VII. New European Financial Regulation: MiFID II

A. Introduction

On January 3, 2018, a groundbreaking piece of European Union (EU) financial regulation came into effect. The new set of regulation, Markets in Financial Instruments Directive II (MiFID II), is a revised directive of the original Markets in Financial Instruments Directive (MiFID) launched in November 2007 and is poised to revolutionize European financial regulation.[1] MiFID has been a cornerstone of the EU's financial regulation and has standardized regulation across member states of the EU.[2] After the 2008 financial crisis, the EU sought to revise MiFID.[3] The resulting regulation was MiFID II, the revised directive component, and its corresponding regulatory component, the Markets in Financial Instruments Regulation (MiFIR) passed in 2014.[4]

MiFID has its origins in the EU's Financial Services Action Plan, first created in 1999.[5] MiFID was developed to create a single financial market for the EU that could rival and compete with the U.S. capital markets.[6] In the wake of the financial crisis of 2008 and other market changes, the European Council looked to address the main problems exposed by the crisis, namely lack of transparency and off-

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[1] Dick Schumacher, *MiFID II*, BLOOMBERG QUICKTAKE (Jan. 3, 2018, 3:13 AM), https://www.bloomberg.com/quicktake/mifid-making-markets-fair (describing the new regulation) [https://perma.cc/2KEP-4T2R]; Philip Stafford, *What Is Mifid II and How Will It Affect EU's Financial Industry?*, FIN. TIMES (Sept. 15, 2017), https://www.ft.com/content/ae935520-96ff-11e7-b83c-9588e51488a0 (outlining the new regulation).

[2] Stafford, *supra* note 1 ("The original Mifid was intended to be a cornerstone of EU efforts to create a single financial market for the bloc that could rival the depth and dynamism of the US capital markets.").

[3] *Id*. ("Its arrival in November 2007 coincided with the onset of the financial crisis and the subsequent years exposed Mifid's shortcomings in focusing on equities.").

[4] Schumacher, *supra* note 1 ("After the financial crisis, policy makers decided they needed to go much further [than MiFID] to protect consumers from opaque or predatory trading practices.").

[5] Council Directive 2004/39, 2004 O.J. (L 145) 1 (EC).

[6] Stafford, *supra* note 1 (detailing how MiFID sought to "create a single financial market" so the EU could "rival the depth and dynamism of the US capital markets").

exchange trading.[7] EU regulators looked to expand the existing MiFID regulations and reviewed and debated potential changes.[8] The resulting regulations were MiFID II and MiFIR, first drafted in October 2011, intended to be a partly revised directive and a new regulation.[9] Finally, in July 2014, the European Parliament and the EU Council adopted MiFID II.[10]

In the following years, the European Securities and Markets Authority (ESMA) worked to adopt the rules into working standards.[11] In February 2016, the EU Council formally delayed the implementation of MiFID II by one year to allow extra time for companies to prepare for compliance.[12] On January 3, 2018, the EU Council put MiFID II into effect for all EU member states.[13] MiFID II seeks to improve MiFID by strengthening investor protection, improving the function of financial markets, and facilitating even greater market transparency.[14] Similar to Dodd-Frank passed in the United States as a result of the 2008 financial crisis, the EU's post-crisis regulation aimed to do away with opacity that can exacerbate crises when investors flee from risks they are unable to assess.[15] MiFID II has three main goals: to increase the safety and transparency of European markets, restore investor confidence in the wake of the financial crises, and move over-the-counter (OTC) trading from off-exchange, unregulated venues to regulated venues.[16]

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[7] *Id*. (describing how new rules aim to "update existing rules" and "tackle what global policy makers saw as 'under-regulated and opaque aspects of the financial system'").

[8] *Id.* (giving a timeline of MiFID I and MiFID II's implementation).

[9] *MiFID II*, EUR. SEC. & MKT. AUTH., https://www.esma.europa.eu/policy-rules/mifid-ii-and-mifir [https://perma.cc/F3B6-YJHC].

[10] *Id.*

[11] *See id*.

[12] Press Release, Eur. Council, Markets in Financial Instruments: Council Confirms Agreement on One-Year Delay (May 18, 2016), www.consilium.europa.eu/en/press/press-releases/2016/05/18/markets-financial-instruments [https://perma.cc/VJN8-GNZP].

[13] *MiFID II*, *supra* note 9.

[14] *Id.* (detailing the goals of MiFID II and MiFIR, including creating "fairer, safer and more efficient markets" and facilitating "greater transparency for all participants").

[15] *See* Schumacher, *supra* note 1 ("Some of the MiFID II guidelines, including those moving derivative trading onto exchanges, mirror the U.S.'s 2010 Dodd-Frank regulations.").

[16] Stafford, *supra* note 1.

To achieve these goals, MiFID II implements several new rules. First, the regulation calls for more transparency for off-exchange markets, with a push toward moving trading to electronic-trading venues.[17] Second, MiFID II implements volume limits for trading in equity dark pools or private trading exchanges where investors are able to trade anonymously.[18] Third, MiFID II changes the way financial institutions pay for research by "unbundling" payments for analyst research and trading commissions.[19] Finally, MiFID II calls for stricter standards for investment products and investment advice.[20]

Since its implementation, MiFID II's effect has been felt in both the U.S. and EU markets.[21] MiFID II has shown to be a wide-reaching regulation, covering all aspects of trading within the EU and across the financial services industry.[22] Although the regulations apply to asset managers based in the EU, many U.S.-based asset managers and investors are indirectly affected, causing concerns with cross-border compliance with the new regulations.[23]

B. The New Regulation

This section details four major regulatory changes MiFID II has introduced to European financial markets. MiFID II calls for: (1) the "unbundling" of research payments; (2) greater transparency for

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[17] *Id.*

[18] *Id.* (listing the main powers granted in MiFID II); Sam Mamudi & Annie Massa, *Dark Pools*, BLOOMBERG QUICKTAKE (July 21, 2017, 4:04 PM), https://www.bloomberg.com/quicktake/dark-pools ("European Union is phasing in similar measures [to limit dark pool trading] as part of . . . MiFID II.") [https://perma.cc/JGL8-ESVT].

[19] Stafford, *supra* note 1 ("[F]und managers will have to budget separately for research and trading costs, a move known as unbundling.").

[20] EUR. SEC. & MKT. AUTH., INVESTOR PUBLICATION, ENHANCED PROTECTION FOR RETAIL INVESTORS: MIFID II AND MIFIR (2014), https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-726_enhanced_protection_for_retail_investors_-_mifid_ii_and_mifir.pdf [https://perma.cc/S9YX-8YCM].

[21] Stafford, *supra* note 1.

[22] *Id.* ("The new rules cover virtually all aspects of trading within the EU. They reach across the financial services industry, from banks to institutional investors, exchanges, brokers, hedge funds and high-frequency traders.").

[23] Schumacher, *supra* note 1 ("The new regulations have the potential to reach far beyond banks operating in London or Frankfurt to institutions trading European stocks or bonds anywhere in the world.").

over the counter trades; (3) the imposition of volume caps for equity dark pools; and (4) stricter standards for investment products.[24]

1. *Unbundling of Payment for Research*

One major component of the new MiFID II regulation involves changing how asset managers pay for the research used to make investment decisions—the so-called "unbundling" of research fees and brokerage fees.[25] Previously, European-based investors indirectly compensated investment bankers for research through payments bundled with a brokerage commission.[26] Brokers published investment research and bundled the research fee into the cost of their overall services.[27] Now, MiFID II requires asset managers pay for all research in explicit terms.[28] Accordingly, this transformation in payment structure will likely impact fund managers and investors in both the EU and United States.[29] Unbundling research and payment fees will force fund managers to separately budget for research and trading.[30] Under the new regulation, any research delivered without a specified price "will be seen as an inducement to trade and therefore considered illegal."[31]

The goal of this unbundling was to make research more objective and provide more information for fund managers' clients.[32] Regulators also wanted to prevent the cost of research from influencing an asset manager's trading behavior and to restore investor confidence

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[24] Stafford, *supra* note 1.
[25] *Id.*
[26] *Id.* ("Until now, asset managers received research, including written reports and phone calls with analysts, for free, although the cost of this service was built into trading fees, which are usually paid by fund managers' clients.").
[27] *Id.*
[28] Indy Sarker, *2017 Top Stories: Understanding MiFID II Unbundling: Research Pricing, Valuation and Entitlements*, TABB F. (Dec. 22, 2017), http://tabbforum.com/opinions/understanding-mifid-ii-unbundling-research-pricing-valuation-and-entitlements ("Regulation requires all research consumed by an asset manager to be 'paid for' in explicit terms, rather than 'bundled' in the brokerage commission (as it has been for years).") [https://perma.cc/726U-CY5T].
[29] *See id.* ("This move to explicit pricing . . . is bringing profound changes to the broker-dealer and asset management industry.").
[30] Stafford, *supra* note 1.
[31] Sarker, *supra* note 28.
[32] *See* Stafford, *supra* note 1 ("Longer-term, institutional investors will have more evidence to grill their brokers that they are doing their best.").

that advisors are providing investment services free from the promise of receiving a commission for selling or recommending a product.[33] Fund managers must instead choose between absorbing research costs themselves or charging clients.

2. *Greater Transparency for Off-Exchange Markets*

Another goal of MiFID II was to move OTC trades to centralized, electronic trading in an effort to facilitate transparency regarding prices, liquidity, and market integrity.[34] Trading in bonds and derivatives are largely conducted via OTC exchanges.[35] The new rules move OTC trading derivatives onto organized venues, benefiting both investors and regulators by facilitating better audit and surveillance trails.[36] MiFID II's push toward electronic trading venues comes with technical standards as well.[37] Trades will be timestamped, and institutions will have to disclose trade information immediately.[38]

3. *Volume Caps for Equity Dark Pools*

MiFID II attempts to address dark trading in the EU.[39] Dark pools allow traders to buy and sell stock without revealing the size and

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[33] EUR. SEC. & MKT. AUTH., *supra* note 20 ("This important change should give you more confidence that whoever is providing investment services to you acts with your best interests in mind . . . .").
[34] Press Release, Eur. Sec. & Mkt. Auth., ESMA Finalises MiFID II's Derivatives Trading Obligation (Sept. 29, 2017), https://www.esma.europa.eu/press-news/esma-news/esma-finalises-mifid-ii%E2%80%99s-derivatives-trading-obligation [https://perma.cc/3TGH-AQUD].
[35] *Day of the MiFID—The Sequel*, ECONOMIST (Sept. 30, 2017), https://www.economist.com/leaders/2017/09/30/a-new-law-heralds-a-new-era-for-europes-financial-markets ("Trading in bonds and derivatives is at present largely conducted 'over the counter' (off centralised exchanges).").
[36] Stafford, *supra* note 1.
[37] *Id*.
[38] *Id.* ("Institutions will have to report more information about most trades immediately, including price and volume.").
[39] Philip Stafford, *Mifid II and Dark Pools: What Are Regulators Up To?*, FIN. TIMES (Jan. 10, 2018), https://www.ft.com/content/491bbfa8-f3ba-11e7-8715-e94187b3017e.

price of their orders beforehand.[40] Dark pools are typically private venues run by banks, exchanges, or independent operators.[41] Dark pools gained support from institutional investors as a way to facilitate large block trades without adverse price consequences implicated by pre-trade disclosures on large transactions.[42] Regulators fear dark pools for a number of reasons, such as opacity and vulnerability to potential conflicts of interest.[43] In dark pool trading, the price of the order is disclosed only after completion of the order.[44] However, when trading on public exchanges, the price is disclosed before a trade is executed.[45] Dark pools have aided institutional investors in the age of high-frequency traders, who use algorithms to identify block trades and trade against them, making the cost of trading in a public market much more expensive for large-volume traders.[46]

According to one estimate, "45 per cent of the daily volume of shares traded in Europe now happens away from exchanges, either on dark pools or via banks."[47] While dark pools likely only account for less than 10 percent of European equity trading,[48] regulators were eager to force equity trading back on public markets in an effort to reduce opacity. European Commission regulators recognized the important role dark pools play in facilitating large trades, and therefore

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[40] *Id*. ("On dark pools, prices are disclosed only after a trade has been completed—in contrast to an exchange, where deal information is displayed before a trade is executed.").

[41] *Id.* ("Dark pools . . . such as ITG or Liquidnet . . . have helped deprive established exchanges of business and reduced their once dominant role in equity trading.").

[42] Philip Stafford, *Hundreds of European Stocks to Be Barred from Dark Pools*, FIN. TIMES (Mar. 8, 2018), https://www.ft.com/content/a7eda36a-2205-11e8-9a70-08f715791301 ("Dark pools have become popular among fund managers who are reluctant to sell or buy large blocks of shares via a traditional stock market, as that can alert other investors of their intentions and push the price against them.").

[43] Will Hadfield, *How Europe's MiFID II Lets Dark Trading Stay Dark: QuickTake Q&A*, BLOOMBERG QUICKTAKE (Aug. 2, 2017, 5:17 AM), https://www.bloomberg.com/news/articles/2017-08-02/how-europe-s-mifid-ii-lets-dark-trading-stay-dark-quicktake-q-a (explaining why dark pools are controversial) [https://perma.cc/52DS-BPBG].

[44] *Id.*

[45] Mamudi & Massa, *supra* note 18.

[46] *See* Hadfield, *supra* note 43.

[47] Stafford, *supra* note 39 (summarizing data from Thomson Reuters).

[48] Hadfield, *supra* note 43.

focused MiFID II's rules on preventing smaller trades from taking place in the dark by setting volume limits.[49] MiFID II creates two volume caps for dark pools.[50] MiFID II only allows a stock to trade in any dark pool if, for a year, that market accounts for only 4 percent or less of the stock's volume.[51] Additionally, MiFID II restricts the trading of a stock in any dark pool if dark pool trading of the stock in aggregate exceeds 8 percent of total volume.[52] Violation of these rules will result in EU regulators suspending stocks from trading in these venues for six months.[53] However, MiFID II allows certain waivers for orders satisfying specific size thresholds.[54]

4. *Stricter Standards for Investment Advice and Products*

MiFID II also imposes stricter standards for both the sale of investment products and offering of financial advice by requiring more disclosures about costs, charges, and risks associated with products.[55] When selling investment products, firms must have product governance helping client investors understand the risks of the products.[56] Product governance includes identifying the target market for

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[49] *Id.* ("The European Commission . . . agrees that dark pools have a role in matching the largest orders. What it doesn't like to see are smaller trades taking place in the dark. So it's setting limits."); Stafford, *supra* note 39 ("Policymakers do not want to eliminate dark pools and accept that institutional investors want to be able to trade large blocks of shares without moving the market price against them.").

[50] Stafford, *supra* note 39

[51] *Id.* ("Over a rolling 12-month period, just 4 per cent of the total trading in an individual stock can take place in any one dark pool.").

[52] *Id.* ("At the same time, trading of any stock across dark pools is limited to 8 per cent of total volume.").

[53] *Id.* ("A breach of either means trading in that security is prohibited for the next six months—either from the individual dark pool that breached the cap, or from all dark pools.").

[54] Hadfield, *supra* note 43 ("Trades that are big enough for the large-in-scale waiver can still take place in the dark regardless of whether the stock is suspended."); Stafford, *supra* note 39 ("Waivers in the rules which allow unlimited trading in dark pools for stock orders above a certain size present another alternative for investors.").

[55] Stafford, *supra* note 1.

[56] EUR. SEC. & MKT. AUTH., *supra* note 20 ("MIFID II will require firms to have stricter internal or organisational requirements to ensure that firms have explicit arrangements around their product design and distribution.").

investment products and ensuring the client understands the risks before investing.[57] MiFID II also imposes an independent advice requirement on investment firms.[58] Firms have to disclose whether the advice offered is independent and whether the advice "is based on a broad or on a more restricted analysis of what financial products are available on the market."[59] The stricter standards imposed by MiFID II aim to reduce informational asymmetries inherent in the client-advisor relationship and improve the quality of both investment products and advice.[60]

C. Response

1. *Positive*

a) Increased Transparency

The increased transparency required by MiFID II revealed large hidden fund charges to investors.[61] Previously, asset managers only had to provide an ongoing cost figure, but MiFID II requires managers provide a total cost figure including hidden fees.[62] As a result, the total cost of investing in popular funds like Vanguard and Blackrock were revealed to be much higher than the ongoing cost

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[57] *Id.*

[58] Memorandum from Dechert LLP, Christopher Christian et al., MiFID II: New Investment Protection Regime: Investment Advice (Jan. 3, 2018), https://www.dechert.com/content/dam/dechert%20files/hot-topics/MiFID%20II%20-%20Investment%20advice.pdf [https://perma.cc/USZ6-RDMF] ("The MiFID obligation on firms to provide clients with appropriate information on financial instruments and investment strategies is expanded in a number of respects under MiFID II.").

[59] EUR. SEC. & MKT. AUTH., *supra* note 20.

[60] *Id.*

[61] Attracta Mooney & Chris Flood, *Large Hidden Fund Charges Revealed by Mifid II Rules*, FIN. TIMES (Jan. 21, 2018), https://www.ft.com/content/78918c88-fd13-11e7-a492-2c9be7f3120a ("The Mifid II trading rules, which came into force this month, have forced asset managers to disclose hidden charges.").

[62] *Id.* ("They can no longer provide just an ongoing costs figure (OCF) . . . . Instead, asset managers and fund distributors must give the total cost, including transaction or trading costs and other charges.").

figures, indicating investors are paying almost double the ongoing costs figures once transaction costs are included.[63]

b) U.S. Compliance with International Regulation

U.S.-based banks are also building upon their own research platforms to comply with the new regulation, showing their willingness to adapt to MiFID II requirements.[64] For example, Goldman Sachs and other large Wall Street banks are investing in Visible Alpha, a company aiming to be a research platform for companies facing regulatory uncertainty.[65] Visible Alpha is a "platform that aggregates and breaks down stock market research by investment banks, allowing asset management clients to consume the raw analysis and data in new ways."[66] The company's mission is on par with the goals of the European regulation, and Wall Street's interest in the company could signal a fundamental change in investment banking in the United States.[67]

c) Higher Quality Research

MiFID II's unbundling of payment and research requirement could give rise to higher quality research and "star" investment

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[63] *Id.* ("The total cost of investing in popular funds . . . is up to four times higher than first thought.").
[64] Robin Wigglesworth, *Goldman Leads Fundraising for Research Platform After Mifid II*, FIN. TIMES (Jan. 18, 2018), https://www.ft.com/content/b6928fee-fbd5-11e7-9b32-d7d59aace167 ("The twin commercial and regulatory pressures have spawned research providers and platforms on both sides of the Atlantic, encouraging investment banks to experiment with new forms of analysis and its distribution in the expectation that the overall pot of money available to pay for research shrinks.").
[65] *Id.* ("Goldman Sachs has led a $38m investment round for a research platform already backed by a club of big banks, highlighting how sweeping regulatory changes are forcing investment banks to find a new business model for the analysis they produce.").
[66] *Id.*
[67] *See id.* ("[MiFID II] will in practice have far-reaching implications for US banks and asset managers, with many of the latter building up their own internal research arms or accepting having to pay for external analysis.").

analysts.[68] As European asset managers are forced to cut their research budgets in the face of MiFID II's unbundling requirement, asset managers will likely become more selective about the research they purchase.[69] Subpar investment bankers producing low quality research that was once accepted when research costs could be "bundled" with other services are likely to move to the bottom of their respective investment firms.[70] Client interactions are more closely tracked, and investment analysts will be provided with more feedback more frequently than pre-MiFID II.[71] This could lead to an increased demand in research from top investment bankers and increased competition among analysts to provide the best quality research.[72]

2. *Negative*

a) Confusion and Delays

MiFID II's execution has experienced some minor hiccups. Most notably, ESMA delayed its plan to regulate dark pools until March 2018, dealing a blow to a "key pillar of the law."[73] ESMA failed to identify equities that would be excluded from the dark pool

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[68] Hannah Murphy, *Mifid II and the Return of the 'Star' Analysts*, FIN. TIMES (Feb. 26, 2018), https://www.ft.com/content/80a1fe16-0c0a-11e8-8eb7-42f857ea9f09 ("[S]ome . . . predict that changes to EU rules under Mifid II . . . will give rise to a new generation of 'star analysts.'").
[69] *See id.* ("Sweeping changes to the way investors pay for research have brought predictions that UK analyst numbers will halve, while many European asset managers have already cut their research budgets.").
[70] *Id.* ("One banking executive said that lower-ranking analysts were already suffering. 'If you're the tenth-ranked analyst, you're seeing a rapid deterioration in your levels of client engagement,' he said.").
[71] *Id.* ("Under Mifid II, interactions with clients are more closely tracked, making it easier for individual analysts to see how much they are worth.").
[72] *Id.* ("Some banks worry that there is now a much higher risk that their best analysts will be poached, while others say they have already had to fend off requests from asset managers to pay only for specific analysts.").
[73] Silla Brush, Viren Vaghela & Alexander Weber, *MiFID Dealt Blow by EU's Surprise Delay of Dark-Trading*, BLOOMBERG (Jan. 9, 2018), https://www.bloomberg.com/news/articles/2018-01-09/mifid-dark-pool-stock-caps-in-flux-on-regulator-s-surprise-delay.

regulations.[74] Because only 75 percent of trading venues reported "lists of stocks that would have been caught by MiFID's dark pools caps," ESMA opted to delay implementing the regulation on dark pools rather than publish standards based on an incomplete, "biased picture."[75] The delay announcement was met with frustration from regulators and an increase in trading volume in dark pools.[76] European equities are continuing to trade in dark pools during the delay.[77]

b) Death of the Investment Banker

Some analysts have predicted the unbundling will lead to the "death of the investment bank analyst" and cost-shifting to buy-side analysts.[78] Bloomberg Intelligence analysts predict a contraction on sell-side coverage and a more concentrated buy-side, leading to a reduction in banks employing analysts.[79] This cost-shifting could lead to a reduction in firms employing investment bankers to conduct research, leading to the end of the investment banker as we know it.

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[74] *Id.* ("The delay of the publication, which helps determine which equities would be subject to MiFID's limits on dark trading, means the planned Jan. 12 start date of the restrictions will now be pushed back.").

[75] *Id.* ("[ESMA] blamed incomplete data it received from trading venues . . . .").

[76] *Id.* (quoting comments of frustration by Markus Ferber, the lead lawmaker on MiFID II in the European Parliament).

[77] *See id.* ("The agency's delay is a silver lining for traders who have waited until the last minute to comply with MiFID.").

[78] Henry Blodget, *The Slow Death of the Investment Bank Analyst*, FIN. TIMES (Feb. 1, 2017), https://www.ft.com/content/db7d5d0a-e873-11e6-893c-082c54a7f539 ("There will be still more job losses ahead of new EU rules, which are due to come into effect next year."); Madison Marriage, *Banks Face $5bn Hit to Research Teams as Asset Managers Cut Spending*, FIN. TIMES (Sept. 18, 2016), https://www.ft.com/content/14bee15e-7c15-11e6-b837-eb4b4333ee43 ("Asset managers intend to cut their analyst research budgets by 30 per cent, heaping more pain on the investment banking industry that has already been forced to make thousands of people redundant on the back of falling profitability.").

[79] Blodget, *supra* note 78 ("The business case for investment banks financing analysts is thus continuing to degrade, while increasingly shifting to the buy side."); Sarah Jane Mahmud et al., *The Future of Investment Research Post-MiFID II*, BLOOMBERG INTELLIGENCE (Aug. 9, 2017), https://www.bloomberg.com/professional/blog/future-investment-research-post-mifid-ii [https://perma.cc/F279-J2JN].

However, the potential negative impact of MiFID II on investment banks may be exaggerated. A study done by Coalition, an investment banking research group, predicts MiFID II will "erode less than 3 percent of investment banks' annual revenue from Europe, the Middle East, and Africa."[80] While MiFID II's impact on the longevity of the career investment banker is yet to be determined, the research shift from sell-side to buy-side seems inevitable under the new regulation, as firms can decide which research to purchase.[81]

Despite being a EU regulation, MiFID II could cause investment banking research in the U.S. to shift from sell-side to buy-side as well.[82] In an uncertain regulatory environment, banks could wish to "streamline their compliance function and may even see some of these requirements as best practice to remain competitive in the market place."[83] Depending on the flexibility of an investment firm's business model, some U.S.-based firms with European exposure may wish to adopt MiFID II's standards universally.[84]

c) Small and Mid-Cap Abandonment

High concern revolves around MiFID II implementation because it may cause a decrease in the availability of quality research and abandonment of less popular small and medium-sized business research.[85] Because of new research costs, investors could limit researching small and medium sized companies, which may negatively impact liquidity in this market.[86] Without bundling costs, larger

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[80] Laura Noonan, *Mifid II Impact on Investment Banking 'Exaggerated,'* FIN. TIMES (Dec. 6, 2017), www.ft.com/content/713fb392-da7c-11e7-a039-c64b1c09b482 (reporting on a study carried out by Coalition, a research group "that produces benchmark reports on corporate and investment banking revenues and industry league tables").
[81] Blodget, *supra* note 78.
[82] Sarker, *supra* note 28 (explaining potential implications of MiFID II on U.S. markets).
[83] *Id.*
[84] *Id.* ("While MiFID II may only specifically apply to operations within the European Union . . . its relevance to both service providers and asset managers cannot be under-estimated in the rest of the world.").
[85] Chloe Cornish, *Smaller Companies Fear Threat from New Financial Regulation*, FIN. TIMES (Jan. 8, 2018), https://www.ft.com/content/c7b9153a-c22f-11e6-81c2-f57d90f6741a.
[86] Sarah Jane Mahmud & Alison Williams, *MiFID II May Hurt Small-Cap Companies, Burden Investor Relations*, BLOOMBERG (Nov. 2, 2017), https://

companies that investors are typically more interested in researching are likely to capture a large percentage of research budgets, leaving small and medium-sized companies under covered.[87] Small investment banks focusing on smaller companies may also be negatively affected by the limited amount of research available.[88]

Because asset managers will be more selective about research purchases, small companies could feel the pressure under the new regime.[89] The lack of attention paid to small and mid-sized companies may compel them to commit more resources to investor relations to compete with other small companies.[90] However, the lack of attention could also be an opportunity for investors willing to pay for research on those companies.[91] If large brokers do abandon researching small and medium-sized companies, there is "an opportunity for investors that are looking at the companies."[92] Whether MiFID II will prove disadvantageous for small and mid-sized companies and their investors or an area of opportunity can only be determined by time.

D. Conclusion

Although MiFID II is a European regulation, it has already demonstrated a global impact that will only increase over time. As fund managers and investors adjust to the new regulation, questions remain about just how greatly the new MiFID II rules will impact the EU and the U.S.

Lauren Hoepfner[93]

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www.bloomberg.com/professional/blog/mifid-ii-may-hurt-small-cap-companies-burden-investor-relations [https://perma.cc/X2HB-42GV].

[87] *Id.*

[88] *Id.*

[89] *Id.* ("In a priced environment, asset managers are likely to be more selective about what they buy, opting for tailored coverage from a select number of banks and independent providers.").

[90] *Id.* ("As banks scale back, companies will need to complete for the attention of a smaller analyst pool, liaise with more independents and market direct to investors.").

[91] Miles Johnson, *Investors Eye Trading Gold in Mifid II Overhaul*, FIN. TIMES (Jan. 24, 2018), https://www.ft.com/content/6a45fdda-0123-11e8-9650-9c0ad2d7c5b5.

[92] *Id.*

[93] Student, Boston University School of Law (J.D. 2019).