June 27, 2023

Via Email

Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Request to Extend the Markets in Financial Instruments Directive II (MiFID II) No-Action Letter

Dear Chair Gensler,

With only days remaining before the July 3rd expiration of the Securities and Exchange Commission (SEC) staff's Markets in Financial Instruments Directive II (MiFID II) no-action letter (NAL) to SIFMA[1] from October 24, 2017, and extended on November 4, 2019, that allows broker-dealers to receive cash payments for research without being deemed to be investment advisers subject to the Investment Advisers Act of 1940,[2] we are writing to request that the SEC preserve and retain the relief provided in that NAL.

Congress has repeatedly spoken on a bipartisan basis in support of an extension of the NAL. On May 24, 2023, the House Financial Services Committee overwhelmingly passed H.R. 2622, legislation offered by Representatives Pete Sessions (R-TX) and Josh Gottheimer (D-NJ) to extend the NAL for six months, by a bipartisan 45-2 vote. On June 15, 2023, Reps. Sessions and Gottheimer reiterated the Committee's concerns in a letter that again urged the SEC to take action. In a letter on June 26, 2023, Senators Jerry Moran (R-KS) and Bob Menendez (D-NJ) echoed the House's calls and requested that the SEC extend the NAL.

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[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] See (https://www.sec.gov/divisions/investment/noaction/2017/sifma-102617-202a.htm) and (https://www.sec.gov/investment/sifma-110419).

That relief is critical to addressing the conflicts of law problem that arises between the current MiFID II requirement for investment managers to make separate, unbundled payments for research and the application of the Investment Advisers Act to any U.S. broker-dealer that accepts such separate, unbundled payments for research. Despite best efforts, the industry has not found a viable solution that works for all U.S. broker-dealers that addresses the conflicts of law problem presented by MiFID II in the U.S.

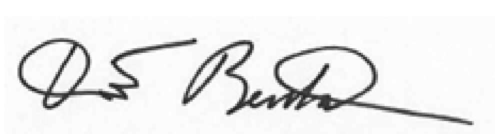
Given the significant risk that impacted buyside managers will lose access to important research services and the negative impact on the competitiveness of U.S. markets and research providers, a recent survey by Coalition Greenwich shows that the least disruptive option at this point is an extension of the relief in the NAL.[3] While all U.S. broker-dealers providing research would be negatively impacted if the NAL is not extended, regional and smaller broker-dealers who lack European operations would be the most harmed. And, importantly, there would be a diminution in research coverage of U.S. issuers.

In response to the negative impacts of the MiFID II unbundling requirement, the European Union (E.U.) and United Kingdom (U.K.) are taking steps that will result in the curtailment of this requirement. The E.U. is in the process of amending MiFID II to make unbundling optional, and that is expected to be completed shortly. It is our understanding that the pending change will be a topic at the upcoming Joint U.S.-E.U. Financial Regulatory Forum this week.

And the U.K. is actively evaluating the impact that the unbundling requirement is having on U.K. capital formation and the need for amendment. It is expected that the U.K. will announce its recommendations for rolling back its rule in the coming weeks. Thus, by failing to extend the NAL, the SEC will subject U.S. broker-dealers, and indirectly U.S. investment advisers and issuers, to a European requirement that presents a conflict with U.S. law, even though that European requirement is in the process of being dramatically revised.

As the window of opportunity to forestall these negative impacts is closing shortly, SIFMA again asks the SEC to extend the NAL to provide relief for market participants, investors and American companies.

Sincerely,



Kenneth E. Bentsen, Jr.
President & CEO

[3] See (https://www.greenwich.com/market-structure-technology/expiration-mifid-ii-no-action-letter).

cc: The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner
The Honorable Jaime Lizárraga, Commissioner
William Birdthistle, Director, Division of Investment Management