CAPITAL GROUP®

The Capital Group Companies, Inc.
333 South Hope Street
Los Angeles, California 90071-1406

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April 18, 2019

The Honorable Walter Jay Clayton
Chairman
United States Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090

RE: Additional Comments on the Impact of MiFID II Research Provisions

Dear Chairman Clayton:

We appreciate the opportunity to provide additional thoughts on the Securities and Exchange Commission's (the "Commission") temporary no-action letter (the "SIFMA No-Action Letter") issued by the Commission's Division of Investment Management.[1] We also commend the Commission's continued efforts to assess the impact of MiFID II[2] on the research marketplace and affected participants and to engage with the industry to find a solution.

We write to supplement our letter, dated February 11, 2019, in which we suggested two rulemaking approaches to a rule that would resolve current regulatory issues addressed in the SIFMA No-Action Letter (the "Original Letter").[3] For your reference, our Original Letter is attached here as Appendix B. Should the Commission wish not to engage in rulemaking, we offer an additional approach for consideration.

1. Recommended Rulemaking

   In the Original Letter, we proposed

   - A safe harbor for broker-dealers providing research to investment advisers primarily for the purpose of the advisers furnishing advice to their clients; or

[1] *Securities Industry and Financial Markets Associates*, SEC Staff No-Action Letter (pub. avail. Oct. 26, 2017).
[2] The Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.
[3] Letter from Michael C. Gitlin, Partner, et al., Capital Research and Management Company, to Honorable Jay Clayton, SEC (Feb. 11, 2019), *available* at https://www.sec.gov/comments/mifidii/cll5-4919397-178352.pdf.

- A rule defining the term "special compensation" to exclude payments made to a registered broker-dealer by an investment adviser.

Either approach would provide a narrow exclusion from the Investment Advisers Act of 1940 (the "Advisers Act") that would be limited to broker-dealers who provide to an adviser "research services" within the safe harbor of Section 28(e) of the Securities Exchange Act for use in providing recommendations to customers. The exclusion would have been further narrowed to limit the use of research broker-dealers provide to be "impersonal advice" and not discretionary advice.

Other market participants have expressed concerns that our proposed rule text in the Original Letter would have excluded some traditional research acquired from broker-dealers that was customized to fit a particular customer's needs.[4] In response, we have revised our proposals to eliminate the "impersonal advice" limitation and substitute a restriction that the research services provided by broker-dealers be "solely incidental to the business of a broker or dealer." See Appendix A.

This revised condition would permit personalized advice to be provided by a broker-dealer relying on the rule, but only if it were "solely incidental" to its business as a broker, the same statutory standard set forth in Section 202(a)(11)(C), the broker-dealer exception in the Advisers Act. The rule would retain the limitation on discretionary authority, which we explained could permit a broker-dealer to effectively serve as a sub-adviser, and which we continue to believe should not be permitted by the rule.

Our suggested rule approaches preserve the "status quo" as the research provided by any broker-dealer must be solely incidental to its brokerage services, with the only change being the form of payment – hard dollars rather than commissions. As a regulatory policy matter, we do not think it makes sense that the form of payment for research services provided by a broker-dealer should be the determining factor of whether such services subjects the broker-dealer to the Advisers Act regulatory regime. Further, as the Commission is aware, certain investment advisers, including Capital Group, are currently bearing the cost of research through the combination of commission sharing arrangements and a reimbursement program. These programs will not continue to work on a global basis upon the expiration of the SIFMA No-Action Letter. The Commission should not lose sight of the fact that advisers paying for research with hard dollars eliminate costs otherwise being borne by investors.

We continue to believe the Commission has ample authority to address the issue under Sections 206A and 211(a) of the Advisers Act. Section 206A provides the Commission broad authority to exempt classes of persons from the Advisers Act. Section 211 was amended in 2010 to specifically grant the Commission the authority to adopt rules to define terms used in the Advisers Act as well as permit the Commission to provide different requirements for different classes of persons. Until the Dodd-Frank Act added this provision,[5]

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[4] *See* Letter from David Oestreicher, Chief Legal Counsel, et al., T. Rowe Price, to Honorable Jay Clayton, Chairman, SEC (Mar. 13, 2019), *available* at https://www.sec.gov/comments/mifidii/cll5-5101584-183252.pdf.

[5] Section 406 of Dodd-Frank Wall Street Reform and Consumer Protection act of 2010, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

the Advisers Act was the only federal securities law that did not give the Commission the authority to define terms. Our two rulemaking approaches result in the Commission defining the term "client" or "special compensation."

2. Alternative Interpretive Approach

If the Commission is not inclined to pursue a rulemaking, we believe staff guidance interpreting the term "special compensation" would provide the solution that the market needs. The term "special compensation" as used in Section 202(a)(11) was interpreted by the Commission's General Counsel (not the Commission) nearly 80 years ago in 1940.[6] Over the years the market has experienced a remarkable transformation in the ways that broker-dealers' investment research is provided to, and valued and paid for by, investment advisers. In light of the current practices and regulatory regimes, the staff's reinterpretation of the definition of "special compensation" is well warranted.

In 2017, the Commodity Futures Trading Commission (the "CFTC") issued an interpretive letter similar to the one we are seeking to address the conflict in regulation that will exist if the SIFMA No-Action Letter expires with no further action by the Commission.[7] In the letter, the CFTC staff provided relief for futures commission merchants and swap dealers receiving direct payments for research services so that they would continue to qualify for the exemption from registration as commodity trading advisers under the CFTC regulation 4.6(a)(3). The Commodity Exchange Act excludes futures commission merchants and swap dealers from the commodity trading adviser definition if the commodity trading advice is solely incidental to their respective businesses. The exclusion in that Act however does not have the "no special compensation" requirement that is in the Advisers Act. Nevertheless, the CFTC itself had suggested that futures commission merchants or swap dealers would not qualify for the exemptions if they received a separate fee for advice to a counterparty.[8] The CFTC had effectively read the "no special compensation" requirement into the "solely incidental" requirement. The CFTC staff stated that the "receipt of a separate payment for commodity trading advisory services is merely a factor to be considered among the facts and circumstances related to the advisory activities provided in determining whether the activities are indeed "solely incidental" to the conduct of a [swap dealer's] business as a [swap dealer], or whether the advisory activities are a separate, independent line of business more commonly associated with the business of a [commodity trading advisor] ... Although direct payment for commodity trading advice may be one factor, receipt of separate compensation would not be dispositive on its own." Similarly, the Commission, as a federal agency, has the authority to interpret the Advisers Act to clarify that the determination of adviser status should not be based upon the form of compensation received for services that are incidental to a broker-dealer's brokerage activities.[9]

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[6] *See* Investment Advisers Act Release No. 2 (Oct. 28, 1940).
[7] *See* CFTC Staff Interpretation Regarding Commodity Trading Advisor Registration Requirements, CFTC Letter No. 17-65 (Dec. 11, 2017).
[8] *See* Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties, 77 Fed. Reg. 9734 at 9740 (Feb. 17, 2012).
[9] The Supreme Court has recently clarified an agencies authority to issue interpretations (and change them) without notice and comment. *Perez v. Mortgage Bankers Assn.,* 135 S.Ct. 1199 (2015).

To conclude, we believe the law authorizes the Commission to allow broker-dealers to accept direct payments from investment advisers for research services without being deemed investment advisers. We understand that the Commission staff is considering a number of possible solutions to the MiFID II issue. We respectfully submit that our suggested approaches maintain the status quo, are straightforward and avoid disruption to current business practices in accessing and delivering research services. Importantly, our proposed solutions preserve choice for investment advisers to acquire broker-dealer research out of their own resources or through the use of client commissions. If the temporary relief under the SIFMA No-Action Letter expires without the Commission implementing a permanent solution, the regulatory impediment to the procurement of research will interfere with efficient market functioning by weakening the competition amongst broker-dealers and diminishing the number of choices available to asset managers for research service providers.

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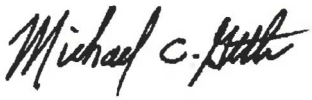
We truly appreciate the opportunity to provide comments on the no-action relief. If you have any questions regarding our comments, please feel free to contact Michael Triessl at [redacted].

Sincerely,



Michael C. Gitlin
Partner
Capital Research and Management Company

Paul F. Roye
Senior Vice President
Capital Research and Management Company

Michael J. Triessl
Senior Vice President
Capital Research and Management Company

cc: The Honorable Robert J. Jackson Jr., Commissioner

The Honorable Hester M. Peirce, Commissioner

The Honorable Elad L. Roisman, Commissioner

Dalia Blass, Director, Division of Investment Management

Paul G. Cellupica, Chief Counsel and Deputy Director, Division of Investment Management

Alan Cohen, Senior Policy Advisor to the Chairman of the Commission

Brett Redfearn, Director, Division of Trading and Markets

JoAnne Swindler, Assistant Director, Division of Trading and Markets

Appendix A

Option 1

Safe Harbor for Research

a. *Safe Harbor*. A broker or dealer that provides "research services" to an investment adviser shall not be deemed solely as a result of providing such research services to have provided investment advice to a client within the meaning of this Act, provided that:

(1) The broker or dealer is registered under Section 15 of the Securities Exchange Act of 1934 ("Exchange Act"); and

(2) The broker or dealer shall have a reasonable belief that such research services are used by the adviser primarily to furnish investment advice to its clients, either directly or indirectly through publications.

(3) The research services provided are solely incidental to the business of a broker or dealer.

b. *Definitions*

(1) The terms "broker" and "dealer" shall have the same meaning they do in Section 3(a)(4) and 3(a)(5) the Exchange Act; and

(2) The term "research services" shall have the same meaning it does in Subsections 28(e)(3)(A) and (B) of the Exchange Act, but shall not include advice provided pursuant to the exercise of "discretionary authority" as those terms are defined in Form ADV.

Option 2

Definition of "Special Compensation"[10]

a. *General*. The term "special compensation" as used in Section 202(a)(11)(C) shall not include the receipt of payments from an investment adviser for research services, provided that the broker or dealer:

(1) Receiving such payments is registered under Section 15 Securities Exchange Act of 1934 ("Exchange Act"); and

(2) Has at the time of the receipt of such payments a reasonable belief that the research services are used by the investment adviser primarily to furnish investment advice to its clients, either directly or indirectly through publications.

[10] The "solely incidental" requirement in the statutory exemption would continue to apply as this rule text only modifies the special compensation portion of the exemption.

b. Definitions

(1) The terms "broker" and "dealer" shall have the same meaning they do in Section 3(a)(4) and 3(a)(5) the Exchange Act; and

(2) The term "research services" shall have the same meaning it does in Subsections 28(e)(3)(A) and (B) of the Exchange Act, but shall not include advice provided pursuant to the exercise of "discretionary authority" as those terms are defined in Form ADV.

Appendix B

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333 South Hope Street
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February 11, 2019

The Honorable Walter Jay Clayton
Chairman
United States Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090

RE: Comments on Measures to Facilitate Cross-Border Implementation of MiFID II

Dear Chairman Clayton:

We appreciate the opportunity to provide our views on the Securities and Exchange Commission's (the "Commission") temporary no-action letter (the "SIFMA No-Action Letter") issued by the Commission's Division of Investment Management.[1] The Capital Group Companies ("Capital Group") is a global asset management firm with offices in Europe, Asia and the Americas. Through our investment management subsidiaries, we actively manage assets in various collective investment vehicles and institutional client separate accounts globally. The majority of these assets consist of the American Funds family of mutual funds, which are U.S. regulated investment companies distributed through financial intermediaries and held by individuals and institutions across different types of accounts. Capital Group has a robust, global investment research capability, and uses third-party research to augment these capabilities. As such, we believe a robust third-party research industry plays an important role in the broader financial industry.

We would first like to commend the Commission for its efforts to monitor and assess the impact of MiFID II[2] on the research marketplace and affected participants, including investment managers and broker-dealers. We also appreciate the efforts of the Staff of the Commission to issue the SIFMA No-Action Letter and the two accompanying letters that addressed issues for the investment management and broker-dealer communities related to the implementation of MiFID II.[3] The issuance of these three letters was critically important to

[1] *Securities Industry and Financial Markets Associates*, SEC Staff No-Action Letter (pub. avail. Oct. 26, 2017).
[2] The Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.
[3] SEC Press Release: SEC Announces Measures to Facilitate Cross-Border Implementation of the European Union's MiFID II's Research Provisions (Oct. 26, 2017), *available at* https://www.sec.gov/news/press-release/2017-200-0.

the continued ability of U.S. and global investment managers to access research from U.S. broker-dealers. With the expiration of the SIFMA No-Action Letter approaching in July 2020, we urge the Commission to propose a rule that allows flexibility for U.S. broker-dealers to accept payment from investment managers for research out of their own resources or with commissions from client trades without having to register as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act").

Background

Most global investment managers acquire research services from U.S. broker-dealers to enhance their internal research capabilities used in serving clients globally, including in the United States and the European Union. Historically, investment managers globally have paid for third-party research services with brokerage commissions in connection with the execution of equity trades. In providing research services, U.S. broker-dealers operate pursuant to an exemption from registration as an investment adviser under the Advisers Act, so long as the "performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor."[4] Over the years, the Commission has interpreted "special compensation" to include any payment other than payments from commissions (or mark ups and mark downs). In contrast, MiFID II requirements provide that an investment manager must pay a reasonable value for all research consumed and must pay for such research services from its own resources, from a separate research payment account ("RPA") registered in the name of the investment manager and funded by a direct charge to the client's account or a charge alongside a trading commission, or a combination of the two. As MiFID II implementation approached at the end of 2017, U.S. regulations and MiFID II requirements were exactly at odds, resulting in massive uncertainty in the marketplace about how to comply with both MiFID II and with U.S. regulations with respect to research. To address this uncertainty, the Commission issued three no-action letters, including the SIFMA No-Action Letter. The SIFMA No-Action Letter provided temporary relief through July 2020, permitting a U.S. broker-dealer to accept hard dollar payments or payments from an RPA for research services provided to an investment adviser that is subject to MiFID II regulations, either directly or by contractual obligation, without being required to register as an investment adviser under the Advisers Act.

While the SIFMA No-Action Letter provided a necessary short-term solution for third-party research payments, we believe it resulted in certain unintended consequences. The temporary relief treats similarly situated clients and investment managers differently solely based on the location of such clients or managers – whether they are in the European Union or outside of the European Union. Under the relief, investment managers subject to MiFID II, directly or contractually, can pay for U.S. broker-dealer research using their own resources while those that are not subject to regulation under MiFID II are limited in their ability to do so. This is true even for the same global investment management firm where one affiliate is subject to MiFID II and another is not. This has created an environment where many global asset managers have determined to pay for research for their clients in the European Union, but continue to have other investors, including those in the United States, pay for research through the use of equity trading commissions. It strikes us as an unworkable long-term solution to continue having only certain clients benefit from an investment manager's

[4] Section 202(a)(11) of the Investment Advisers Act of 1940.

willingness to bear the expense of research based on where the clients, or their investment manager, is located.

Several global investment managers, including Capital Group, have implemented policies to bear the cost of research from their own resources, thereby benefitting all clients in the same manner. In order to bear the cost of U.S. broker-dealer research, an investment manager must track client commissions that are used to pay for research and reimburse each client account for those amounts. The process to implement this policy, which ultimately benefits the end client, imposes a significant operational and administrative burden on the investment adviser and seems unnecessary. The same net effect can be attained by providing the flexibility that would allow an investment manager to pay the broker-dealer directly for research.

Impacts on Broker-Dealer Research

In the event the Commission does not take any action prior to July 2020, we believe that certain broker-dealers will choose not to register as an investment adviser under the Advisers Act. As a result, these broker-dealers will not be able to receive any form of payment for research permissible under MiFID II. At the same time, as discussed above, MiFID II precludes an EU investment manager from receiving research free of charge as it is deemed an illegal inducement. Without any means for payment, investment managers subject to MiFID II and importantly their clients would not be able to benefit from research services provided by broker-dealers not registered as an investment adviser. Further, investment managers that conduct their research and manage investments on a global basis, including U.S. investment managers, may not be able to benefit from research provided by these U.S. broker-dealers. It would be massively disruptive to the investment process to prohibit investment manager affiliates outside the EU from sharing the research they receive with their EU affiliates. We believe that this could lead to a shift away from consumption of research provided by U.S. broker-dealers that are not registered as investment advisers and result in decreased coverage of certain companies and sectors.

Alternatively, broker-dealers may discontinue their research services altogether if they determine that the regulatory risks outweigh the profits earned from operating their research business. These regulatory challenges may have an outsized impact on small to mid-sized research providers that do not have the scale and resources to implement the changes necessary to stay compliant.[5]

Regardless of the form of payment, investment managers will seek to consume and pay for third-party research that enhances their internal research capabilities. Over the past several years, there has been greater transparency into the value of third-party research providers and the research they distribute. This trend has resulted in the re-calibration of the amount that investment managers spend on third-party research. This is a trend that will not be affected by the source of funding for such third-party research. Research providers that offer valuable and distinguished research services will continue to thrive. We believe that this

[5] Letter from Gary A. LaBranche, President and CEO of National Investor Relations Institute, to the Honorable Walter Jay Clayton, Chairman, U.S. Securities and Exchange Commission (October 31, 2017), *avail. at,* https://www.sec.gov/comments/mifidii/cll5-2660133-161422.pdf.

will improve the quality of research from many research providers. Investment managers are incented to provide their investment professionals with the research services they need to do their job well. Those that don't will likely see investment results suffer, which in turn will see investors choose other investment options.

Capital Group's Recommendation

We strongly urge the Commission to issue a rule before July 2020, the expiration of the relief provided by the SIFMA No-Action Letter, to continue to permit payment in hard dollars by investment advisers without causing broker-dealers to be considered investment advisers. We also urge the Commission to extend the relief to all broker-dealers regardless of the location of the market participants. If there is inadequate time to both propose and adopt such a rule within the remaining time, we urge that the time provided in the SIFMA No-Action Letter be extended until a rule can be adopted.[6] A permanent solution is needed for global asset managers to comply with both the MiFID II and the US regulatory regimes, while continuing to permit investment advisers to obtain important sell-side research.

Any permanent solution should permit broker-dealers to receive hard dollar payments from investment advisers for research services without subjecting such broker-dealers to the Advisers Act, regardless of whether market participants are located in a place that makes them subject to MiFID II. Capital Group is mindful that because such a rule would reverse many years of Commission and staff interpretations of the Advisers Act the rule must rely on firm statutory authority. In addition, we appreciate that any rule the Commission would adopt must be sufficiently narrow to prevent its reliance by broker-dealers and other persons whose advisory activities implicate the core protections of the Advisers Act. With these considerations in mind, we suggest two approaches to a rule that would resolve current regulatory issues addressed in the SIFMA No-Action Letter. Attached as Appendix A is draft rule text that we believe will be helpful to the staff in considering the two suggested approaches.

Safe Harbor for Research

The first approach would provide a safe harbor that would deem a registered broker-dealer that provides research services to an investment adviser not to be providing investment advice to a client under the Advisers Act. The research would be limited to impersonal advice and could not be provided pursuant to the exercise of discretionary authority.

The Advisers Act regulates the relationship between advisers and their clients. Investment advisers typically provide advice to clients that incorporates ideas, analysis or facts obtained from third parties, such as broker-dealers. Once incorporated into advice, practically speaking, it becomes most difficult to isolate or distinguish the source or portion of the advice attributable to the third party. As fiduciaries, investment advisers are responsible for vetting such inputs to form a reasonable basis for the advice they give.

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[6] The Division has extended no-action relief pending rulemaking on previous occasions. See *Robert Van Grover,* SEC Staff No-Action Letter (Oct., 4, 2016) (custody rule); *Staff Responses to Questions About the Pay to Play Rule*, Question 1.5, *avail. at*, https://www.sec.gov/divisions/investment/pay-to-play-faq.htm.

Clients of the adviser are thus fully protected by the Advisers Act when the investment adviser formulates its advice based upon information or analyses which contribute to the adviser's ultimate advice.

The Division of Investment Management concluded as much in a 2010 no-action letter in which it stated that the mere provision of research services by a broker-dealer would not in and of itself establish a client relationship with the adviser's clients.[7] Indeed, in the case of traditional broker-provided research, the broker-dealer does not know who the client is and the investment adviser's client is typically unaware of the source of information or analysis on which the investment adviser bases its advice.

The Advisers Act may be read to treat the adviser as the client of the broker-dealer and apply the statute to govern that relationship. But the Advisers Act was enacted to protect clients rather than advisers, and such a technical reading is not compelled by the Advisers Act, although consistent with how the Commission has historically administered the Advisers Act. Indeed, the term "client" is not defined in the Advisers Act and who, if anyone, may be viewed as the client is ambiguous when the research is merely incorporated into the advice.

We believe the Commission could adopt a rule providing a safe harbor for broker-dealers providing research to investment advisers primarily for the purpose of the advisers furnishing advice to their clients. Such a rule would permit broker-dealers to sell traditional research for "hard dollars" to investment advisers without triggering application of the Advisers Act. It would do so without implicating the "broker-dealer exception" because the broker-dealer would not be considered to be giving advice to a client.

The attached draft rule text would describe the scope of the safe harbor as covering "research services," as the term is broadly defined in Section 28(e) of the Securities Exchange Act of 1934, but narrow it in several important respects. First, the rule would be available only to registered broker-dealers over which the Commission and Financial Industry Regulatory Authority have broad regulatory authority. Second, it would exclude broker-dealers providing personalized investment advice or advice pursuant to the exercise of discretionary authority. Such advice suggests that the broker-dealer is providing something more than traditional research services, and may have established a fiduciary relationship with the adviser's clients. Broker-dealers who provide discretionary advice to investment advisers essentially act as sub-advisers and it seems appropriate to subject such activities to the Advisers Act.

Finally, to rely on the safe harbor the broker-dealer must reasonably believe that the investment adviser to which it is furnishing the research services is using the advice primarily for the purpose of furnishing investment advice to clients. It thus could not merely pass on the research to its clients, but must incorporate the research into its own advice, whether provided on a discretionary or non-discretionary basis. Moreover, the research could not be used primarily for managing proprietary assets; in such circumstances it may be appropriate to treat the adviser as the client of the broker-dealer. The broker-dealer could establish that

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[7] *ConvergEx Group, LLC* (Sept. 21, 2010) (broker-dealer). In two similar letters, the Division agreed not to treat clients of a bank trust department acting in a fiduciary capacity as clients of an adviser providing advice to the trust department. *Copeland Financial Services, Inc.* (Sept. 21, 1992); *Kempner Capital Mgmt.* (Dec. 7, 1987).

it reasonably believed the investment adviser was using the research to furnish advice to its clients if the broker-dealer received an appropriate certification from the investment adviser.

We believe such a safe harbor could be adopted pursuant to the Commission's authority in Section 206A and 211(a). In 1975, the Commission relied on the broad grant of exemptive authority in Section 206A to temporarily exempt broker-dealers from the Advisers Act as a result of the anticipated receipt by broker-dealers of special compensation for research provided to investment advisers when brokerage commissions were unfixed.[8] Section 211, as we discuss below in more detail, was amended in 2010 to explicitly grant the Commission authority to define terms used in the statute, in this case the term "client." And even without these explicit grants of authority, under well-developed case law, agencies such as the SEC have inherent authority to use rulemaking authority to "fill in the gaps" of statutes they administer.[9]

Definition of "Special Compensation"

The second approach would be to adopt a rule defining the term "special compensation" to exclude payments made to a registered broker-dealer by an investment adviser. This "definitional" approach would preserve the broker-dealer exception to the Advisers Act when a broker-dealer receives cash payments for research from an investment adviser, subject to the same limitations and conditions that we have suggested for the safe harbor rule above.

The term "special compensation" is a term of art undefined in the Advisers Act, the scope of which has been the subject of much discussion and debate over the years. In 2010, Congress amended Section 211 of the Advisers Act to specifically grant the Commission the authority to adopt rules to define terms used in the Advisers Act, clarifying the inherent authority that courts have long recognized of administrative agencies such as the Commission to define ambiguous terms.[10]

We believe that Section 211 provides the Commission with clear authority to define the term "special compensation"; however, we suggest that the Commission also adopt the rule under the broad authority granted in Section 206A to exempt any person from "any provision or provisions of [the Advisers Act] if and to the extent that such exemption is necessary or appropriate in the public interest."[11] A rule that helps investment advisers, like

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[8] *Adoption of Temporary Rule 206A-1(T) Exempting Certain Broker-Dealers*, Investment Advisers Act Rel. No 455 (April 23, 1975).

[9] *Chevron U.S.A. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837(1984).

[10] Section 406 of Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1376 (2010). The Commission used this authority to define terms used in the Dodd-Frank Act. *See Exemption for Advisers to Venture Capital Funds, Private Funds With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers,* Investment Advisers Act Rel. No 3222 (June 22, 2011) at n. 28.

[11] A Federal appellate court, in 2007, vacated an SEC rule that would have had the effect of expanding the scope of the broker-dealer exception in section 202(a)(11)(C). *Financial Planning Association v. SEC,* 482 F.3d (D.C. Cir.). The Commission adopted that rule under Section 202(a)(11)(F) (now H) rather than Section 206A. In its opinion, the Court specifically noted that the Section 206A contains broader exemptive language. As we discuss above, neither of the rulemaking alternatives we suggest rely on authority provided by Section 202(a)(11)(H).

Capital Group and our subsidiaries, obtain research important to the exercise of its fiduciary responsibilities on behalf of its clients is appropriate and in the public interest.

Conclusion

If the temporary relief under the SIFMA No-Action Letter expires without the Commission implementing a permanent solution, we believe the regulatory impediment to the procurement of research will interfere with efficient market functioning by weakening the competition amongst broker-dealers and diminishing the number of choices available to asset managers for research service providers.

We believe that facilitating the cross-border implementation of MiFID II is about preserving choice for sophisticated market participants. Allowing broker-dealers to accept cash payments for research services without being deemed investment advisers will preserve choice for broker-dealers and investment managers for research services available and procured in the marketplace.

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We truly appreciate the opportunity to provide comments on the no-action relief. If you have any questions regarding our comments, please feel free to contact Michael Triessl at (213) 615-4024.

Sincerely,

Michael C. Gitlin Partner Capital Research and Management Company	Paul F. Roye Senior Vice President Capital Research and Management Company	Michael J. Triessl Senior Vice President Capital Research and Management Company

cc: The Honorable Robert J. Jackson Jr., Commissioner

The Honorable Hester M. Peirce, Commissioner

The Honorable Elad L. Roisman, Commissioner

Dalia Blass, Director, Division of Investment Management

Paul G. Cellupica, Chief Counsel and Deputy Director, Division of Investment Management

Appendix A

Option 1

Safe Harbor for Research

a. *Safe Harbor*. A broker or dealer that provides "research services" to an investment adviser shall not be deemed solely as a result of providing such research services to have provided investment advice to a client within the meaning of this Act, provided that:

(1) The broker or dealer is registered under Section 15 of the Securities Exchange Act of 1934 ("Exchange Act"); and

(2) The broker or dealer shall have a reasonable belief that such research services are used by the adviser primarily to furnish investment advice to its clients, either directly or through publications.

b. *Definitions*

(1) The terms "broker" and "dealer" shall have the same meaning they do in Section 3(a)(4) and 3(a)(5) the Exchange Act; and

(2) The term "research services" shall have the same meaning it does in Subsections 28(e)(3)(A) and (B) of the Exchange Act, but shall include only "impersonal advice" and advice not provided pursuant to the exercise of "discretionary authority" as those terms are defined in Form ADV.

Option 2

Definition of "Special Compensation"

a. *General*. The term "special compensation" as used in Section 202(a)(11)(C) shall not include the receipt of payments from an investment adviser for research services, provided that the broker or dealer:

(1) Receiving such payments is registered under Section 15 Securities Exchange Act of 1934 Exchange Act"); and

(2) Has at the time of the receipt of such payments a reasonable belief that the research services are used by the investment adviser primarily to furnish investment advice to its clients, either directly or indirectly through publications.

b. Definitions

(1) The terms “broker” and “dealer” shall have the same meaning they do in Section 3(a)(4) and 3(a)(5) the Exchange Act; and

(2) The term “research services” shall have the same meaning it does in Section 28(e)(3)(A) and (B) of the Exchange Act, but is limited to “impersonal advice” and advice not provided pursuant to the exercise of “discretionary authority” as those terms are defined in Form ADV.