September 21, 2023

Delivered via email

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File Number S7-12-23.
Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers, RIN 3235-AN00; 3235-AN14

Dear Ms. Countryman:

On behalf of the American Benefits Council (the Council), I am writing to express our concerns regarding the proposed rule entitled: Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers.

The Council is a Washington, D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and their families. Council members include over 220 of the world's largest corporations and collectively either directly sponsor or support sponsors of health and retirement benefits for virtually all Americans covered by employer-provided plans.

We wrote a comment letter with five other trade associations that was sent on September 19, asking the SEC to withdraw the proposal because there is virtually no economic analysis supporting the proposal. In fact, the preamble to the proposal indicates that the SEC does not have a basis to determine if the proposal would help or hurt investors. That means that the proposal would almost certainly be invalidated in court under the laws governing SEC rules, which require an economic basis for a rule.

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We are writing today to emphasize one key point. The SEC seems focused on regulating new technologies that can be used in a way that is harmful to investors. We have no concerns with that objective; on the contrary, we support it. But the SEC cast its regulatory net so wide that the proposal would apply far beyond these new technologies that appear to be the SEC's focus. The proposal would apply to virtually all technologies used in connection with investment issues. This would include longstanding common technologies that are part of everyday life and raise no conceivable issue, such as Excel spreadsheets. For example, such spreadsheets can be used by individuals to determine how much they should be saving annually for retirement, and this use would need to be tested under the proposal.

The proposal would similarly cover basic technologies that enable retirement participants to determine (1) how much in total they need to have saved by retirement age or (2) how much money they can afford to spend annually during retirement. Other covered technologies provide retirement plans and plan sponsors with the tools they need to help their participants and to operate a plan.

Additional commonly used technologies covered by the proposal provide very basic guidance for participants on well-established asset allocation principles, such as allocations among equities and fixed income investments. These asset allocation principles are used either to educate employees or help them invest among a small menu of investment options screened by an ERISA fiduciary.

We have heard deep concerns from retirement plan sponsors about the overly broad scope of the proposal. The cost for service providers to test their thousands of covered technologies will be enormous, and this burden is exacerbated by the fact that the proposal provides very little guidance on how this testing should be done. Who will pay for this in the retirement space? Ultimately retirement participants, which is very counterproductive to our goal of achieving retirement security.

The SEC needs to withdraw this proposal because (1) there is virtually no economic analysis justifying this proposal, and (2) the SEC needs to target its proposal on problematic technologies, rather than covering virtually every technology used by any broker-dealer or investment adviser.

Thanks for your consideration of this comment.

Sincerely,

Lynn D Dudley

Lynn Dudley
Senior Vice President, Global Retirement & Compensation Policy