for the issuer-sponsored research produced in the French financial market.

It has been a resounding success, with a massive migration of existing contracts to the new system (with 230 migrated after one year). At end of March 2025, 285 contracts had been signed by a total of 8 research providers, covering close to one third of issuers listed on Euronext Paris with a market cap between €10 million and €1 billion, 23% of which were covered by more than one research provider (mainly 2 but up to 4)[1].

[1] Source: AMAFI's register of sponsored research, maintained in compliance with the French Charter, covering research providers who are investment firms.

Issuers on Euronext Paris (inc. Growth and Access)
covered by at least one sponsored research contract, by market capitalisation



Source: Euronext cash monthly document as at the end of February 2023

This success is due to several factors:

- **The Charter provides regulatory security** to issuers and research providers by ensuring that issuer-sponsored research is considered as genuine research and not mere marketing material. The clarity brought by the Listing Act in this regard is therefore essential. The EU Code of conduct thus needs to implement this principle in a non-ambiguous way, hence some of our observations on the MiFID and MAR requirements applicable or not to issuer-sponsored research (*please refer to our answer to Q2*).

- **Equivalence of research and issuer-sponsored research:** consistent with the above, we consider that sponsored research providers should produce issuer-sponsored research under the same conditions as those applied to traditional research in terms of means, competences, content and organisational and disclosure obligations. Accordingly, the MiFID requirements applicable to research (*Directive 2024/790 and Regulation 2024/791*) and MAR should apply to sponsored research. This equivalence of regulatory requirements is fundamental to establish the legitimacy of both types of research and for sponsored research not to be considered as sub-standard or biased.

- **The French Charter is the result of a consensus** between most of the parties concerned (research providers – both investment firms and specialist analysts - and asset managers), with a fair balance and alignment of interests between the parties.

Our detailed observations hereafter and the clarifications that we consider important to make stem from these general observations.

II. AMAFI'S ANSWERS TO ESMA'S QUESTIONS

SECTION 3.1 – THE EU CODE OF CONDUCT FOR ISSUER-SPONSORED REASEARCH – THE APPROACH TAKEN

Q1: 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.

As mentioned by ESMA, a "*Charter of good practices for sponsored research*" was produced in France in 2022 by 3 trade associations (including AMAFI). We are not aware of any other framework existing elsewhere in the EU.

We welcome the fact that many of ESMA's proposals on the proposed EU code of conduct are derived from the French Charter. In our view, the EU code of conduct, while ensuring the independence and objectivity of issuer-sponsored research, should strive for **being adaptable** as much as possible to the various situations where such type of research is produced in Member States. It should also ensure that the **developed ecosystem of issuer-sponsored research in France is not disrupted**.

In this respect, we consider that the RTS lacks a **grand-fathering clause** to ensure the orderly transition to the new EU regulatory framework. Sponsored research contracts entered into before the entry into force of the EU code and compliant with existing national codes of conduct for issuer-sponsored research would remain valid until their renewal date and no longer than for 2 years after entry into force of the EU code. In France, the renewal of issuer-sponsored research is set at an annual frequency by the Charter. Such grand fathering clause is in our view necessary, given the number of contracts that will have to be renegotiated and re-signed, and the short timeframe envisaged between the submission of the draft RTS to the Commission (5 December 2025) and their entry into force (June 2026).

Additionally, we would **welcome a period of a few months between entry into force of the EU Code and its application date** to allow sufficient time for research providers to establish contractual arrangements with issuers. This would be particularly useful in Member States where a framework for sponsored research will be totally new and a transition from the old practices will need to be organised, which will include contractual negotiations with issuers.

In addition, to ease the contracts' renewal process and for the avoidance of doubt, Clause 4.1 of the EU code of conduct could explicitly allow **tacit renewals of at least one year** (and not only mandate that renewals shall be for at least one year). This feature is part of Commitment 8 of the French Charter.

Q2: Do you agree with the proposed approach? Please state the reasons for your answer.

AMAFI agrees with the bottom-up approach taken by ESMA and the leverage of local best practices as a basis for the definition of an EU regulatory framework. The EU Code safeguards the balance

established by the commitments of the French Charter, while maintaining the principles of independence and objectivity, and allowing the prevention of potential conflicts of interest.

As stated in our general comments, we agree that the EU Code of conduct needs to be adapted to the needs emerging from a wider EU discussion and that issuers should face the least possible obstacles to have their company covered.

We however disagree that the basis provided by the French Charter needs to be modified to ensure "*its inclusion in the broader EU regulatory framework*". As mentioned in our General observations, it must be clear that all MAR and MiFID II requirements apply equally to issuer-sponsored research, as is the case through the French Charter. This is to us the necessary conditions for the independence and objectivity of issuer-sponsored research. The EU Code of conduct creates ambiguity in this respect, as explained hereafter.

- Regarding **conflicts of interest**, we suggest clarifying that the obligation to establish a conflicts of interest policy, supported by a register of potential conflicts of interest and conflicts of interest, does not have to result in a policy and a register separate from the ones already established by investments firms. The specific risks stemming from issuer-sponsored research should be managed as part of the arrangements already in place and consistent with existing regulatory requirements applicable to investment firms.

- Regarding the application of **MiFID requirements specific to research** (*Delegated Regulation 2017/565*), the **EU Code copies-pastes** (*Clause 2, Paragraph 3 (b) to (h)*) the organisational requirements applicable to traditional investment research (*Delegated Regulation 2017/565, art. 37.2*), but:
    - As regards personal transactions, it does not include the existing exemption for market makers and unsolicited client orders[2],
    - It does not include the detailed organisational requirements applicable to traditional research to ensure the analysts' independence (*Delegated Regulation 2017/565, Art. 34.3*[3]). This seems covered more generally through point 2 of Clause 2.

[2] "*financial analysts and other relevant persons do not undertake personal transactions or trade, other than as market makers acting in good faith and in the ordinary course of market making or in the execution of an unsolicited client order….*" (*Delegated Regulation 2017/565, art. 37.2 a)*).

[3] "*a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;*
(b) the ***separate supervision*** *of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the firm;*
(c) the removal of any direct ***link between the remuneration*** *of relevant persons principally engaged in one activity* ***and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity****, where a conflict of interest may arise in relation to those activities;*
(d) measures to prevent or limit any person from exercising ***inappropriate influence*** *over the way in which a relevant person carries out investment or ancillary services or activities;*
(e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate investment or ancillary services or activities where such involvement may impair the proper management of conflicts of interest."

We understand that this may be the case so that the EU Code is also applicable to issuer-sponsored research providers who are not investment firms. However, it seems clear from the Listing Act that the MiFID Delegated Regulation also applies to sponsored research[4].

For the avoidance of doubt, it would therefore be useful for a **Recital to make clear that the Delegated Regulation 2017/565 applies in full to sponsored research**.

- Regarding the **application of MAR** to sponsored research, the EU Code refers in Clause 3 to the requirements of the Delegated Regulation of Market Abuse dedicated to Research, which specifies the disclosure obligations applicable to "*investment recommendations*". This assumes that these requirements are therefore applicable to sponsored research (as mentioned in Recital 4), but it is not explicit. Conversely, the Listing Act instituting issuer-sponsored research indicates as part of the ESMA mandate to develop an EU Code of conduct that it "*shall also, where applicable, take into account the relevant obligations and standards on investment recommendations set out in Article 20 of Regulation (EU) No 596/201 [MAR]*." **This would mean that not all provisions of the Delegated Regulation of Market Abuse (provided for by Article 20) are applicable. This needs to be clarified.**
  As an example, we note that the French Charter requires providers to disclose quarterly statistics on the proportions of "buy," "hold," and "sell" recommendations for all research, whether sponsored or traditional —a requirement not included in the EU Code but part of MAR (*Delegated Regulation 2016/958, Art. 6.3*). There is a need thus to clarify that all MAR Delegated Regulation applies to sponsored research.

SECTION 3.3 – PROPOSALS INCLUDED IN THE EU CODE OF CONDUCT FOR ISSUER-SPONSORED RESEARCH

Q3: Do you agree to mainly focus the requirements on research providers? Or do you think that additional requirements are necessary for issuers? Please state the reasons for your answer.

AMAFI agrees to mainly focus requirements on research providers. We believe that the proposed EU Code tackles satisfactorily the risk of undue influence of issuers on research providers.

AMAFI also considers that no additional requirement is needed for issuers: the contract signed between issuers and issuer-sponsored research providers will have an explicit reference to the issuer-sponsored research code of conduct, covering the obligations issuers should follow.

[4] Art. 1 that inserts § 3a in Art. 24 of MiFID - Directive 2014/65 – states that: " *Research shall be clearly identifiable as such or in similar terms, provided that all conditions laid down in Commission Delegated Regulation (EU) 2017/565 (*) applicable to the research are met*", and § 3c in Art. 24 of MiFID stating that "*Member States shall provide that investment firms that produce or distribute issuer-sponsored research have in place organisational arrangements to ensure that such research is produced in compliance with the EU code of conduct for issuer-sponsored research and complies with paragraphs 3a, 3b and 3e*."

Q4: 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.

AMAFI agrees on a requirement for a minimum initial term as it considers it a cornerstone of the independence of the sponsored research. We note that the minimum of 2 years set in the French Charter has been implemented with success.

With respect to research reports prepared for the purpose of an IPO, there are two different situations:

- **Research is part of the overall IPO process led by a bank syndicate**

  Research reports produced by analysts connected to the syndicate are distributed to qualified investors, who are investor-clients of the banks in the syndicate, in the context of Pre Deal Investor Education (PDIE). Such PDIE aims at collecting feedback from investors to allow the syndicated banks to provide the issuer or the shareholders with a recommendation on the IPO price range to be set for the bookbuilding. These research reports are subject to a specific and stringent set of rules, which, among other things, restricts their distribution to qualified investors and subject to a detailed audit trail, and requires a blackout period of 40 days after the IPO. No agreement is signed between the issuer and the research department and no commitment to publish a report is given. For these reasons, **we do not consider this research to be issuer-sponsored research**.

- **Research is produced independently from a syndicate and paid for by the issuer**

  It should comply with the EU Code of Conduct, including the 2-year initial term to reinforce the analyst's independence.

Q5: 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.

AMAFI agrees on a minimum upfront payment of 50% of the annual remuneration as a reinforcement of the analyst's independence, for the provision of research services. We also agree on the forbiddance of any variable component in the remuneration.

The EU Code requests the payment to be made ASAP, whereas the French Charter mandates this to happen "*at the time of signature of the contract*". The EU Code is more flexible for issuers, but introduces room for interpretation, raising a risk of divergence of appreciation (would ASAP be 2 weeks after the signature or 3 months?).

Q6: 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.

As regards Article 3 and Clause 7, we wish to draw attention to the ambiguities of the terms used in the RTS to designate research providers. In the consultation paper, the terms "investment firms" refer alternatively to:

a. investment firms producing issuer-sponsored research and thus distributing it to their clients, ("*The RTS thus only apply to investment firms where they produce and/or distribute issuer-sponsored research to clients or potential clients"*)
b. investment firms not producing such research and merely distributing it ("*The RTS thus only apply to investment firms where they produce and/or distribute issuer-sponsored research to clients or potential clients"*),
c. investment firms purchasing research, e.g. for portfolio management purposes ("*investment firms can use research partly or fully paid by the issuer and that is not produced in compliance with the EU code of conduct, 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*"). Sometimes, the terms "*research providers*" seem to exclude investment firms altogether and designate exclusively buyers of such research ("*ESMA also believes it is important to remind investment firms and research providers that issuer-sponsored research* (…)").

This ambiguity is highly confusing with regard to the proposed Article 3 and Clause 7 of the RTS:

- Article 3: "*Investment firms shall request from research providers all information necessary to assess whether research labelled as "issuer-sponsored research" is produced in compliance with the code of conduct as set out in the Annex to this Regulation"*.
- Clause 7: "*Issuer-sponsored research providers shall make available to investment firms, when requested, all information necessary to assess whether issuer-sponsored research is produced in compliance with this code of conduct*".

Such article and clause are introduced as stemming from the **Level 1 requirement** that "*Member States shall provide that **investment firms that produce or distribute issuer-sponsored research have in place organisational arrangements** to ensure that such research is produced in compliance with the EU code of conduct for issuer-sponsored research and complies with paragraphs 3a, 3b and 3e*" (*MiFID, Art. 24 3c*).

But if an investment firm is a research provider itself (point a. above), this obligation makes no sense (it cannot request information from itself). Instead, an investment firm that is a research provider shall ensure that it complies with the code of conduct through **organisational arrangements** such as through its compliance and control functions that it has to maintain as per its authorisation as an investment firm. This would be consistent with the Level 1 obligation.

If an investment firm is a distributor of research produced by a research provider (point b. above), then the Level 1 requirement would indeed require that it assesses that the research is produced in compliance with the code of conduct.

If an investment firm is a buyer of research, e.g. for portfolio management purposes (point c. above), with no onward distribution, then the Level 1 obligation does not apply, as the firm does not "*produce or distribute*".

For the avoidance of doubt, Article 3 should be redesigned, sticking to the Level 1 mandate.

The statement in § 20 of the Consultation paper that « *The Level 1 MiFID II obligations on issuer-sponsored research include that investment firms must have organisational arrangements to ensure that issuer-sponsored research is produced in compliance with the EU code of conduct*" is indeed misleading: this Level 1 requirement applies to "*investment firms that produce or distribute issuer-sponsored research*". Hence the statement in § 20 that the logical consequence of this requirement is that: "*To this end, investment firms should be able to request information from research providers necessary to assess whether the research is produced in compliance with the EU code of conduct*" is in our view incorrect.

As Article 3 only applies to those research providers that are investment firms, it should only specify the organisational arrangements applicable to those that:

- Produce research, with the objective to ensure that the label "issuer-sponsored research" they assign to their research reports is adequate: this does not hinge on an assessment by a third party and does not need to be specified further than through a reference to the MiFID organisational requirements applicable to research, and enforcement is under the competence of NCAs (not any other third party),
- Distribute research produced by another firm: this implies that this another firm is not an investment firm, in which case it does not fall within MiFID scope and is not subject to enforcement by the NCAs. This situation would call indeed for assessing the compliance of the research produced with the Code, possibly via exchange of information.

Finally, we do not see the merit of stating in Article 3 that the assessment could rely on an independent third-party, such as an external auditor. Firms have the possibility to outsource their activities, as they see fit, providing they monitor them adequately, and considering that they always remain responsible for their performance. There is no need to specify this possibility specifically for issuer-sponsored research. Such statement is not useful and would on the contrary make it more costly to distribute such research, if it were to become the norm, albeit providing a new source of revenue to external auditors. This is likely to create a new barrier to the distribution of issuer-sponsored research.

We therefore suggest amending Article 3 as follows:

"When ***research providers are not investment firms, i****nvestment firms* ***that distribute issuer-sponsored research*** *shall request from research providers all information necessary to assess whether research labelled as "issuer-sponsored research" is produced in compliance with the code of conduct as set out in the Annex to this Regulation.*

Where the investment firm has no or lacks information to assess whether research labelled as issuer-sponsored research is produced in compliance with the code of conduct (for ***research providers that are not investment firms)****, the investment firm shall not distribute the research to clients or potential clients labelled as "issuer-sponsored research*.

~~***To ensure that issuer sponsored research is produced in compliance with the code of conduct, an investment firm may rely on the opinion of an independent third party, such as an external auditor. The firm, however, shall stay responsible for discharging its obligation under Article 24 (3b) of Directive 2014/65/EU.***~~"

As for Clause 7, it should be amended accordingly. In addition, the communication of the agreement between the issuer and the research provider is contrary to the legitimate business interest of the research provider and the issuer, and it is protected by trade secrecy. Only the template of the agreement, or its main provisions, should be communicated.

"*Information sharing with investment firms*

1. Issuer-sponsored research providers ***who are not investment firms*** *shall make available to investment firms* ***who distribute their research****, when requested, all information necessary to assess whether issuer-sponsored research is produced in compliance with this code of conduct.*
This information shall include:
a) the ***template*** *agreement between the issuer and issuer-sponsored research provider, including how the research provider ensures that the remuneration arrangements do not impede its objectivity and independence;*
b) applicable conflicts of interest policies and registers;
c) steps taken to prevent or manage conflicts of interest or potential conflicts of interest in accordance with Clause 1 of this code of conduct."

Q7: 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..

AMAFI agrees that, when the issuer-sponsored research is fully paid by the issuer, it should be accessible to all eligible (*) investors at the same time and free of charge, as per the French Charter.

Should the research be partially paid by the issuer, it may be reserved to eligible investors who pay for it and hence contribute to the financing of this research, either indefinitely or for a period of time contractually agreed between the sponsored research provider and the issuer, as per Recital 10. If the research partially paid by the issuer were made available publicly, it would lose its value for the investors paying for it, as they would not have any incentive in continuing doing so: they would in effect subsidise the research for their competitors. Such public dissemination would considerably weaken sponsored research, which would become a public good of little value, despite the fact that it is produced using the same means and according to the same standards as traditional research. Such requirement would actually lead to the disappearance of sponsored research.

(*) By eligible investors, we mean professional investors, i.e. the same type of investors receiving traditional research, according to the internal rules of each research provider and that would have been contractually agreed with the issuer. Indeed, research reports are traditionally reserved for professional investors, as their wider distribution to retail investors would require significant adaptations to make them understandable. Without such adaptations, the risk of a wide distribution is considered too high to be borne by research providers in terms of compliance with investor protection rules and litigation risks.

Q8: Do you think that any further requirements should be introduced in the code of conduct? Please state the reasons for your answer...

Apart from all the points mentioned above, AMAFI does not see any further requirements to be added.