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October 1, 2021

Via e-mail to rule-comments@sec.gov

U.S. Securities and Exchange Commission
100 F Street, NE
Washington DC 20549-1090
Attn: Ms. Vanessa A. Countryman

**Re: SEC Request for Information and Comment on Digital Engagement Practices;
File No. S7-10-21**

Dear Ms. Countryman:

The Insured Retirement Institute, Inc. (“IRI”)¹ appreciates the opportunity to comment on the Securities and Exchange Commission (the “Commission”) “Request for Information and Comments on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches; Information and Comments on Investment Adviser Use of Technology to Develop and Provide Investment Advice” (the “RFI”).²

IRI looks forward to working collaboratively with the Commission and engaging in a comprehensive discussion on the future of digital engagement practices as employed by our members, while emphasizing the effectiveness of related statutory and regulatory regimes already applicable to our members. We offer the following comments to distinguish our members use of certain digital engagement practices, along with related operational and regulatory matters addressed in the Commission’s RFI.

¹ IRI is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, and distributors such as broker-dealers, banks, and marketing organizations. IRI members account for more than 95 percent of annuity assets in the U.S., the top 10 distributors of annuities ranked by assets under management and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.

² Release Nos. 34-92766; IA-5833; File No. S7-10-21 (August 27, 2021), available at <https://www.sec.gov/rules/other/2021/34-92766.pdf>. The RFI was published in the *Federal Register* on September 1, 2021. See 86 Fed. Reg. 49067 (Sept. 1, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-09-01/pdf/2021-18901.pdf>.

While our comments set forth below represent some key issues identified by IRI, we welcome continued dialogue on regulatory modernization with the Commission to best serve our members and consumers alike in the current and emerging financial and retirement marketplace.

In the RFI, the Commission defines digital engagement practices (“DEPs”) to include the following nine categories of practices purportedly engaged in by broker-dealers and investment advisers: (i) social networking tools, (ii) games, streaks and other contests with prizes, (iii) points, badges and leaderboards, (iv) notifications, (v) celebrations for trading, (vi) visual cues, (vii) ideas presented at order placement and other curated lists or features, (viii) subscriptions and membership tiers, and (ix) chatbots.³

In this letter, IRI will offer our views on the RFI’s questions related to (A) the use of and practices concerning DEPs, and (B) whether additional regulation is required for DEPs:⁴

A. IRI Members’ Use of And Practices Concerning DEPs:

In response to the RFI, it is imperative to note the nature of IRI members’ registered products and retirement plans are sold, monitored, and managed as long-term investments for the creation and preservation of lifetime income. These investments are most-commonly sold through consultations between financial professionals and prospective clients. As such, the use of certain DEPs, such as gamification, are not consistent with the traditional methods of marketing by IRI members of their products.

Whereas DEPs provide both an ongoing and emerging informational platform for our members to better engage with and educate their customers, the technologies or DEPs employed are never intended or designed to side-step the role, purpose, and function of the customer’s financial advisor. Following discussion of DEPs with our membership from an operations and technology standpoint, such emerging technologies and digital platforms are intended to (1) provide education to the investor, or (2) direct the investor back to the financial advisor for additional guidance on and analysis of both the risks advantages use of a DEP may provide.

Our members’ practices and procedures with any or all the DEPs, as defined by Commission’s RFI above, are not intended to direct a plan or client to invest without the facilitation of professional financial advice to support any related investment decisions. For example, robo-advice and AI technologies are not generally used by our members to provide direct recommendations regarding a particular individual’s investments, but rather to provide education and information to better equip the investor to make informed investment decisions with the assistance of their financial advisor.

Therefore, the use of DEPs may enhance or supplement a financial advisor’s knowledge and ability to identify and analyze emerging investments and better comprehend the digital enhancements available in the marketplace, it is not used by our members as a mechanism to divert from or undermine the financial advisor’s role in making prudent investment recommendations.

B. Current Statutory and Regulatory Regimes are Sufficient and Appropriate for DEPs as Employed by IRI Members:

³ *Id.* Section II, Part A.

⁴ *Id.* Section II, Parts A, B, and C.


IRI and its members have been and continue to be steadfast and vocal supporters of Regulation Best Interest (“Reg BI”),⁵ which sets a clear standard of conduct for financial professionals who provide investment advice that is incidental to the sale of securities.⁶ In setting and applying this standard under Reg BI, the Commission relies on the well-established definition of “recommendation” established by the Financial Industry Regulatory Authority (“FINRA”). Similarly, the Investment Advisers Act effectively imposes a fiduciary obligation on financial professionals who are primarily in the business of providing investment advice.⁷ Further, FINRA has issued extensive rules and guidance governing communications to investors, including educational, informational, advertising, marketing materials.⁸ These laws and rules collectively comprise a well-established and understood regulatory regime that can and should be viewed as proving effective protections for investors with respect to the use of DEPs by our members.

The Commission has recognized the long-standing guidance issued by FINRA as to the distinction between and treatment of “recommendations” as compared to “education.”⁹ IRI strongly urges the Commission to refrain from issuing new rulemaking or guidance that would blur these established lines by broadly classifying DEPs as recommendations. Doing so would preclude our members from utilizing these modern technologies as a means to deliver valuable “investment education” to investors and their financial advisors. To the extent that DEPs would fall within the Commission’s established definition of “recommendation,” investors are already well protected by the existing regulatory regime, while DEPs that do not meet that definition should not be subject to regulation as such. Instead, the Commission should only proceed with rulemaking or guidance if it identifies particular investor protection issues related to the use of DEPs, and in that case, rulemaking or guidance should be targeted and carefully designed to precisely address such concerns.

While we have addressed some key issues in our comments above, we would welcome an opportunity to share additional, specific comments on issues addressed in the Commission’s RFI. As the industry adapts to the economic, compliance and operational needs resulting from the evolving digital marketplace, IRI seeks to partner with the Commission, FINRA, regulators and other stakeholders to work towards regulatory modernization to best represent our members and the consumers they serve.

Thank you again for the opportunity to provide these comments. If you have questions, or if IRI can be of any further assistance in connection with this important regulatory effort, please feel free to contact the undersigned at [REDACTED].

Respectfully submitted,



⁵Regulation Best Interest: The Broker-Dealer Standard of Conduct, 17 CFR Part 240, Release No. 34-86031; File No. S7-07-18, available at: <https://www.sec.gov/rules/final/2019/34-86031.pdf>

⁶ *Id.*

⁷[Investment Advisers Act of 1940, As Amended Through P.L. 115-417, Enacted January 03, 2019, Section 211\(g\)](#)

⁸ *Id.* (citing NASD Notice to Members 01-23, Online Suitability—Suitability Rules and Online Communications (Apr. 2001); Notice of Filing Proposed Rule Change to Adopt FINRA Rule 2090 (Know Your Customer) and FINRA Rule 2111 (Suitability) in the Consolidated FINRA Rulebook, Exchange Act Release No. 62718 (Aug. 13, 2010), 75 FR 51310 (Aug. 19, 2010), as amended, Exchange Act Release No. 67218A (Aug. 20, 2010), 75 FR 52562 (Aug. 26, 2010) (discussing what it means to make a “recommendation”).

⁹ SEC Release No. 34-62718A; File No. SR-FINRA-2010-039, (August 20, 2010) available at: <https://www.sec.gov/rules/sro/finra/2010/34-62718a.pdf>

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Emily Micale
Director, Federal Regulatory Affairs