Svensk Värdepappersmarknad
Swedish Securities Markets Association

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

General Comments

Swedish Securities Markets Association (SSMA) welcomes the opportunity to respond to this consultation regarding Code of Conduct for issuer sponsored research.

SSMA comments to the RTS in the annex:

3 (d) A physical separation exists between the research analysts involved in the production of the issuer-sponsored research and other relevant persons whose responsibilities or business interests may conflict with the interests of the persons to whom the issuer-sponsored research is disseminated or, when physical separation is considered not appropriate to the size and organisation of the firm as well as the nature, scale and complexity of its business, other appropriate alternative information barriers exist and are implemented;

SSMA agree to the extent that these entail the same requirements as for independent research analysts.

3 (f) Before the dissemination of issuer-sponsored research, issuers, relevant persons other than research analysts, and any other persons are not permitted to review a draft of the issuer sponsored research for the purpose of verifying the accuracy of factual statements made in that research, or for any purpose other than verifying compliance with the legal obligations of the issuer-sponsored research provider, where the draft includes a recommendation or a target price;

SSMA interpret this as aligning with current regulations for independent research, i.e. that parts of reports may be shared with relevant persons not involved in production of the research provided that such drafts do not include valuation information.

3(h) Research analysts are not involved, directly or indirectly, in commercial solicitation and contract negotiations with issuers or, when such segregation of duties is not appropriate to the size and organisation of the issuer-sponsored research provider as well as the nature, scale and complexity of its business, other appropriate measures are taken.

The "and commercial solicitation" clause implies that analysts shouldn't be involved in commercial solicitation (which seems to imply e.g. pitch meetings). If that's the case, then SSMA believe the rule should be restricted to contract negotiations and discussions. Analysts and their knowledge are a selling point. We would suggest the rule be clarified to state that analysts may participate in meetings with prospective customers in areas that regard their area of expertise, but, in line with independent research, may not be present in discussions regarding pricing/commercial terms.

Question 1: 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.

No, no specific code of conduct exists in Sweden.

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

Yes, SSMA agree. Seems reasonable to minimise obstacles for having companies covered. We also agree that an alignment with the current requirements for non-sponsored research makes sense, both from a consumer protection point of view and from an independence, integrity and objectivity perspective for the responsible research analyst.

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.

Yes, SSMA agree with ESMA's approach to only focus the requirements of the EU code of conduct on research providers, rather than on issuers. However, we would prefer to include a comment that the issuer needs to respect the independence and integrity of the responsible research analyst in order to further promote independence.

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.

SSMA believes it is important with a quite long initial term (not more than two years if the term must be specified in the CoC) and the market will benefit if research coverage cannot be dropped early leaving investors with no coverage. However, from a legal standpoint we see this as contract terms which discretion is exclusive to the parties involved. There must be no restrictions to the possibility to terminate the agreement for convenience, for instance there could be a situation where the company would want to move to regular independent research instead.

When it comes to IPOs, SSMA believe the same principal as above should apply. However, in the case of an IPO it is even more important with a long initial coverage period to eliminate the risk of a one-off report linked to the IPO, which would leave investors without research coverage.

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.

SSMA do not agree with the 50% yearly upfront payment. It may be too large for smaller firms to pay that much up front and deter them from buying research. Quarterly upfront payments or fixed monthly instalments over the agreed period achieves the same end, as long as no variable “success” payments are allowed. SSMA think this should be up to the issuer and provider to agree upon and see no need for regulation in this part. It should be a business decision how to handle payments for issuer sponsored research.

Question 6: 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.

The agreement between the research provider and issuer is a commercial contract and not public information. Disclosure could constitute a violation of bank secrecy obligations. As long as all other requirements stated are fulfilled, there should be no need to force research providers to provide contractual terms.

Question 7: 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.

If the issuer is a publicly listed company, SSMA agree that the information should be made accessible to the public immediately. However, if the issuer is a private company, for instance in conjunction with a private placement, we do not agree. This may prevent private companies from wanting to disclose important information or refraining from buying research at all as they do not wish to make that information available to a wider audience.

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

SSMA see no need for further additions.