HEALTHY MARKETS
TRANSPARENCY & TRUST

March 1, 2019

Via Electronic Mail

Hon. Jay Clayton, Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20002

Re: Concerns Regarding Best Execution and Research Payments Issues

Dear Chairman Clayton,

We write to supplement our suggestions regarding the implementation of MiFID II[1] and its impact on investment research and best execution.[2] We understand that the Commission is considering how it may best address concerns regarding its "no action" letter to SIFMA.[3] As the Commission decides how to address these concerns, we urge it to consider two basic principles:

1) Asset owners should know how much they are being asked to pay for research and have the comfort that the research for which they are paying benefits them; and
2) Investment advisers should have the ability to competitively and separately shop for investment research and trading services.

Some commenters have urged the Commission to broaden its no action relief so that brokers could accept hard dollar checks from any customers without having to register as investment advisers,[4] another has suggested a rulemaking to achieve a similar result,[5] and still other commenters (including Healthy Markets Association) have suggested rescinding the SIFMA No-Action Letter.[6]

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[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] Letter from Tyler Gellasch, Healthy Markets Association, to Hon. Jay Clayton, SEC, Apr. 2, 2018, *available at* https://www.sec.gov/comments/mifidii/cll5-3416684-162181.pdf; Letter from Tyler Gellasch, Healthy Markets Association, to Hon. Jay Clayton, SEC, Dec. 21, 2018, *available at* https://www.sec.gov/comments/mifidii/cll5-4870517-177406.pdf.

[3] Letter from Elizabeth Miller, SEC, to Steve Stone, Morgan Lewis (on behalf of SIFMA), Oct. 26, 2017, *available at* https://www.sec.gov/divisions/investment/noaction/2017/sifma-102617-202a.htm (SIFMA No-Action Letter).

[4] *See, e.g.*, Letter from Heidi W. Hardin, MFS Investment Management, to Hon. Jay Clayton, SEC, Oct. 16, 2018, *available at* https://www.sec.gov/comments/mifidii/cll5-4529305-176062.pdf.

[5] See Letter from Michael Gitlin, Paul Roye, and Michael Triessl, Capital Group, to Hon. Jay Clayton, SEC, Feb. 11, 2019, *available at* https://www.sec.gov/comments/mifidii/cll5-4919397-178352.pdf.

[6] *See, e.g.,* Letter from Jeff Mahoney, Council of Institutional Investors, to Hon. Jay Clayton, SEC, Jan. 31, 2019, *available at* https://www.sec.gov/comments/mifidii/cll5-4919406-178353.pdf.

All of these commenters seem to have the same objective -- to enable investment advisers to competitively and separately shop for research and trading services, which will improve investment advisers' abilities to fulfill the best execution obligations. We urge the Commission to embrace that objective as well. We further urge the Commission to disclose its resolution of these commenters' concerns in a manner that provides market participants with sufficient time to adjust their businesses.[7]

Importantly, however, no matter how the Commission ultimately addresses the SIFMA No-Action Letter, there are many broader concerns with best execution that will remain unresolved. Indeed, there are already numerous academic studies[8] and regulatory enforcement cases that strongly suggest that the regulatory framework in the United States -- for both brokers and investment advisers -- is not working properly. The Commission's efforts to address concerns with the SIFMA No Action Letter will not fully address all of the concerns with best execution. Worse, regardless of how the Commission proceeds to address the SIFMA No Action Letter, some market participants may nevertheless respond in ways that further impede best execution.

Accordingly, to better protect investors, we strongly encourage the Commission to quickly address the SIFMA No Action Letter and modernize best execution obligations for both brokers and investment advisers to provide clear, implementable, and enforceable expectations.[9]

Lastly, we thank you for opening a public comment file, which we hope will allow the Commission to act with the benefit of input from a wide array of market participants.

Thank you for your consideration.

Sincerely,

Tyler Gellasch
Executive Director

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[7] See Letter from Doug Clark and Jim Toes, Securities Traders Association, Feb. 15, 2019, *available at* https://www.sec.gov/comments/mifidii/cll5-4943859-178506.pdf.

[8] *See, e.g.*, Amber Anand, et. al, *Institutional Order Handling and Broker-Affiliated Trading Venues*, Updated Feb. 22, 2019, *available at* http://www.finra.org/sites/default/files/OCE_WP_jan2019.pdf; see also, David Rushing Dewhurst, et. al., *Scaling of inefficiencies in the U.S. equity markets: Evidence from three market indices and more than 2900 securities*, Feb. 14, 2019, *available at* https://arxiv.org/pdf/1902.04691.pdf.

[9] We note that while FINRA has offered detailed rules and guidance for brokers, there are no analogous expectations for investment advisers. *See* Letter from Tyler Gellasch, Healthy Markets Association, to Brent J. Fields, SEC, Aug. 7, 2018, *available at* https://www.sec.gov/comments/s7-09-18/s70918-4182239-172535.pdf.