

Press Release

SEC Announces Measures to Facilitate Cross-Border Implementation of the European Union's MiFID II's Research Provisions

FOR IMMEDIATE RELEASE

2017-200

Washington D.C., Oct. 26, 2017— Today, following consultation with European authorities, and in response to concerns that investors could lose access to valuable research, the staff of the U.S. Securities and Exchange Commission issued three related no-action letters. These letters are designed to provide market participants with greater certainty regarding their U.S. regulated activities as they engage in efforts to comply with the European Union's (EU) Markets in Financial Instruments Directive (MiFID II) in advance of the Jan. 3, 2018, implementation date.

The no-action relief provides a path for market participants to comply with the research requirements of MiFID II in a manner that is consistent with the U.S. federal securities laws. More specifically, and subject to various terms and conditions: (1) broker-dealers, on a temporary basis, may receive research payments from money managers in hard dollars or from advisory clients' research payment accounts; (2) money managers may continue to aggregate orders for mutual funds and other clients; and (3) money managers may continue to rely on an existing safe harbor when paying broker-dealers for research and brokerage.

"Today's no-action relief was designed with input from a range of market participants to reduce confusion and operational difficulties that might arise in the transition to MiFID II's research provisions," said SEC Chairman Jay Clayton. "Staff's letters take a measured approach in an area where the EU has mandated a change in the scope of accepted practice, and accommodate that change without substantially altering the U.S. regulatory approach. These steps should preserve investor access to research in the near term, during which the Commission can assess the need for any further action. Cooperation with European authorities, including the European Commission, has been instrumental to the SEC's efforts, and I welcome the additional guidance the EC published today. We look forward to continued dialogue on this and other important issues."

The temporary no-action relief facilitates compliance with the new MiFID II research provisions while respecting the existing U.S. regulatory structure. It also is intended to provide the staff with sufficient time to better understand the evolution of business practices after implementation of the MiFID II research provisions. During the period of the temporary relief, the staff will monitor and assess the impact of MiFID II's research provisions on the research marketplace and affected participants in order to determine whether more tailored or different action, including rulemaking, is necessary and appropriate in the public interest.

To facilitate the staff's monitoring and assessment efforts with respect to the temporary no-action relief, SEC staff encourages members of the public to make their views known on these matters via [webform](#) or [e-mail](#) . In particular, staff invites the public to provide data and other information relating to the impact of MiFID II's research provisions on broker-dealers (including any changes to their business models), investors, and the quantity and quality of research. Comments would be appreciated by one year before the expiration of the period of temporary relief.

FACT SHEET

Division of Investment Management No-Action Relief

- The Division of Investment Management provided temporary relief for thirty (30) months from MiFID II's implementation date under the Investment Advisers Act of 1940 ("Advisers Act") to permit a broker-dealer to receive payments in hard dollars or through MiFID-governed research payment accounts from MiFID-affected clients without being considered an investment adviser. In connection with this temporary relief, the staff will continue to monitor and assess the impact of MiFID II's requirements on the research marketplace and affected participants in order to ascertain whether more tailored or different action, including rulemaking, is necessary and appropriate in the public interest.
- The Division of Investment Management also provided relief under the Investment Company Act of 1940 and the Advisers Act to permit investment advisers to continue to aggregate client orders for purchases and sales of securities, where some clients may pay different amounts for research because of MiFID II requirements, but all clients will continue to receive the same average price for the security and execution costs. This relief provides clarity and consistency to investment advisers by permitting the continued aggregation of orders while addressing the differing arrangements regarding the payment for research that will be required by MiFID II.

Division of Trading and Markets No-Action Relief

- The Exchange Act Section 28(e) safe harbor addresses the manner in which a money manager can use client commissions to purchase "brokerage and research services" without breaching its fiduciary duty. In the U.S., money managers often use client commission arrangements to obtain brokerage and research services from a broker-dealer, using a single, "bundled" commission that is separated after execution to pay for order execution and research.
- Under MiFID II, money managers may make payments to an executing broker-dealer out of client assets for research alongside payments for order execution, and the executing broker-dealer must transmit the payments for research into research payment accounts ("RPAs").

The Division of Trading and Markets provided relief to allow money managers to operate within the safe harbor if the money manager makes payments for research to an executing broker-dealer out of client assets alongside payments for execution through the use of an RPA that conforms to the requirements for RPAs in MiFID II, and the executing broker-dealer is legally obligated to pay for the research, provided that all other applicable conditions of Section 28(e) are met.

###

Related Materials

- [Staff Letter: \(No-action relief to SIFMA\)](#)
- [Staff Letter: \(No-action relief to ICI\)](#)
- [Staff Letter: \(No-action relief to SIFMA AMG\)](#)