

Response of Deutsche Börse Group

ESMA Consultation on the draft RTS for the establishment of an EU code of conduct for issuer-sponsored research

I. Intro Statement

Deutsche Börse Group (DBG) welcomes the new provisions on research under MiFID II and the establishment of an EU code of conduct for issuer-sponsored research to ensure high research quality, independence, integrity supporting sufficient research coverage and market efficiency.

Although most of the clauses in the EU code of conduct are likely to contribute to the objectives, we have concerns that some requirements may lead to unnecessary burdens, especially for SMEs, are contrary to the goal to ensure sufficient research coverage and are not necessarily required by the Level 1 provisions.

ESMA should re-examine the EU code of conduct to ensure that all the proposed requirements are necessary for achieving the Level 1 objectives. We also propose a more flexible approach, which respects the contractual freedom between issuer and research provider.

II. Questionnaire

Question 2: Do you agree with the proposed approach? Please state the reasons for your answer.

Since ESMA shall take into account existing code of conducts when developing this draft RTS, we agree that ESMA opt for Option 3. However, we believe that not all clauses from the existing codes are appropriate and should therefore not be included in the EU code of conduct to avoid too prescriptive and detailed requirements. In general, we would suggest a more flexible approach considering the specific characteristics of SMEs. Please note our responses on questions 4 and 5.

Question 3: 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.

DBG agrees that the main focus of the requirements should be on research providers. ESMA should refrain from imposing additional requirements for issuers in order not to impair the use of research services. Particularly SMEs, which sometimes experience lower research coverage, should not face additional hurdles.

Question 4: 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.

DBG understands that ESMA aims to ensure continuity and consistency for research providers and research reports by introducing a minimum contract term. However, we advocate for more flexibility. For smaller investment firms and research providers in particular, a minimum term requirement of two years could be challenging. We believe a shorter term with the option to renew the contract would be the better approach. We would also like to point out that the need of a minimum contract term is not required by Level 1 and should be subject of an agreement between issuer and research provider instead.

With regard to one-off reports for IPOs, we believe the possibility should be allowed, as they offer significant added value without the need for long-term agreements.

Question 5: 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.

DBG supports the view that the remuneration agreement should not compromise the objectivity and independence of the research provider. Therefore, we understand ESMA's intention not to link variable remuneration components to the content of the research. Nevertheless, we suggest a more flexible approach to avoid high upfront payments, which could make the idea of issuer-sponsored research unattractive, particularly for smaller issuers. ESMA could consider a staggered payment approach with lower upfront payments, but interim payments during the contract term. This would equally ensure objectivity and independence and would be in line with Level 1 requirements.

Question 8: Do you think that any further requirements should be introduced in the code of conduct? Please state the reasons for your answer.

From our perspective, the code is already very comprehensive. Further requirements should therefore be avoided. Contractual details should primarily be decided between the contracting parties. The Level 1 requirements according to Article 24 Paragraph 3b, 3c and 3e MiFID II are sufficiently ensured.