



MiFID II: Securities and Exchange Commission publishes "no-action" relief in respect of research payments to US brokers

Introduction

On October 26, 2017, following consultation with European authorities, and in response to concerns that investors could lose access to valuable research, the U.S. Securities and Exchange Commission (the “SEC”) granted what is called “no action relief” through the publication of three 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 January 3, 2018, implementation date.

In essence, it provides temporary measures for US banks to accept direct payments for research, as mandated by MiFID II, without it being considered investment advice.

The relief period provided to US banks lasts for **30 months**, starting from the January 3, 2018 (MiFID II implementation date).

What does this mean?

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.

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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.

Without the SEC's decision, European asset managers would have had their access to research on many stocks and financial instruments sharply limited. In addition, until the decision, US broker-dealers had faced the prospect of having to register as investment advisers with the SEC (a step that increases compliance obligations).

What happens next?

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.

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