HEALTHY MARKETS
TRANSPARENCY & TRUST

April 23, 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 and its impact on investment research and best execution. We understand that the Commission and staff have been working on a mechanism to allow advisers to separately fund accounts that could be treated like CSAs.[1] Payments from these accounts would presumably allow broker/research providers to receive the funds and still avoid having to register as investment advisers.[2] This potential "solution" may assist investment advisers who seek to pay for research using their own assets, and could make it easier for those advisers to separate their research and trading decisions. These efforts could aid those advisers' best execution efforts and better protect investors.

Nevertheless, easing the ability of advisers to pay directly for research alone is insufficient to protect investors and address the full impact of MiFID II on market participants. Absent some dramatic change in the US marketplace, most investment advisers in the US are unlikely to rely on the potential "CSA-like" process outlined above. Instead, the vast majority of US asset owners would still continue paying undisclosed amounts for research that may not benefit them, even though MiFID II's impact has heightened the risks to them (in part because European asset owners generally are not paying for research).

[1] We understand some senior Commission officials recently discussed potential actions by the Commission or staff in a meeting with several large market participants, although we have been unable to identify the meeting, attendees, or the details from the public record.

[2] We agree with market participants and experts who support efforts to link the regulatory status of firms more directly to the nature of the services they provide, as opposed to the form of payment they receive. See, e.g., Letter from Michael Gitlin, et. al, Capital Research and Mgmt Co., to Hon. Jay Clayton, SEC, Apr. 18, 2019, *available at* https://www.sec.gov/comments/mifidii/cll5-5388506-184128.pdf. Several US-based research providers have already proven it's possible for research providers to operate effectively as registered investment advisers in the US.

Further, simply easing the ability of advisers to pay for research using their own assets would not necessarily resolve issues for foreign investors looking to purchase research from US brokers. We suspect that European and other regulators would need to accept this model as consistent with their regulatory regimes. While foreign regulators may ultimately agree to accept this process as consistent with their rules, there are uncertainties and complications.

Section 28(e) currently isn't interpreted as requiring detailed disclosures or investor protections related to research costs, such as protections against being disadvantaged in favor of the adviser or the advisers' other customers. MiFID II's implementation and evolving research practices around the world demand that the Commission address this weakness.[3]

Proposed Solution to Protect Investors

To best respond to the changes in market forces and foreign rules, we urge the Commission to take steps to better protect investors by issuing guidance for advisers on the contours of their best execution obligations[4] and potentially revising guidance under 28(e)[5] to:

1. require advisers to disclose amounts paid for research;
2. require advisers to take steps to ensure research benefits those who pay for it;
3. permit advisers to independently fund CSAs using their own P&L; and
4. clarify that a firm need not have a trading relationship in order to receive funds from a CSA.

On the last point, while many research providers are currently willing to accept payments through a CSA without a trading relationship, we recognize that some are not. If the Commission does not expressly clarify this issue, we fear that some research providers may still compel advisers who seek their research to also trade with them.

While some advisers are paying for research using their own assets, we do not think the Commission should mandate that business model. We remain concerned that the Commission's proposed action to address just some issues with accepting advisers' hard dollar payments, while not addressing the broader concerns of asset owners, will leave

[3] See Letter from Russ Kinnel, et. al, Morningstar, to Hon. Jay Clayton, SEC, Apr. 2, 2019, *available at* https://www.sec.gov/comments/mifidii/cll5-5305997-183847.pdf.

[4] 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 (offering suggested enhanced guidance to investment advisers regarding best execution).

[5] While we understand the Commission and staff may not be interested, we believe that an easier alternative to implement may exist through revising existing interpretations under the Advisers' Act.

asset owners at risk and subject all advisers to intense pressures to pay P&L for research (which may likely benefit only the largest advisers). Instead, the Commission should both (1) ease the ability of advisers to shop for research and pay for research and (2) offer a reasonable, disclosure-based alternative that also protects US asset owners.

Thank you for your consideration.

Sincerely,

Tyler Gellasch
Executive Director