

July 20, 2019

Re: File No. 265-28

Securities and Exchange Commission Dodd-Frank Investor Advisory Committee
c/o Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090

Honorable Committee Members,

Trend Macrolytics LLC is an independent investment research firm, serving 79 institutional investment organizations world-wide, mostly in the United States. We have been independently owned and operated since our founding in 2001. It has been a point of pride, and we believe a point of distinction very much appreciated by our clients, that we provide our research completely free of influence by any other firms or interests.

We are writing to share our experience since the onset of Markets in Financial Instruments Directive (Mifid II). In brief, it has been a catastrophe. A number of our clients with global operations, which naturally are our largest clients, decided to comply globally with Mifid II, even though there was no strict requirement to do so for non-European operations. As the result of that compliance, research payments had to be unbundled from transaction payments, which lead to the elimination of so-called "soft dollar" payments to us.

Among such clients, the largest one had to end its relationship with us entirely. Among those whom we have manage to retain, our revenues have typically been cut by at least 80%.

We have some sympathy for the ideal of transparency that is served by unbundling. But just as you can't make grapes out of wine, there are some things that cannot actually be unbundled despite the nobility of the goal to do so. Investment research is one of those.

Investment research was born bundled. It has always been part and parcel of the due diligence expected and required of any underwriter of any securities offering. No investor would buy an initial public offering if the underwriter had not quality-assured it, and then committed to ongoing monitoring through research after the issuance. That research effort was bundled in the initial offering price and in subsequent transaction fees. For there to be a level competitive playing field, other broker-dealers would have to be able to bundle their competing research, even if they had not participated in the initial offering. By extension, independent research providers like us, who cannot charge transaction fees to cover our research since we are not a broker-dealer, by definition, can only compete if "soft dollars" are available. Indeed, in that sense, "soft dollars" are themselves a constructive form of unbundling through which the transacting broker is paid for trading, and the independent research firm is paid for research.

From the beginning, end clients of investment managers have understood that they are paying for research twice – once in the form of management fees, and again in the component of transaction fees that compensate for research. There is nothing wrong with paying twice, because the client gets twice the research. It doesn't matter that the two payments were made by different means.

In the case of index funds, in which no research is involved at all, managers charge lower fees and so do their brokers. So the end client not only doesn't pay twice for research, but doesn't pay at all. In the case of managers who do not wish to use research from broker-dealers or independents, but rather generate all their research internally, they can negotiate lower transaction fees easily. So the end client only pays once for research. Such cases have existed in the competitive marketplace for years, long before Mifid II. There is no reason for a regulation now to impose one-size-fits-all patterns for research acquisition when the marketplace has already been capable of providing its own highly differentiated solutions.

When regulations interfere with a well-functioning market in any good or service, the result is always the same – less of that good or service will be supplied, and there will be less diversity in what supply is left. In the case of investment research, less supply can only hurt the end client. Surely we can agree that investment decisions should be made with more research, not less, in a vibrant competitive marketplace. Mifid II is driving the United States investment research, simultaneously, into scarcity and monopoly.

Making it even worse, some organizations have interpreted Mifid II as prohibiting any research at all which is not explicitly paid for in cash – which means we cannot provide samples of our research to prospective customers in order to develop new business relationships. Thus Mifid II has effectively created a “closed shop” in which smaller independent firms like ours are virtually shut out.

So it is time for United States regulators to both speak up and act against Mifid II and its dangerous unintended consequences. First, our nation's regulators should make it clear to regulated US entities that they are under no domestically driven requirement to comply with these regulations. Second, our nation's regulators should urge their European counterparts to repeal these terribly mistaken and destructive rules.

Please feel free to reach out to me if you would like any more input on this subject.

Yours truly,

A handwritten signature in black ink, appearing to read 'DL Luskin', with a long horizontal flourish extending to the right.

Donald L. Luskin