

## AMF Proposals to Revive the Research Industry in France

*The AMF has published a report containing a number of new proposals relating to production of research under MiFID II.*

### Key Points:

- The report pointedly criticises the original MiFID requirements (most of which were heavily influenced by the FCA's views).
- The AMF issues a number of new proposals that would create a different approach in France, and potentially future changes at a European level.
- The AMF makes a number of suggestions for alignment between the French and the UK industries.

It remains to be seen whether the AMF adopts some of these proposals unilaterally, and whether it can persuade the European legislative framework to adopt others. In particular, the proposals have been picked up by the European Commission in its [consultation](#) on the review of the MiFID framework, which could lead to them gaining momentum at European level. Either way, [the report](#) is an important contribution to a high-profile and ongoing debate between national regulators as to the beneficial (or otherwise) impact of the MiFID rules.

### Background

MiFID II introduced new rules on research unbundling, requiring asset managers to pay for research separately from execution costs. These rules were largely driven by the FCA, which considered that the research market had become too saturated and that forcing asset managers either to pay for research out of their own resources, or to account to clients for the cost of research purchased, would create a more streamlined market.

However, the rules have proved controversial, and regulators across Europe have different understandings of what the changes were intended to achieve. In France, for example, the financial industry has expressed concerns about the deterioration of research (in scope, volume, and quality) over the last few years. The view of the French industry is that, instead of creating a research market remunerated for its value, the changes have undermined the capacity of financial research firms.

This view led the French regulator to commission a Task Force, led by AMF Board member Jacqueline Eli-Namer and president of the French Society of Financial Analysts Thierry Giami, to analyse the impact of MiFID II on investment research and to explore possible areas of improvement. The Task Force reported to the AMF on 7 January, and the AMF has now adopted an action plan endorsing the Task Force's key proposals.

## **AMF's Analysis**

In the Task Force's view, the original MiFID reform was introduced "without political debate nor a preliminary impact analysis...contrary to the normal procedures". In fact, there had been a preceding political debate and impact analysis, but this was carried out almost entirely in the UK. However, the usual European approach was missing in this area.

The Task Force also issued further criticism about the MiFID regime in relation to price, noting that MiFID "did not really define its fundamental rules, especially with regard to price competition [with] the consequence of destabilising the competitive position of European firms". As a result, the report notes "reported drops in revenue thus far [which] often range between 20% and 30% on average, and up to 50% in some cases". It also notes that some major global financial players have applied "extremely competitive fee schedules for research [and that] the price of research continues to fall". This is in notable contrast to the [FCA's 2019 feedback](#) on the MiFID research unbundling rules, which considered the regime was working well and had beneficial effects in lowering the cost for the consumers of research without fundamentally damaging the breadth of research coverage.

To some degree, the difference in these conclusions is likely drawn from different understandings of what the MiFID II proposals were intended to achieve. Arguably, for the FCA, a key aspect of the proposal was that the research industry should shrink in order to lower its costs, and to put consumers in control. The AMF's view of the effect of MiFID may, in fact, be the same, but the effect is seen as detrimental — less profitability for research firms, leading to less extensive (and good) coverage having an overall detrimental impact from the point of view of both producers and consumers.

## **The Proposals**

The report makes three key proposals for improving the position, both in France and at a European level.

### **Launching a Research Marketplace to Increase Supply**

The report proposes the creation of a new virtual research marketplace. Investors would volunteer to share the funding of the marketplace and the cost of producing the research provided through it, and to pay an ongoing market price. The marketplace would focus on small, medium-sized, and innovative stocks, and on IPOs. The intention is that this marketplace would be temporary until a market is built and has found an "equilibrium in the MiFID II environment". The report also proposes that Bpifrance could provide financial support. In effect, this would be akin to a degree of state support and price support, which may attract other forms of scrutiny at a European level.

### **Sponsored Research**

The report notes the development of a sponsored research market, particularly in the UK, and supports the development of such a market in France. It considers that such a market would benefit from a "regulatory framework" that would involve an element of self-regulation. The report also suggests how this framework might work in practice.

First, the report recommends the term “research paid for by the company” as a way of making clear the potential conflict in the production of this type of research. Second, the charter would explain how producers would guarantee the “intellectual independence of the analyst”, along with their expertise and the conditions in which the research would be produced, to ensure the “same standards of quality” as other types of research. Finally, a model contract between issuers and analysts would be agreed. Such research would benefit from broad distribution, alongside access being provided by financial information platforms.

It is worth noting that many of the AMF’s proposals are contained in existing ESMA guidance (with the exception of the proposed framework).

### **Amending the Existing MiFID Framework**

The AMF makes a number of proposals to amend the existing MiFID framework in order to make the research market more flexible.

The report suggests that a concept of a “reasonable commercial basis” for the consumption of research should be introduced, and notes other parts of MiFID that use this terminology. However, in general, these parts of MiFID control the price at which sellers of information, who may be in a position of power, are required to sell. MiFID does not, in any other area, require consumers to ensure that they are acquiring information on a reasonable commercial basis.

The AMF proposes amending guidance to make clear that concierge services are minor non-monetary benefits, in order to reflect its view of the value of such services and to simplify the rules. It is not clear whether this proposal includes corporate access more generally, but the lack of guidance on what a concierge sub-category might involve suggests the AMF may mean a wide rather than narrow definition.

The report proposes extensions to permitted free trial periods for research, so that they would last for six months in every 12 (instead of three months in every 15). This would be an important change, as it would appear to open up the possibility that firms could use trial periods to try to limit the overall cost of research that they were consuming, contrary to several of the other AMF proposals about supporting the research industry. The AMF also suggests having separate trial periods for different classes of financial instrument, although MiFID does not appear to prohibit this at the moment.

Finally, the AMF makes some more radical proposals relating to the use of exemptions or proportionality. For example, the AMF suggests that research on small- and medium-sized companies could be exempted entirely from the MiFID obligations, and that small research consumer firms (judged upon the amount of assets under management) could also be exempted. The report also proposes that independent financial analysts, who only produce research, could be exempted. Lastly, the Task Force considers a more extreme proposal — only applying the MiFID research obligations to firms that provide research at “clearly undervalued prices”, on the basis that firms making any other sort of charge are not, in reality, providing inducements.

### **Conclusions**

The AMF’s paper is an important contribution to an ongoing debate about the true policy objectives of the MiFID research proposals, and whether or not those objectives are helping or harming the overall functioning of this important marketplace. The Task Force invites “the market’s industry associations” to respond, and (presumably) hopes that other regulators, including ESMA, will consider, and be informed by, its proposals in the future.

The report is important because research is a cross-border service, and so any regulatory divergence in the rules on research is unhelpful for firms participating in this market. For example, the MiFID II rules proved particularly controversial because of the way in which they interact with regulation in non-EU jurisdictions, such as the US. Any potential changes to the MiFID rules would also take on heightened significance in the context of Brexit, as this would raise questions as to whether the UK would follow suit, and, if not, what that might mean in terms of regulatory alignment and equivalence.

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