12 June 2023

The Honorable Gary Gensler, Chair
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Mr. Andrew Griffith MP
Economic Secretary to the Treasury
HM Treasury
1 Horse Guards Road
SW1A 2HQ

Commissioner Mairead McGuinness
European Commission
Rue de Spa
1000 Bruxelles
Belgium

Chair Gensler, Economic Secretary Andrew Griffith, and Commissioner McGuinness:

On behalf of the Global Financial Markets Association (GFMA),[1] which consists of the Association for Financial Markets in Europe (AFME), the Asia Securities Industry & Financial Markets Association (ASIFMA), and the Securities Industry and Financial Markets Association (SIFMA), we have greatly appreciated discussing with your respective organizations the issues certain of our members face in connection with the Markets in Financial Instruments Directive II (MiFID II) requirement for investment managers to make separate, unbundled payments for research. At present, all three of your respective jurisdictions are in the process of potential change to the regime as it stands:

- The E.U. is actively considering potential changes to the MiFID II unbundling requirement, including making unbundling optional.
- In December 2022, the U.K. Chancellor announced that he would be launching an independent review of financial services investment research, and the review is currently underway.
- And in the U.S., the date by which the SEC staff's MiFID II no-action letter expires – July 3, 2023 – is rapidly approaching.

[1] The GFMA represents the common interests of the world's leading financial and capital market participants, to provide a collective voice on matters that support global capital markets. We advocate on policies to address risks that have no borders, regional market developments that impact global capital markets, and policies that promote efficient cross-border capital flows, benefiting broader global economic growth. The GFMA brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London, Brussels and Frankfurt, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA.

Based on these on these ongoing developments, we are writing you to urge you to work together to avoid harmful market disruptions that might arise in connection with any changes to the MiFID II unbundling requirement, including a loss of access to critical research provided by United States (U.S.) broker-dealers to MiFID II investment managers. **We believe that this coordination should include an extension of the Securities and Exchange Commission (SEC) staff's MiFID II no-action letter until at least the changes to the MiFID II unbundling requirement can be completed and implemented.** Upcoming bilateral dialogues between your jurisdictions provide a vehicle to facilitate this.

E.U. policymakers have for some time been considering changes to update the scope of the MiFID II unbundling requirement. At the end of 2022, a proposal was put forth that would raise the company market capitalization threshold from $1 billion to $10 billion under which MiFID II investment managers could pay for research through bundled commission payments. More recently, the dialogue in the E.U. has shifted to making the MiFID II unbundling requirement optional, which our AFME and SIFMA memberships support. The goal of these changes is to make research on companies more widely available in Europe and thus help facilitate capital formation. These changes could be enacted by year-end, if political agreement is reached in the next few months, with a potential implementation date of later in 2023 or in 2024.

In the U.K, the Investment Research review has been set up to examine the link between levels of research and the attractiveness of the UK as a destination for companies to access capital, both in private and public markets. The review is evaluating options to improve the U.K. market for investment research and will provide recommendations to the government, regulators, and industry. Among the items being considered in the review is the impact of the MiFID II unbundling rules on the provision and quality of research in the U.K.

While these changes to update the scope of the MiFID II unbundling requirement are actively being considered, the date by which the SEC staff's MiFID II no-action letter expires – July 3, 2023 – is rapidly approaching. That SEC letter has been critical in preserving the ability of U.S. broker-dealers to provide critical research to MiFID II investment managers. The letter accomplishes this by addressing the conflicts of law problem that arises between the MiFID II unbundling requirement and the application of the Investment Advisers Act of 1940 to any U.S. broker-dealer that accepts such separate, unbundled payments for research. That is why the SEC issued no-action relief in 2017 and extended it in 2019. That also is why the House Financial Services Committee by a 45-2 vote approved legislation directing the SEC to extend the no-action relief for six months and study the potential negative impacts of the expiration.

Recently, a Coalition Greenwich survey commissioned by SIFMA highlights the significant problems buy and sell-side firms will face and the loss of research that will occur upon the expiration of the no-action relief.[2] The survey further shows that the least disruptive option at this point is an extension of the SEC staff's MiFID II relief, especially given the changes to the MiFID II unbundling requirement currently being considered by the E.U. and U.K.

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[2] See (https://www.greenwich.com/market-structure-technology/expiration-mifid-ii-no-action-letter).

Accordingly, we are writing to you to strongly encourage you to work together and coordinate to avoid harmful market disruptions that might arise. As noted, this risk could be eliminated through an extension of the SEC staff's MiFID II no-action letter until at least the potential changes to the MiFID II unbundling requirement can be completed and implemented, if approved by E.U. legislators and the UK has produced conclusions from its investment review. We believe such coordination is critical to preserving robust and competitive capital markets in Europe and the U.S. The upcoming U.S./EU Financial Regulatory Forum will be an excellent opportunity for those jurisdictions to discuss carefully the way forward; we also understand the U.S./UK Financial Regulatory Working Group is due to meet later in July although note that is after expiration of the SEC's relief period. We look forward to continuing to engage with you on this matter of significant importance to our memberships.

Sincerely,

Adam Farkas
Chief Executive Officer, GFMA

Cc: Nikhil Rathi – Chief Executive Officer, Financial Conduct Authority
Gwyneth Nurse – Director General, Financial Services, HM Treasury
Nellie Liang – Under Secretary for Domestic Finance, U.S. Department of Treasury
Brent Neiman – Assistant Secretary, International Finance, U.S. Department of Treasury
John Berrigan – Director General, DG FISMA, European Commission
Verena Ross – Chair, European Securities and Markets Authority
William Birdthistle – Director, Division of Investment Management, SEC
Haoxiang Zhu – Director, Division of Trading and Markets, SEC