



HARVARD LAW SCHOOL

1525 Massachusetts Avenue
Cambridge, MA 02138

Commission Unbundling under MiFID II: Cross-Border Conflicts and Potential Implications for the United States

A Roundtable Discussion at Harvard Law School

Thursday, September 28, 2017

10:00 am to 4:00 pm

Room 214A Lewis International Law Center

Harvard Law School

1557 Massachusetts Avenue

Cambridge, Massachusetts 02138

The goal of this day-long roundtable discussion is to bring together leading academics, practitioners, and government officials to discuss the unbundling of commissions in E.U. capital markets under MiFID II. Under this umbrella, a range of topics will be considered, including the Financial Conduct Authority's implementation of MiFID II in the U.K., how the new MiFID II legal regime differs from current U.S. legal requirements, cross-border conflicts and their resolution, and the potential implications of E.U. developments for U.S. asset managers. Roundtable participants include practicing attorneys (several of whom have held senior positions with the SEC), industry representatives, trade group and FINRA representatives, legal academics from the U.S. and U.K., and senior economists (including two with experience at the SEC). Also participating will be a host of practitioners with expertise in running trading desks at major U.S. asset management firms, managing research services, and measuring the quality of trade execution. The roundtable will follow the Chatham House Rule regarding the attribution of comments. Members of the press will not be invited. An agenda for the day as well as a list of confirmed participants is attached, as is a note on logistics.

The roundtable is being organized by Professor Howell E. Jackson, James S. Reid, Jr., Professor of Law, with support from Harvard Law School and its Program on International Financial Systems.

Agenda for Roundtable Discussion on Commission Unbundling under MiFID II

- 9:30 am – 10:00 am Welcoming Coffee and Reception
- 10:00 am Introductions and Plan of Action for the Day
- 10:15 to 11:00 am **Panel I: *Overview of Commission Bundling Practices Today.*** The first panel of the day will review current practices with respect to bundled research in both E.U. and U.S. markets, highlighting the kinds of research services that are typically purchased with soft dollars/bundled commissions. We will also discuss divergences in U.S. and U.K. markets, such as in the purchase of corporate access.
- 11:00 am to Noon: **Panel II: *Comparing U.S. and E.U. Legal Regimes.*** We will next compare the differences of the emerging legal regime in the E.U. and U.K. under MiFID versus the legal regime in the U.S. under section 28(e) of the Securities Exchange Act of 1934. Special focus in this panel will be given to the reasons for the E.U. reforms and the decisions that U.K. asset managers and securities firms are making in preparing to comply with MiFID II requirements.
- Break for Lunch**
- 12:15 to 1:30 pm **Luncheon Discussion: *Academic Literature Reviews.*** Over lunch, several of our academic participants will discuss academic literature on bundled commissions. Panelists will also review the available empirical work on the topic and recap policy debates about whether commission unbundling could reduce the availability of research dollars for small and medium-sized enterprises.
- 1:30 to 2:30 pm **Panel III: *Cross-Border Conflicts, Corporate Challenges, and their Potential Resolutions.*** This panel will focus on the various cross-border conflicts that MiFID II has generated, including issues arising under the Advisers Act and potential sources of relief that might be forthcoming from the SEC staff. We will also discuss operational challenges that divergent legal requirements pose for global asset managers operating in both E.U. and U.S. markets.
- Coffee Break**
- 2:45 to 3:45 pm **Panel IV: *Potential Implications of MiFID II for U.S. Practices.*** In this final session, we will examine the broad implications of MiFID II. The primary question will be the extent to which U.S. investors and their representatives will seek greater transparency with respect to research costs and execution costs now that major securities firms will be unbundling commissions for at least some customers. We will consider the pros and cons of such developments.
- 3:45 to 4:00 pm Concluding Remarks

List of Participants

- Brandon Becker, Managing Director & Deputy General Counsel, DTCC (and former director of the SEC Division of Trading and Markets)
- Martin Bengtzen, PhD Candidate and Lecturer of Law, Faculty of Law, Oxford University
- Norm Champ, Partner, Kirkland & Ellis, LLP, New York City (and former director of the SEC Division of Investment Management)
- Jennifer S. Choi, Associate General Counsel, Investment Company Institute
- John Coates, John F. Cogan, Jr., Professor of Law and Economics, Harvard Law School, and member SEC Investor Advisory Committee
- Robert L.D. Colby, Chief Legal Officer, FINRA (and former deputy director of SEC's Division of Trading and Markets)
- Sean C. Davy, Managing Director, SIFMA, NYC
- Merritt B. Fox, Michael E. Patterson Professor of Law; NASDAQ Professor for Law and Economics of Capital Markets, Columbia Law School
- Tyler Gellasch, Executive Director, Healthy Markets Association, Washington, D.C.
- John Gulliver, Executive Director of Research, Committee on Capital Markets Regulation
- Kathleen Weiss Hanley, Bolton-Perella Chair Professor and Director of the Center for Financial Services, Lehigh University (and former SEC deputy chief economist)
- Howell E. Jackson, James S. Reid, Jr., Professor of Law, Harvard Law School
- Chetan Joglekar, Managing Director and Head of Global Equity Trading, TIAA Investments
- Kathryn Judge, Professor of Law, Columbia Law School
- Russel Kinnel, Director of Mutual Fund Research, Morningstar
- Michael Mayhew, Founder and Director of Research, Integrity Research, LLC
- Amy C. McGarrity, CIO, Colorado PERA, and member of a Council of Institutional Investors working group on MiFID II
- Carolyn McPhillips, Senior Counsel, Mutual Funds Directors Forum
- Niamh Moloney, Professor of Law and Dean-Designate, Department of Law, London School of Economics
- John Rady, Harvard Law School (Class of 2017)
- David Reuter, Managing Director, Abel Noser Solutions, LLC
- Jonathan Reuter, Associate Professor of Finance, Boston College
- Erik Sirri, Professor of Finance, Babson College (and former SEC chief economist and director of the division of trading and markets)
- Steven W. Stone, Partner, Morgan, Lewis & Bockius LLP, Washington, D.C.
- Jeanette Wingler, Associate General Counsel, FINRA
- Jeffery Y. Zhang, Senior Economist, Federal Reserve, Washington, D.C.

Logistics

The roundtable will be held in Room 214A of the Lewis International Center on the campus of Harvard Law School. The address of the Lewis International Center is 1557 Massachusetts Avenue, Cambridge, MA 02138. The entrance to the Lewis Building driveway is marked with a granite sign for "Harvard Law School," slightly north of Harvard Square on the east side of Massachusetts Avenue, just beyond the Harvard-Epworth United Methodist Church. (A pdf map is attached and available at: <http://hls.harvard.edu/about/campus-map-and-directions/>.)

For those needing rides back to Logan Airport or to South Station at the end of the day, taxis can be arranged by our staff. The roundtable will begin promptly at 10:00 am (with coffee available starting at 9:30 am) and will end promptly at 4:00 pm. A light lunch will be served and coffee/soft drinks available during the day.

If you have any questions about the event, please feel free to contact Professor Howell Jackson (hjackson@law.harvard.edu) or his assistant, Sam Learner (slearner@law.harvard.edu). For academic participants without funding of their own, reimbursement for modest travel costs is available. Please contact Professor Jackson for details.