



February 15, 2019

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The Honorable Jay Clayton

Chairman

United States Securities and Exchange Commission

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We are writing in response to the request for comments from market participants on how the European Union (EU) Markets in Financial Instruments Directive II (MiFID II) “research provisions are affecting broker-dealers, investors and small, medium, and large issuers, including whether research availability has been adversely affected.”¹ In particular, the letter² from the SEC’s Division of Investment Management “provided temporary no-action assurances under the Investment Advisers Act of 1940 to broker-dealers that receive payments in hard dollars or through MiFID-governed research payment accounts from MiFID-affected clients.” The assurances in the letter expire on July 3, 2020. The STA³ is an organization comprised of individuals who are involved in the trading of financial securities. Our members represent many of the business models in the financial services sector affected by MiFID II, including full service broker dealers, agency only broker dealers and asset managers, of varying size. Over the course of STA’s 85 year history we have held the position that by following certain basic principles for rulemaking the appropriate balance of competition and regulation can be achieved with benefits that accrue to investors.

These principles include:

- The observance of due process in rulemaking.
- The use of empirical data in the rulemaking process.
- Regulations should not favor any one business model or platform.
- Market structure initiatives should insure that the benefits of competition accrue to investors through the appropriate balance of competition and regulation.

As we view the events which lead up to the current situation and offer input on a path forward, we respectfully offer these comments.

The October 26, 2017, decision by the staff of the U.S. Securities and Exchange Commission (“SEC” or “Commission”) to issue three (3) related no-action letters

¹ SEC Staff Encourages Continued Engagement on Impact of MiFID II Research Provisions – Dec. 21, 2018 <https://www.sec.gov/news/press-release/2018-301>

² Response of the Chief Counsel’s Office of Division of Investment Management <https://www.sec.gov/divisions/investment/noaction/2017/sifma-102617-202a.htm>

³ STA is a trade organization founded in 1934 for individual professionals in the securities industry. STA is comprised of 24 Affiliate organizations in North America with individual members who are engaged in the buying, selling and trading of securities. STA is committed to promoting goodwill and fostering high standards of integrity in accord with the Association’s founding principle, Dictum Meum Pactum – “My Word is My Bond.” <https://securitytraders.org/>



designed to provide market participants with greater certainty regarding their U.S. regulated activities as they engage in efforts to comply with MiFID II in advance of its January 3, 2018, implementation date, was necessary and in the best interests of investors. While the observance of due process in this rulemaking was not necessarily followed, STA commends the Commission for taking this action to protect U.S. market participants and investors from the impacts of foreign rules.

We also commend the Commission for its efforts to monitor and assess the impact of MiFID II on the research marketplace and affected participants, including asset owners, asset managers and broker-dealers⁴.

While the Commission’s “no-action” relief provided much-needed protection for U.S. firms, it has resulted in unintended negative consequences due to several factors, including but not limited to the temporary nature of the relief and the operational and administrative burdens it imposed on the asset management and broker dealer industries. As the Commission contemplates permanent rule making, we recommend it incorporate the four (4) aforementioned guiding principles in this letter.

STA believes that a meaningful number of market participants anticipate the Commission granting an extension on the existing “no-action” relief. Therefore, a decision to allow the relief to expire in July 2020 risks to be highly disruptive if firms are not provided adequate time to adjust to the regulatory regime. Expiration would have a particular impact on those broker-dealers who may decide to register their research departments as investment advisers to accommodate cash payments.

Recommendation

Should the Commission decide to allow the “no-action” relief to expire on its July 2020 date, STA would recommend that such a decision include a designated transition period long enough to allow industry participants to adjust to the regulatory regime.

Conclusion

Over the past decade, the financial services industry has become much more global through a series of acquisitions and mergers. In addition, the industry is able to move capital across borders more efficiently. While these combined forces have produced benefits for investors, they have also brought greater challenges to the primary regulators within each nation. These risks add to the already difficult job of the Commission.

STA appreciates the Commission’s initial response to this regulatory event which occurred away our nation’s soil and we are confident that this experience can be a

⁴ Comments on Measures to Facilitate Cross-Border Implementation of the European Union’s MiFID II’s Research <https://www.sec.gov/comments/mifidii/mifidii.htm>



catalyst for greater communication among regulators. STA appreciates the opportunity to provide comments on the no-action relief.

Doug Clark
Chairman of the Board

James Toes
President & CEO

cc: The Honorable Robert J. Jackson Jr., Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Reisman, Commissioner
Dalia Blass, Director, Division of Investment Management
Brett Redfearn, Director, Division of Trading and Markets, U.S. Securities and Exchange Commission