

Public Statement

Statement on the Staff's No-Action Relief Regarding MiFID II

Commissioner Kara M. Stein

Oct. 26, 2017

Today, staff from the Division of Investment Management and the Division of Trading and Markets issued a series of no-action letters related to the research payment provisions in the Council of the European Union's Markets in Financial Instruments Directive ("MiFID II").^[1] MiFID II will give investors transparency into the cost of both research and trading commissions by requiring that payments be unbundled. Bundling of payments is a common practice in the United States and thus, Europe's new approach creates a conflict for certain global firms.

Questions about transparency and investor protection are central to this conflict. When payments for research and trading are combined, do investors know that they are paying for research? Do investors know what they are paying for trading? Do investors know of the potential conflicts of bundled payments?

The staff's no-action relief does not adequately address these issues and merely kicks the can down the road. This inaction may be costly to investors and advantage some market participants over others. While a time-limited approach may allow the staff to study the impact of MiFID II, taking over 900 days is simply unreasonable.

Transparency and disclosure are vital to our capital markets. Transparency in government process is equally important. It is critical that investors and other market participants have an opportunity to voice their concerns and ideas. I encourage the staff and the Commission to consider timely notice and comment rulemaking in order to reach the best policy outcome in this area.^[2]

[1] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on Markets in Financial Instruments and Amending Commission Directive 2002/92/EC and Council Directive 2011/61/EU, O.J. (L 173) 57, 349, *available at* <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0065> .

[2] See Steven T. Mnuchin & Craig S. Phillips, U.S. Dep't of the Treasury, A Financial System That Creates Economic Opportunities: Capital Markets 219 (Oct. 2017), *available at* <https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf> ("Treasury recommends that the CFTC and the SEC take steps to ensure that guidance is not being used excessively or unjustifiably to make substantive changes to rules without going through the notice and comment process.").