



March 13, 2019

The Honorable Jay Clayton  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-0609

Re: MiFID II's Research Provisions

Dear Chairman Clayton:

We are writing in response to your request for further comment on the effects of MiFID II's research provisions.<sup>1</sup>

Since MiFID II went into effect, we have continued to evaluate ways to evolve our approach to paying for third-party investment research with the goal of having a global solution for all clients. We recently announced our intent to have T. Rowe Price pay for all research, which we believe is the right result for clients, and we are currently working with our investment research partners to support that decision. We appreciate the opportunity to work with you and our other global regulators to those same ends.

The current U.S. regulatory framework presents a challenge in this regard. Except for payments made consistent with the staff's October 26, 2017 no-action letter,<sup>2</sup> broker-dealers in the U.S. cannot accept hard dollar payments without triggering registration as an investment adviser.

Several commenters have made thoughtful recommendations on ways the SEC could, consistent with its existing authority, adopt a permanent rule to exempt broker-dealers from investment adviser status when providing research services to asset managers, regardless of how the broker-dealers are paid for those services. We would highlight, in particular, the letters that point to Sections 206A and 211 of the Advisers Act, which give the SEC authority to promulgate exemptive rules and define ambiguous terms.<sup>3</sup>

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<sup>1</sup> See <https://www.sec.gov/news/press-release/2018-301>.

<sup>2</sup> See <https://www.sec.gov/divisions/investment/noaction/2017/sifma-102617-202a.htm> (providing temporary no-action assurances under the Investment Advisers Act of 1940 to broker-dealers that receive payments in hard dollars or through MiFID-governed research payment accounts from MiFID-affected clients). These assurances expire on July 3, 2020.

<sup>3</sup> See, e.g., letters from MFS Investment Management dated October 16, 2018, available at <https://www.sec.gov/comments/mifidii/cll5-4529305-176062.pdf> (recommending that the SEC adopt an exemptive rule pursuant to Section 206A) and The Capital Group Companies, Inc. dated February 11, 2019, available at <https://www.sec.gov/comments/mifidii/cll5-4919397-178352.pdf> (recommending that the SEC adopt either an exemptive rule pursuant to Sections 206A and 211 or define "special compensation" in Section 202(a)(11)(C) pursuant to Section 211).

Of the various approaches put forward, for several reasons we favor an exemptive rule that would create a safe harbor to allow registered broker-dealers to provide research services to registered investment advisers:

- It retains the SEC's ability to regulate the activity, because it is limited to registered entities on both sides.
- It gives asset managers an additional choice with respect to how to pay for research, including by paying for all research directly, but would also allow existing arrangements to remain in place because it would not fundamentally affect the safe harbor for bundled commissions in Section 28(e) of the Securities Exchange Act.
- It is consistent with how both broker-dealers and asset managers view this universe of research, which is as a valuable input to the asset managers' overall investment decision-making process but not as fiduciary-level advice warranting registration of the research provider under the Advisers Act.<sup>4</sup>
- It facilitates a clear payment mechanism by avoiding the need for asset managers who want to pay for research directly, like T. Rowe Price, to implement some form of rebate or reimbursement of funds through their commission sharing arrangements (CSAs), thus furthering the SEC's mission to promote efficiency and market transparency.<sup>5</sup>
- Longer term, we believe gains in efficiency and market transparency will result in greater price discovery. It should follow that broker-dealers and other research providers will allocate resources to segments of the market that are most highly valued by the investing public, which may incentivize publishing on companies with limited research coverage, leading to additional liquidity in those issuers and creating fairer and more efficient markets for small-cap and mid-cap stocks.
- And most importantly, it benefits investors and fosters the equal treatment of EU and US clients, who gain as advisers move to paying for research directly.

Regulatory inaction, on the other hand, runs counter to the SEC's mission. The current state of regulation is uncertain, based on temporary relief that is set to expire in July 2020 and a lack of clarity as to what to expect next. This makes it needlessly difficult for advisers with a wide

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<sup>4</sup> In its recommendation, The Capital Group would exclude personalized investment advice or advice pursuant to the exercise of discretionary authority, where the broker-dealer is providing something more than traditional research services and may have established a fiduciary relationship. We agree with this concept, but caution that the use of "impersonal advice" may be overly restrictive. There may be instances where a broker-dealer's research is tailored to a particular investment adviser, but still not provided in the context of a fiduciary relationship.

<sup>5</sup> We would strongly prefer an SEC rule to a rebate or reimbursement approach. Rebates or reimbursements present challenging (although admittedly not impossible) operational and accounting complexities, making a rebate or reimbursement approach clearly less efficient than paying directly. It should also be less desirable from a regulatory policy perspective.


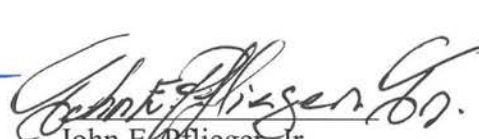
variety of clients to analyze various options (including rebating or reimbursement) from a legal, operational, and infrastructure perspective. Permitting broker-dealers to accept direct payments for research would allow all market participants to operate in a much more straightforward and transparent manner.

We recognize that proposing and adopting an exemptive rule can take a considerable amount of time. In the near term, we would encourage the SEC to provide as much certainty to the marketplace as possible. If there is to be no further relief, broker-dealers that provide research need to decide whether to register as advisers and those that decide to register need time to do so. And advisers need to understand any potential gaps in research coverage that might result and need time to take the necessary measures in that new environment to preserve the investment process that generates returns for investors.

Over the coming weeks, there are numerous industry conferences where you, other Commissioners, and senior SEC staff can make public statements that might provide this sort of clarity. We would strongly encourage you to do so.

As always, we appreciate your consideration of our views on this important topic.

Sincerely,

		
David Oestreicher Chief Legal Counsel	Marc Wyatt Head of Global Trading	John E. Pflieger, Jr. Global Head of External Research Services

cc: The Honorable Robert J. Jackson Jr., Commissioner  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Elad L. Roisman, Commissioner  
Dalia Blass, Director, Division of Investment Management  
Brett Redfearn, Director, Division of Trading and Markets

***About T. Rowe Price***

Founded in 1937, Baltimore-based T. Rowe Price Group, Inc., is a global investment management organization with \$1.04 trillion in assets under management as of January 31, 2019. The organization provides a broad array of mutual funds, subadvisory services, and separate account management for individual and institutional investors, retirement plans, and financial intermediaries.