

CSA Staff Notice 23-320

*Consideration of the Markets in Financial Instruments Directive (MiFID II)
Unbundling Requirements on the Regulatory Requirements in Canada*

December 14, 2017

Staff of the Canadian Securities Administrators (**Staff** or **we**) have monitored developments relating to the unbundling of research inducements from trading fees under MiFID II (the **MiFID II unbundling requirements**) which are expected to be effective on January 3, 2018. Since the summer of 2016, Staff conducted consultations with key industry participants and other regulatory authorities to better understand their views and to assess the potential impact of the MiFID II unbundling requirements on the current Canadian regulatory regime under National Instrument 23-102 *Use of Client Brokerage Commissions* (**NI 23-102**). Staff are publishing this Notice to provide a description of the work completed to date and next steps, as well as Staff's view if any changes to NI 23-102 are required as a result of the MiFID II unbundling requirements.

Background

On April 7, 2016, the European Commission released a Delegated Directive, which, among other things, proposed a complete separation of research and trading fees charged to clients by investment firms, commonly known as “unbundling of commissions”. The new requirements are expected to apply to all European Union (EU) and third country investment firms providing investment services or activities in the EU.¹

In Canada, the use of client brokerage commissions is governed by NI 23-102. NI 23-102 and its Companion Policy 23-102CP set out requirements pertaining to brokerage transactions involving client brokerage commissions that are directed to a dealer in return for the provision of order execution goods and services or research goods and services. The payment for research and order execution can be bundled into a single transaction commission, and may be done pursuant to a commission sharing agreement.

Consultations with industry and other regulatory authorities

Staff consulted with asset managers, dealers, pension plans and other regulatory authorities. The discussions were constructive and contributors expressed significant interest in the expected MiFID II unbundling requirements and the impact, if any, on regulatory requirements in Canada. Among other things, industry participants focused on possible operational issues and impacts given their respective level of business with affected European based firms. We obtained feedback on whether the MiFID II unbundling requirements were consistent with the current Canadian regulatory regime, to help Staff determine if any changes would be required.

¹ See s. 1.1 of the Delegated Directive.

NI 23-102 and the MiFID II unbundling requirements

It is Staff's view that the expected MiFID II unbundling requirements do not create an immediate need to amend the current regulatory regime in Canada. Based on information available to date, Staff have concluded that changes to NI 23-102 are unnecessary at this time, since the MiFID II requirements will not directly conflict with NI 23-102.

Staff's view is that the current Canadian regulatory regime provides flexibility with respect to disclosing and describing the nature of commission arrangements.² Furthermore, the Canadian regulatory regime clarifies that commission arrangements could be for bundled services and that they could be both formal as well as informal.³ Thus, it is Staff's view that when a market participant is obliged to comply with both MiFID II and NI 23-102, if the market participant complies with MiFID II, then the market participant could also comply with NI 23-102. Compliance with MiFID II also does not appear to create any additional requirements for market participants that are subject to NI 23-102.

Next steps

We will continue to monitor developments relating to the MiFID II unbundling requirements and consider any further changes that may impact our current view. For additional information and guidance on the MiFID II unbundling requirements, the European Securities and Markets Authority, which is responsible for ensuring MiFID II implementation, maintains a Questions and Answers document to promote common supervisory approaches and practices in the application of all aspects of MiFID II.

The Questions and Answers document can be found at:

https://www.esma.europa.eu/sites/default/files/library/esma35-43-349_mifid_ii_qas_on_investor_protection_topics.pdf

Questions with respect to this Notice may be referred to:

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² See NI 23-102 s. 4.1(1)(a)(ii)

³ See Companion Policy 23-102CP *Use of Client Brokerage Commissions*, s.4.1

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