

US SEC ISSUES THREE 'NO ACTION' LETTERS ON MIFID2 RESEARCH UNBUNDLING

Today the US Securities and Exchange Commission (SEC) issued three related no-action letters that collectively provide relief to US market participants who are impacted directly or indirectly by MiFID2. In parallel, the European Commission issued an FAQ offering guidance to portfolio managers subject to MiFID2 and non-EU broker-dealers that provides flexibility in the types of payments that can be made.

The SEC provided (i) relief to US broker-dealers allowing the acceptance of hard-dollar research payments, either from research payment accounts (RPA) or directly from managers subject to MiFID2 directly or contractually, on a temporary basis for a period of 30 months from the implementation date (January 3, 2018); (ii) relief to investment advisers to continue to aggregate orders/allocate trades to client accounts even where the accounts have different client commission rates based on variations in the research payment structure; and (iii) the availability of the existing Section 28(e) soft-dollar safe-harbor to cover payments through RPA accounts.

Separately, the European Commission's FAQ (i) permits MiFID2 portfolio managers and their third country sub-advisors to pay non-EU broker-dealers for research using a single commission rate, provided the portfolio manager/sub-adviser separately is able to account for the portion of the commission used to pay for research; and (ii) the obligation to comply with MiFID2 Article 13 (i.e., research unbundling) falls to the EU manager or its sub-advisor, and not a non-EU broker-dealer.

These are important developments that represent a practical way forward in dealing with conflicting US and EU regulatory requirements. The SEC's no-action relief will be a welcome move for US market participants as it will allow US brokers-dealer to continue to service managers impacted by MiFID2's research requirements without triggering new US regulatory obligations, including the need to register as an investment adviser. The SEC also highlighted that during the period of the temporary no-action relief, SEC staff will monitor the evolution of business practices and assess the impact of MiFID2 on the research marketplace in order to determine whether more tailored or different action, including rulemaking, is required.

Link to SEC Press Release:
<https://www.sec.gov/news/press-release/2017-200-0>

Link to European Commission MiFID2 FAQ
<https://ec.europa.eu/info/system/files/non-eu-brokers-dealers.pdf>

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