

Unbundled Commissions Under MiFid II and their Potential Impact on U.S. Soft Dollar Arrangements

LSE Law and Financial Markets Project Workshop

Tuesday 6 June 2017, 4pm - 6pm

Moot Court Room, 7th floor, New Academic Building,
54 Lincoln's Inn Fields, London WC2A 3LJ

Speaker: Howell Jackson (Harvard)
Commentators: John Armour (Oxford); Tim Tachi (TT International)
Chair: Philipp Paech (LSE)

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Abstract

Since 1975, investment advisers in the United States have been permitted to pay excess brokerage commission on securities transactions and then utilize those excess payments – commonly known as “soft dollars” – to purchase research services and thereby subsidize the investment advisers’ own operating costs. Over the past four decades, the SEC has made fitful attempts to curtail the practice and enhance the transparency of soft dollar payments, but has been routinely thwarted by a financial services industry that profits from soft dollars and strives to keep the payments obscure and undiminished. In the past few years, however, financial authorities in the EU, UK and Canada have taken a fresh look at excessive brokerage commissions under MiFID II and are moving towards regulatory reforms that force the unbundling of commission charges in a manner that is likely to be much more investor-friendly and arguably more efficient as well. The emergence of international best practices for the oversight of soft dollar payments presents challenges to firms in the financial services industry that increasingly will need to comply with conflicting legal regimes in multiple jurisdictions. These challenges also present an opportunity for the United States to reconsider its approach to soft dollars. This article starts with an overview of the regulation of excess brokerage commissions in the United States and around the world, as well as a summary of economic studies of soft dollars. We then focus in on the specific and quite lax disclosure requirements for soft dollar payments in the United States today, drawing on specific examples from recent SEC filings and highlighting challenges arising out the developments of more stringent regulatory regimes in Europe and elsewhere. We close with an overview of a handful of reform efforts that could improve the regulation of soft dollar payments (short of legislation outlawing the practice, which we do not address in this article).

Programme

16:00 Welcome

Philipp Paech (Director of the LSE Law and Financial Markets Project)

16:05 Unbundled commissions under MiFID and their potential impact on US Soft Dollar arrangements

Howell Jackson (James S. Reid, Jr., Professor of Law at Harvard Law School)

16:45 Comments

John Armour (Hogan Lovells Professor of Law and Finance at Oxford University) and Tim Tacchi (Founding Partner of TT International)

17:15 Discussion

17:45 End of Conference

Speakers

John Armour is Hogan Lovells Professor of Law and Finance at Oxford University and a Fellow of the European Corporate Governance Institute. He was previously a member of the Faculty of Law and the interdisciplinary Centre for Business Research at the University of Cambridge. He studied law (MA, BCL) at the University of Oxford and then at Yale Law School (LLM). He has held visiting posts at various institutions including the University of Auckland, the University of Chicago, Columbia Law School, the University of Frankfurt, the Max Planck Institute for Comparative Private Law in Hamburg, and the University of Pennsylvania Law School. He is a member of the American Law Institute and an Academic Member of the Chancery Bar Association.

Howell Jackson is the James S. Reid, Jr., Professor of Law at Harvard Law School. His research interests include financial regulation, consumer protection, international finance, and federal budget policy. Professor Jackson is co-author of *Financial Regulation: Law and Policy* (2016), *Analytical Methods for Lawyers* (3rd ed. 2017), and *Fiscal Challenges: An Inter-Disciplinary Approach to Budget Policy* (2008), and author of numerous scholarly articles. He is the chairman of the board of College Retirement Equities Fund (CREF) and affiliated TIAA-CREF investment companies. Before joining the Harvard Law School faculty in 1989, Professor Jackson was a law clerk for Associate Justice Thurgood Marshall and practiced law in Washington, D.C. He received JD and MBA degrees from Harvard University in 1982 and a BA from Brown University in 1976.

Philipp Paech is Assistant Professor of Financial Law and Financial Regulation. He is the Director of LSE's Law and Financial Markets Project and a fellow at the Institute for Law and Finance in Frankfurt. Before joining LSE, Philipp spent many years at the heart of international legal and regulatory reform of the financial sector, working for the European Commission's directorate for financial services in Brussels and for UNIDROIT in Rome. He is a qualified lawyer admitted to the Bar of Frankfurt. Philipp's principal research interest is international financial markets law and regulation, with a focus on legal devices for risk management and their influence on market liquidity. Recently, his work concentrates on financial innovation, including blockchain/dlt-related issues.

Tim Tacchi is Founding Partner of TT International, its Chief Investment Officer and Portfolio Manager of TT's Global Macro Fund. In addition to this, he chairs the firm's regular 'What Time Is It?' meetings that help formulate our top-down views. Prior to founding TT in 1988, Tim was an Investment Director at Fidelity International, where he focused on UK and European stock selection. Tim graduated with an MA from the University of Oxford.