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**Re: Extension of SIFMA No-Action Letter**

Dear Ms. Blass and Mr. Cellupica,

The Securities Industry and Financial Markets Association ("SIFMA") and the SIFMA Asset Management Group ("SIFMA AMG")[1] agree with the recommendations of the SEC Investor Advisory Committee at its July 25, 2019 meeting – and would like to formally request – that the staff of the Division of Investment Management act quickly to extend the temporary no-action relief issued to SIFMA on October 26, 2017 ("SIFMA No-Action Letter")[2] until July 3, 2023. We continue to believe it is critical for the Securities and Exchange Commission ("SEC") to provide permanent relief to allow

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1 SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly one million employees, we advocate for legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. With offices in New York and Washington, D.C., SIFMA is the U.S. regional member of the Global Financial Markets Association.

2 Secs. Indus & Fin. Mkts. Ass'n, SEC Staff No-Action Letter (Oct. 26, 2017). We also request that the staff confirm that the SIFMA No-Action Letter and the October 26, 2017 no-action letter to the Investment Company Institute, Investment Co. Inst., SEC Staff No-Action Letter (Oct. 26, 2017), extend to equivalent national rules of the United Kingdom following Brexit because the UK Financial Conduct Authority ("FCA") has announced its intention of transposing MiFID II into UK law, and we anticipate the FCA will impose the MiFID II unbundling requirements following Brexit.

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broker-dealers to charge separately or receive cash payments for research provided to investment managers and other institutional investors without the broker-dealers being deemed investment advisers subject to the Investment Advisers Act of 1940 ("Advisers Act"). Extending the SIFMA No-Action Letter, which is set to expire on July 3, 2020, for three additional years will provide the SEC with more time to evaluate market developments, provide important certainty to market participants, and avoid the consequences of allowing the SIFMA No-Action Letter to expire. We elaborate on each of these key points below.

***Provide More Time to Evaluate Market Developments***

The SIFMA No-Action Letter was precipitated by the need to address dislocations caused by the then-pending effectiveness of MiFID II's[3] restrictions on inducements, including research, which require investment managers to pay for research out of their own assets, through a research payment account utilizing customer funds ("RPA"), or through a combination of the two, and require broker-dealers to accept such payments. The SEC staff chose to provide relief that is limited as to both its duration (30 months) and its scope (providing relief only for dealings with investment managers subject to MiFID II directly or by contractual obligation), while at the same time allowing the staff time to understand better the evolution of business practices and the impact on the research marketplace and market participants.[4] Extending the SIFMA No-Action Letter would allow more time for the SEC and its staff to consider the continuing regulatory and market developments both in Europe and in the US.

The European Commission has initiated a formal study to evaluate the impact of MiFID II's restrictions, including the impact on investment managers, asset owners, and the research coverage of issuers, particularly small and medium issuers (an area of significant concern to European regulators).[5] The study is expected to be completed later in 2019, with related consultations and deliberations to

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[3] By "MiFID II" we are referring to Directive 2014/65, of the European Parliament and of the Council of 15 May 2014 on Markets in Financial Instruments and Amending Commission Directive 2002/92 and Council Directive 2011/61, O.J. (L 173) 57, 349, as implemented by the EU member states.

[4] *See* Secs. Indus & Fin. Mkts. Ass'n, SEC Staff No-Action Letter ("The Temporary Period is intended to provide the staff with sufficient time to better understand the evolution of business practices after the implementation of MiFID II. Staff notes that EU regulators have recently issued guidance on key aspects of MiFID II and the Temporary Period will allow the industry time to review, comprehend, and implement the guidance, and evaluate impacts on their business models. Accordingly, during this Temporary Period, the staff will monitor and assess the impact of MiFID II's requirements on the research marketplace and affected participants in order to ascertain whether more tailored or different action is necessary.").

[5] *See* European Commission, Call for Tenders, FISMA/2017/117(06)/C, Study on the Impact of MiFID II Rules on SME and Fixed Income Research (June 2018).

follow.  We also understand that the Autorité des Marchés Financiers in France and BaFin in Germany are separately assessing the impact of MiFID II's restrictions.

In addition to providing time to monitor developments in Europe, extending the SIFMA No-Action Letter will provide the SEC and its staff additional time to consider the very complicated issues that arise in connection with payments for research.  The comment process initiated by the SEC in December 2018 was a helpful start, and it has already yielded significant and meaningful comments from a wide range of market participants.  Further, extending the SIFMA No-Action Letter will allow additional time for market participants to provide feedback to the SEC and to monitor developments in the US research marketplace.

These are all matters that the SEC and its staff will need to consider thoughtfully and, to the extent that additional action is taken, may require formal notice and comment.  As it seems unlikely that the SEC and its staff could complete this process by July 3, 2020 – let alone do so by a date that would give market participants time to react – we believe that the staff should extend the SIFMA No-Action Letter now to allow for the continued thoughtful review.

***Provide Important Certainty to Market Participants***

Extending the no-action relief now is also critical to providing important certainty to market participants that have established research arrangements based on the relief provided in the SIFMA No-Action Letter.  At this time, the SIFMA No-Action Letter is part of the current established regulatory framework and is reflected in established arrangements between investment managers and broker-dealers. While market participants understand that the SEC is continuing to evaluate policy options, there is increasing concern that the SEC or its staff will ultimately let the SIFMA No-Action Letter lapse without providing a sufficient alternative for affected firms or time for market participants to adjust.  Changing these arrangements is complicated and goes well beyond bilateral discussions between investment managers and broker-dealers because they involve the need for input and agreement of clients and asset owners, as well as corresponding changes in commercial documentation, disclosures, and firm policies, procedures, and systems.

If the SIFMA No-Action Letter were allowed to lapse, this would not set the clock back to 2017, and the research marketplace would not simply revert back to pre-MiFID II arrangements.  Rather, there would be significant uncertainty and likely substantial business disruption.  For example, broker-dealers would need to decide whether to unwind established arrangements with MiFID II–impacted clients, and potentially cut off their access to research, or accept separate payments for research provided as an investment adviser.

Elimination of the SIFMA No-Action Letter would also impact those broker-dealers that have elected to bring aspects of their research businesses – specifically business units generating formal research reports – into their regulated investment advisory businesses in the wake of MiFID II. Even though these firms do not need to rely on the SIFMA No-Action Letter to take cash payments for research content, this would not be the case for content distributed by their sales and trading businesses that might be viewed as investment advice under the Advisers Act (e.g., market color, alpha capture, trading ideas, bespoke analysis, and desk commentary) and as an inducement under MiFID II. Without the protection of the SIFMA No-Action Letter, it is difficult to know how firms would be able to provide this type of content to a recipient that feels obligated to pay in cash.

If the SEC does not intend to allow the SIFMA No-Action Letter to expire, then it should inform the market as soon as possible. Otherwise, broker-dealers will increasingly – and unnecessarily – need to expend resources to put in place an operational and compliance infrastructure in the event the SIFMA No-Action Letter is allowed to expire (we understand that some broker-dealers are already considering whether contingency planning is needed), including diverting resources from important ongoing compliance needs. This at a time when broker-dealers already are having to expend significant resources to comply with Regulation Best Interest, a generational regulatory change to the standards for retail advice that SIFMA supports. Although in some cases a broker-dealer's retail and institutional businesses are separate from one another, the resources required to adapt to Regulation Best Interest can be expected to be substantial, and correspondingly limit the resources available to navigate changes in the research marketplace. There is no reason to add a generational change to the institutional research marketplace at the same time that broker-dealers are grappling with changes in the retail marketplace.

***Avoid the Consequences of Allowing the SIFMA No-Action Letter to Expire***

We believe that allowing the SIFMA No-Action Letter to expire would negatively impact investors, the US capital markets, and the US research marketplace. We are concerned that the receipt of payments for research directly or indirectly out of an investment manager's own money or from an RPA might subject broker-dealers to the Advisers Act and disrupt existing business models that are already subject to a comprehensive regulatory framework overseen by the SEC and the Financial Industry Regulatory Authority. Subjecting broker-dealers to the Advisers Act regulatory framework when providing research services, including restrictions on agency and principal trading in Section 206(3), could disrupt broker-dealers' roles in providing liquidity (particularly in the fixed income market where most trades occur on a principal basis), and acting as counterparties to their clients and would disproportionately impact smaller issuers to the extent research coverage is reduced.

As a general matter, we do not believe that the Advisers Act – and corresponding fiduciary duties – were intended to apply to broker-dealers providing research to investment managers in the ordinary course of the broker-dealers' businesses. The SEC and its staff have long recognized that research is a fundamental element of the brokerage function. The existing regulatory framework for broker-dealers is appropriately structured to address investor-protection concerns related to the provision of research to investment managers, and presents a more considered, tailored, and sensible approach to regulating research than the Advisers Act regulatory regime.

Moreover, subjecting broker-dealers to investment adviser regulation would pose unnecessary costs and may reduce the availability of research. The costs of registering as an investment adviser and complying with the Advisers Act would vary from broker-dealer to broker-dealer and depend on, among other things, the size of the business, research provided, trading capabilities offered, and complexity of the business structure. However, in all cases, these costs, which include compliance, administrative, operational, and other added costs, would far outweigh any benefit of requiring firms to comply with an additional regulatory regime that was not intended to apply to broker-dealer research.

A broker-dealer might find that the additional compliance costs are greater than the revenues it could expect to receive from research provided, particularly in the face of shrinking research budgets. Or a large broker-dealer with a complex business and expansive trading capabilities might decide that operating its research business as an investment adviser would require a separation of research, sales, and trading activities that could impact its ability to service its clients effectively.

As a result, in either scenario, a broker-dealer might decline to provide research to investment managers that insist on making cash payments for research, which would be further detrimental to the research marketplace.

***Conclusion***

SIFMA and SIFMA AMG appreciate the continued focus of the SEC and its staff on finding ways to respond to important developments in the US and global research marketplace—including changes in the research marketplace—and to mitigate the potential for these changes to negatively impact US investors and the US capital markets. For the reasons discussed above, we urge the SEC to extend the SIFMA No-Action Letter. We look forward to continued dialogue with the SEC and its staff about the requested relief.

Sincerely,

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