

CP 21/9 Changes to UK MiFID's conduct and organisational requirements

The response

This online form provides the format for your response to the CP.

Introduction

The UK Markets in Financial Instruments Directive (MiFID) is the collection of laws and rules that regulates the buying, selling and organised trading of financial instruments. The UK laws and regulations implementing its amendment in January 2018 (MiFID II) were modified to address deficiencies as part of the process of onshoring EU law. This enables UK laws and regulations to function effectively post-Brexit. This CP concerns changes to MiFID II rules.

Responding to the consultation

You are asked to respond to the consultation by completing this online response process that lists the questions as set out in the consultation paper.

The following is a link back to the consultation paper if you need to refer back to it.

[CP21/9 Changes to UK MiFID's conduct and organisational requirements](#)

Note, this online form provides a short summary of the CP. For full details please refer to the CP.

Why we are consulting

The UK Markets in Financial Instruments Directive (MiFID) is the collection of laws and rules that regulates the buying, selling and organised trading of financial instruments. We are working with HM Treasury on capital markets reform, which involves looking at the UK's regulatory regime for capital markets to develop a package of changes. These changes are to ensure the regulation of investment business in the UK is adapted to the broad and deep structures of UK markets, underpinned by the highest regulatory standards that promote market integrity, effective competition and consumer protection.

As part of the capital markets reform work, this first consultation covers changes in two areas to the conduct and organisational rules in UK MiFID – research and best execution reporting.

What outcomes we are seeking

We are proposing to change the existing inducements requirements relating to research. This includes an exemption from the inducement rules for research on SMEs with a market cap below £200m and an exemption for FICC research. We are also proposing to remove two sets of reporting obligations on firms known as RTS 27 and 28 reports.

The changes are intended to ensure the rules achieve their objective and reduce compliance costs without compromising high standards of investor protection.

Instructions

Questions with a * are compulsory and therefore need to be answered in order to move on in the survey.

FCA privacy notice on how we will use the data you provide in this survey:

<https://www.fca.org.uk/privacy/personal-data-and-surveys-consultations-and-market-research>

Consultation Questions

About ICMA

ICMA promotes well-functioning cross-border capital markets, which are essential to fund sustainable economic growth. It is a not-for-profit membership association with offices in Zurich, London, Paris and Hong Kong, serving around 600 member firms in 60 countries. Among its members are private and official sector issuers, banks, broker-dealers, asset managers, pension funds, insurance companies, market infrastructure providers, central banks & law firms. It provides industry-driven standards and recommendations, prioritising four core fixed income market areas: primary, secondary, repo & collateral and sustainable finance. ICMA works with regulatory and governmental authorities, helping to ensure that financial regulation supports stable and efficient capital markets.

Question 1

Do you agree with our proposal to create an exemption for SME research below £200m provided the research is offered on a re-bundled basis or for free?

- Yes
- No
- No view

If yes or no, please explain your views.

The EC's exemption, as a result of the 'MiFID Quick Fix', allows re-bundling of payment for execution and research on SMEs and fixed income instruments where small and mid-cap issuers do not exceed market capitalization of EUR 1 billion in a 36-month trailing period. The difference between the EUR 1 billion threshold and GBP 200 million threshold is significant and it would be very burdensome on managers to monitor companies on the basis of two separate thresholds, as extra budget and resource will need to be allocated to meet the requirement of different regimes. To ensure a harmonised approach, ICMA would suggest increasing the threshold to align with the EUR 1 billion market cap.

ICMA would welcome clarity from the FCA regarding multi-asset portfolios. It is expensive, cumbersome, and complex for buy-sides to manage fee paying research and non-fee-paying research in a portfolio (s) that encompasses both.

Question 2

Would you be likely to take advantage of the proposal to rebundle SME research?

- Yes
- No
- No view

If yes or no, please explain your views.

Implementing the unbundling requirements was a significant operational task and firms are unlikely to dedicate additional cost and resource on re-bundling for SME research for market cap below GBP 200 million, given SMEs represent a small portion of asset managers' research needs.

Most asset managers have decided to absorb the cost of research on their P&L. Re-bundling would make it difficult to explain to clients why they have to pay for SME research but not for other research.

Implementing a dual regime within a fund/mandate would be confusing for investors as mandates and funds invest across a number of asset classes so firms are most likely to take advantage of re-bundling research if all research is re-bundled, particularly FICC research.

It would also be particularly burdensome to monitor companies to ensure they remain under the GBP 200 million threshold.

The unbundling proposal also assumes that asset managers wish to trade with the same brokers from whom they also buy research from, which is not necessarily the case.

ICMA would welcome clarity from the FCA regarding multi-asset portfolios. It is expensive, cumbersome, and complex for buy-sides to manage fee paying research and non-fee-paying research in a portfolio (s) that encompasses both.

Question 3

Do you agree that an Industry-led initiative to fund research would be capable of addressing low coverage of SMEs?

- Yes
- No
- No view

If yes, we would welcome your suggestions on how this can be developed.

ICMA believes it would depend on the design of such research funding. The alternative solution is to allow Issuer Sponsored Research, at least for SMEs, to be complemented by an industry-led 'Code of Conduct' to ensure this research is produced and disclosed fairly.

Issuer Sponsored Research is a useful tool for investors and issuers. From an investor perspective, the reliability of data and information on the business model coming from sponsored research is particularly valuable beyond the recommendation itself. Issuer sponsored research can also enhance secondary market liquidity of SME's securities markets.

If yes or no, please explain your views.

Question 4

Do you agree with our proposal to create an exemption for FICC research?

- Yes
- No
- No view

If yes or no, please explain your views.

Fixed Income transactions are typically paid via the bid-ask spread to the broker instead of a commission. *For that reason, it was difficult to “unbundle” in the first place and isolate the transaction cost.*

While it was difficult to “unbundle” in the first place and isolate the transaction cost, ICMA agrees with the FCA view that there is no evidence of a narrowing of spreads as a result of decoupling of research from trading spreads. Thus, this exemption for FICC research is very much welcomed.

ICMA would welcome the FCA confirming in the Handbook its long-standing view that materials do qualify as freely available if the only limit to their availability is dictated by compliance with relevant rules and regulations.

The FCA could consider amending the proposed new Handbook text as follows:

COBS 2.3A.19(5)(j) R *written material that is made openly available from a third party to any firms wishing to receive it or to the general public. “Openly available” in this context means that there are no conditions or barriers to accessing it, ~~for example requiring a log in, sign up or submission of user information by a firm or a member of the public in order to access that material,~~ other than those necessary to enable the third party to comply with relevant laws and regulations.*

ICMA would welcome clarity from the FCA regarding multi-asset portfolios. It is expensive, cumbersome, and complex for buy-sides to manage fee paying research and non-fee-paying research in a portfolio (s) that encompasses both.

Question 5

Do you agree with our proposal to include research provided by IRPs in the list of minor non-monetary benefits?

- Yes
- No
- No view

If yes or no, please explain your views.

Yes, ICMA agrees to exempt IRPs from inducement rules. There is a risk of the small and niche IRPs being wiped out as they cannot compete against the large broker-dealers which can subsidize their own research departments. Including IRP research in list of minor non-monetary benefits will ensure fair competition and diversity within the research market and enable the opportunity for firms to discover and trial IRPs without the compliance controls.

ICMA would welcome clarity from the FCA regarding multi-asset portfolios. It is expensive, cumbersome, and complex for buy-sides to manage fee paying research and non-fee-paying research in a portfolio (s) that encompasses both.

Question 6

Do you agree with the circumstances in which the exemption applies i.e., where the IRP is not engaged directly or indirectly in execution services?

- Yes
- No
- No view

If yes or no, please explain your views.

ICMA agrees. IRPs cannot induce anyone to trade so no conflicts of interest arise compared with the investment firms which offer both research and execution services.

ICMA would also welcome the scope of the exemption to be clearly defined and firm and for it to be specific so that it applies when the IRP does not provide execution services to the investment firm in question, as opposed to the IRP providing execution services as a whole.

ICMA would welcome clarity from the FCA regarding multi-asset portfolios. It is expensive, cumbersome, and complex for buy-sides to manage fee paying research and non-fee-paying research in a portfolio (s) that encompasses both.

Question 7

Do you agree with our proposal to include in the list of minor non-monetary benefits openly available written material?

- Yes
- No
- No view

If yes or no, please explain your views.

ICMA agrees with the proposal to include in the list of minor non-monetary benefits openly available written material. This is because ICMA considers the inherent risk of conflict will not arise.

ICMA would welcome clarity from the FCA regarding multi-asset portfolios. It is expensive, cumbersome, and complex for buy-sides to manage fee paying research and non-fee-paying research in a portfolio (s) that encompasses both.

Question 8

Do you agree with our proposal to remove the obligation for execution venues to produce execution quality reports consistent to the format prescribed under RTS 27?

- Yes
- No
- No view

If yes or no, please explain your views.

Yes, ICMA agrees. These execution reports are very complex and burdensome to produce and do not bring any demonstrative added value to market participants.

Question 9

Do you agree with our proposal to remove the obligation for firms who execute orders to produce reports about their order routing and execution outcomes obtained consistent to the format prescribed under RTS 28?

- Yes
- No
- No view

If yes or no, please explain your views.

Yes, ICMA agrees with the FCA's proposal. These execution reports are very complex and burdensome for firms to produce and use and as a result have not delivered the intended benefits and these reports are not consulted by investors.

These reports have not been useful for the buy-side's professional clients, due to the information not being granular enough to provide them with insights on how firms achieve best possible outcomes. The qualitative responses required by RTS28 for the eight questions are repetitive across asset classes and information on execution approach is already covered in the Best Execution policy which remains the document most sought after by current and prospective clients. Some sell-side brokers were interested in the statistics contained in these reports initially but through time they find more value from the Broker reports that buy-side Dealing Desks produce and the engagement through performance reviews.

In addition, the cost and effort in pulling this report is very intensive as the inputs for this have to be collated from multiple Dealing Desks, supported by various teams in the process including Operations, Marketing and Compliance and then signed off by Senior Managers and Committees including Executive Committee members before being published on the firms' corporate website – the entire process takes 3 months and is operationally cumbersome for seemingly no value.

Please give any other feedback on our proposals not covered by the questions above.

We are asking for comments on this Consultation Paper (CP) by 23 June 2021.

You can submit this Word document using the online form here:
[Changes to UK MiFID's conduct and organisational requirements](#)

Or in writing to:
James Eldridge
Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

Telephone: 020 706 69280