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United States Senate

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AGING

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Dear Chairman Clayton:

As you begin your tenure as the Chairman of the U.S. Securities and Exchange Commission (SEC), one of the immediate and potentially dramatic decisions you will be confronted with is how to address the conflicts between U.S. regulation and the obligations to unbundle or otherwise identify separate charges for research under the Markets in Financial Instruments Directive (MiFID) II. As you are well aware, the U.S. capital markets have long served as a vehicle for economic growth, and are widely thought of as the deepest and most liquid in the world. One challenge that many have observed is how the proverbial regulatory creep has affected the functioning of our capital markets and public offerings in particular over recent years.

When you testified before the Senate Banking Committee for your confirmation hearing and through private meetings that we had, I was encouraged by your commitment to facilitating greater access to our domestic capital markets. During your testimony, you also highlighted the increasing global competition that the U.S. presently faces. In light of these comments and your commitment to working with members of the Senate Banking Committee, I wanted to express my concern about the potential impacts of MiFID II.

MiFID II's effective date is January 3, 2018, and one of the most pressing issues is how to prevent frictions between the European Union's (EU) and U.S.'s regulatory regimes that could have detrimental impacts to our financial markets and the competitiveness of U.S. broker dealers. As you know, under the Investment Advisers Act of 1940, U.S. brokers are prohibited from accepting "hard dollars" to pay for research without being subject to fiduciary obligations and related restrictions under the Act; however, U.S. brokers are able to accept commissions, i.e. "soft dollars," that are generated from account transactions under the Securities and Exchange Act of 1934. Accordingly, the EU's MiFID II obligations may drastically affect the way European asset managers (and the U.S. affiliates of global asset managers) pay for U.S. research, and U.S. firms are presently ill-equipped to harmonize domestic rules and practices. Absent some regulatory relief from either the EU or U.S., conflicts between the two regulatory regimes will arise, which could negatively impact the provision of research to EU investment managers (and to the U.S. affiliates of global asset managers) from U.S. broker dealers and could dramatically reduce those investment managers' access to the U.S. securities markets.

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As such, and given your particular interest in capital formation, I would like to understand the following:

- What is the SEC currently doing to evaluate the potential impacts of MiFID II, in particular, as it relates to the production of research for asset managers by broker-dealers?
- Is the SEC considering regulatory relief for U.S. broker-dealers that would be forced to receive “hard dollar” payments for research as a result of MiFID II?
- Is the SEC considering guidance or no-action relief as it relates to U.S. broker-dealers’ receipt of unbundled payments for research?
- How does the SEC think MiFID II might impact analyst coverage of smaller and mid-cap companies.
 - Particularly, does the SEC believe that MiFID II may impact current Emerging Growth Companies (EGCs), companies considering becoming EGCs, companies considering entering the U.S. public markets, and how MiFID II might impact the growth of public offerings in the U.S.?
- Does the SEC believe that MiFID II presents a competitive advantage to the EU?

Thank you for your attention to this important matter. If there are other items that you feel are important to understand regarding MiFID II and its U.S. application, please include such information.

Sincerely,



Thom Tillis
United States Senate