

MEMO# 32642

July 28, 2020

European Commission Publishes MiFID and Prospectus Regulation Quick Fixes; Consultation on Investment Research Changes

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July 28, 2020 TO: ICI Global Regulated Funds Committee
ICI Global Trading & Markets Committee RE: European Commission Publishes MiFID and Prospectus Regulation Quick Fixes; Consultation on Investment Research Changes

Overview

On July 24, the European Commission (Commission) published quick fixes for the Markets in Financial Instruments Directive (MiFID) and the Prospectus Regulation, referred to as the “markets recovery package.” The MiFID portion of the package consists of a proposal for a Directive^[1] and a consultation on changes to the Delegated Directive on investment research.^[2] The Prospectus Regulation portion contains a proposal for a Directive^[3] and an Annex.^[4] The Commission is targeting publication of the final markets recovery package in the EU Official Journal by the end of 2020; however, this will depend on how quickly negotiations between the co-legislators can progress.

Consultation on Investment Research

In the proposed Delegated Directive on investment research, the Commission states that issuers, and in particular small and mid-cap companies, have experienced a decline in research coverage for several years, and that the COVID-19 pandemic has further increased the need for such companies to find alternative financing measures. The Commission further states that a declining trend has also been observed for research on fixed income. To address this decline, the Commission is proposing to permit investment firms to choose not to comply with the investment research requirements of Article 13 of the Delegated Directive with respect to small and mid-cap issuers^[5] and fixed income securities. In order to rely on the exemption, (1) the investment firm and research provider must enter into an agreement identifying which part of the joint payment is attributable to research before the execution or research services have been provided, and (2) the investment firm must inform its clients about the joint payment.

The Commission is seeking feedback on its proposed changes to the investment research provisions by September 4. We understand that the consultation is a procedural step and

the Commission does not plan to make significant drafting changes following the consultation. Additionally, feedback from members regarding changes to the investment research framework on the earlier Commission MiFID consultation varied significantly. Therefore, at this time, we do not intend to comment on this consultation unless members have particular concerns with the proposal. Please contact me by email (emykolenko@ici.org) if you'd like to discuss.

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endnotes

[1] Proposal for a Directive of the European Parliament and of the Council, amending Directive 2014/65/EU as regards information requirements, product governance, and position limits to help the recovery from the COVID-19 pandemic, available at https://ec.europa.eu/finance/docs/law/200724-mifid-review-proposal_en.pdf.

[2] The consultation on Delegated Directive (EU) 2017/593, available at <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12530-Amendments-to-Delegated-Directive-EU-2017-593-on-the-research-regime-to-help-the-recovery-from-the-COVID-19-pandemic>.

[3] Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2017/1129 as regards the EU Recovery prospectus and targeted adjustments for financial intermediaries to help, available at https://ec.europa.eu/finance/docs/law/200724-prospectus-review-proposal_en.pdf.

[4] Annex to the Regulation of the European Parliament and of the Council amending Regulation (EU) 2017/1129 as regards the EU Recovery prospectus and targeted adjustments for financial intermediaries to help, available at https://ec.europa.eu/finance/docs/law/200724-prospectus-review-proposal-annex_en.pdf.

[5] The exemption applies to issuers which did not exceed a market capitalization of EUR 1 billion during a period of 12 months preceding the provision of the research.