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October 10, 2023

VIA email: rule-comments@sec.gov

Subject: File No. S7-12-23

Ms. Vanessa Countryman
Secretary
U.S. Securities Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: SEC Notice of Proposed Rulemaking titled “Conflicts of Interest Associated With the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers” File No. S7-12-23, 88 FR 53960, Release Nos. 34-97990; IA-6353 (July 26, 2023)

Dear Secretary Countryman:

The Alternative and Direct Investment Securities Association (“ADISA”)¹ appreciates the opportunity to provide comments on the Securities and Exchange Commission’s (“SEC”) proposed rulemaking entitled “*Conflicts of Interest Associated With the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers.*”

ADISA represents the retail direct investment industry, acting for both large and small investment firms throughout the United States. ADISA wholeheartedly supports the SEC’s efforts to strengthen the regulatory framework intended to protect investors from material conflicts that result in financial harm while ensuring fair, orderly, and efficient markets. Moreover, ADISA supports transparency across all industry sectors. As written, however, the proposed rule is both overbroad and imprecise, and in our view carries with it the likelihood of causing confusion and imposing conflicting standards on regulated firms. We therefore urge the SEC to not move forward in this area unless and until it has addressed the problems inherent in

¹ ADISA (Alternative & Direct Investment Securities Association), is the nation’s largest trade association for the non-traded alternative investment space (i.e., retail vs. institutional). Through its 4,500 financial industry members (close to 900 firms), ADISA reaches over 220,000 finance professionals, with sponsor members raising in excess of \$200 billion in 2021-22 alone, serving more than 1 million investors. ADISA is a non-profit organization (501c6), registered to lobby, and also hosts a related 501(c)(3) charitable non-profit (ADISA Foundation) assisting with scholarships and educational efforts.

the proposed rule's language and has compiled and published meaningful data as part of the necessary economic analysis.

1. The Language in the Proposed Rule is Overly Broad and Vague.

The language in the proposed rule includes virtually every form and type of technology implemented and/or used by financial firms. As a result, the use of almost any technology by broker-dealers and investment advisors would be defined as “conflicted.” The terms “covered technology” and “investor interaction” capture a firm's use of “analytical, technological, or computational function, algorithm, model, correlation matrix, or similar method or process that optimizes for, predicts, guides, forecasts, or directs investment related behaviors or outcomes in an investor interaction,” with effectively any communication with a customer or investor swept into the definitions and thus within the proposed rule's scope.

The Proposal would cover technology utilized to demonstrate the value of investing as well as how to achieve retirement or savings goals, all of which can be achieved using advanced technology or even a simple computer spreadsheet. Even if a covered technology is neither used for investment advice, nor for a specific recommendation, the Proposal requires a broker-dealer or investment adviser nonetheless to evaluate and test the covered technology to determine if a conflict of interest exists.

Such an approach would increase costs substantially, hinder the use of existing technological tools intended to benefit investors, and deter the development or implementation of newer, innovative ways to improve investor benefits.

2. The Economic Analysis Contains No Meaningful Data.

The Proposal contains virtually no data to substantiate the Commission's claims or purported need to act. Instead, the SEC states what it “preliminarily” believes to be the primary benefit of the Proposal, noting that it “could” enhance investor protection by removing purported conflicts and adding that the proposed rule “could” engender greater confidence on the part of investors and therefore potentially “could” result in higher participation in the financial markets.

The SEC's purpose appears to be focused on fees and expenses. In the proposing release, it states that the Proposal “would likely” cause investors to prioritize “fees and execution quality” which “could” drive greater competition among firms and result in lower fees and higher levels of service. As stated previously, the challenge is that the Proposal contains no data to support what appears to be mere conjecture on this point.

3. The Proposal Creates a New, Heightened Standard Not Contained within Reg BI.

The Proposal potentially controverts the SEC's Regulation Best Interest (“Reg BI”), framework, wherein a firm may satisfy its obligation by fully and fairly disclosing conflicts of interest to investors. Instead, the Proposal requires a heightened standard on

the part of the broker-dealer or advisor to “eliminate or neutralize” any conflict of interest, creating a legal standard that does not exist in Reg BI. Furthermore, Reg BI applies only when a firm makes an investment recommendation, but the Proposal goes further by applying the heightened standard to *all* communications even if they are not directed at specific recommendations or customers.

ADISA encourages the SEC to reexamine its Proposal before moving forward. Predictive data analytics should be used appropriately to benefit investors, and focus should remain on enforcement and ensuring fairness and shrinking the wealth gap, not on broad, sweeping changes that create new legal standards, increase costs, dampen investor opportunities, and stifle innovation especially with firms who serve the smaller investors in diverse communities.

ADISA appreciates the opportunity to provide our comments to the Commission regarding the proposals set forth in the Release. We enthusiastically support the SEC’s efforts to improve the efficiencies and fairness of the investment markets.

As always, ADISA stands ready to offer objective recommendations and analysis from our unique position within the American economy.

Sincerely,

Michael Underhill

Michael Underhill
President
ADISA

cc: Catherine Bowman, Co-Chair, Legislative & Regulatory Committee
John Grady, Co-Chair, Legislative & Regulatory Committee