



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

September 14, 2017

The Honorable Thom Tillis
United States Senate
185 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Tillis:

Thank you for your letter, dated June 16, 2017, concerning the obligations to unbundle or otherwise identify separate charges for research under the E.U. Markets in Financial Instruments Directive II (MiFID II). I appreciate your interest in this issue and share your goal of reaching a resolution to minimize disruptions to investors, markets and market participants.

As you know, the Investment Advisers Act of 1940 (“Advisers Act”) excludes broker-dealers from regulation as investment advisers if the advice they provide to their customers is “solely incidental” to their broker-dealer business, and if the broker-dealers receive no “special compensation” for such advice. It has long been the position of the Commission that a separate payment for research would constitute special compensation for investment advice, and that a broker-dealer receiving such a payment would be subject to regulation under the Advisers Act. Broker-dealers generally charge one “bundled” commission for the provision of research and other brokerage services, particularly execution, and thus are not subject to regulation as investment advisers.

It is our understanding that MiFID II generally requires, beginning in January 2018, that E.U. asset managers must unbundle commissions and pay separately for research. These payments can come directly from the asset manager’s revenues, or from a new “research payment account” (RPA) that can be funded either through a specific research charge to the client or from dealing commissions – but the research element of the commission must be priced separately from the execution element.

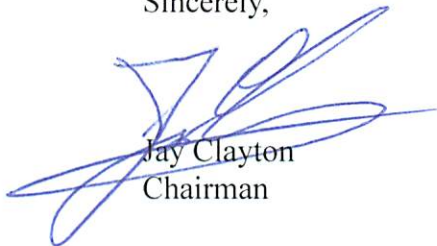
SEC staff is aware of market participants’ concerns about the potential unintended consequences for U.S. firms involved in the cross-border research market, especially related to U.S. broker-dealers’ receipt of unbundled payments from E.U. asset managers constituting special compensation, thereby eliminating the U.S. broker-dealers’ ability to rely on the exclusion from the Advisers Act. The staff understands that relief may be required in order for U.S. broker-dealers to avail themselves of the Advisers Act exclusion in order to continue to provide research to E.U. asset managers, or cease to provide that research entirely. Market participants have informed the staff that this latter option may put U.S. broker-dealers at a competitive disadvantage, and could also harm investors. And, to the extent that U.S. broker-

dealers retreat from their research function more generally, issuers already struggling to attract research – particularly small and emerging growth companies, who value research to attract investors both for investment and for a more liquid market in the company’s stock – may find it more difficult or even impossible to obtain research coverage.

SEC staff has engaged – and continues to engage – with the relevant European authorities, including the European Commission and the European Securities and Markets Authority, as well as with the United Kingdom’s Financial Conduct Authority, on the potential impact of MiFID II requirements on the cross-border research market, and is seeking to address this issue collaboratively, recognizing that any relief that the SEC might extend unilaterally may be ineffective if our regulatory counterparts in the E.U. were to determine that the requirements of MiFID II were not satisfied. We also recognize that we may be constrained by relevant judicial precedent. The staff is, therefore, prioritizing cooperation with our European colleagues to reach a solution that avoids a potential disorderly transition in the market for research around the rapidly-approaching implementation date.

Thank you again for your letter and for your attention to this important matter in our capital markets. Should you wish to discuss these issues further, please do not hesitate to contact me at (202) 551-2100 or have your staff contact Bryan Wood, Director of the Office of Legislative and Intergovernmental Affairs, at (202) 551-2010.

Sincerely,



Jay Clayton
Chairman