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VIA ELECTRONIC SUBMISSION

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

October 10, 2023

RE: Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers (File No. S7-12-23)

Dear Ms. Countryman:

We appreciate the opportunity to comment on the Securities and Exchange Commission's (the "Commission") proposed rules 15l-2 under the Securities Exchange Act of 1934, and 211(h)(2)-4 under the Investment Advisers Act of 1940 addressing conflicts of interests associated with investment advisers and broker-dealers using "covered technologies" to engage in investor interactions (the "Proposed Rules"). While we support the Commission in addressing potential conflicts of interests, the Proposed Rules are overbroad and largely premised on theoretical concerns that advisers and broker-dealers will use technology to inappropriately place their interests ahead of investors. The Proposed Rules do not provide evidentiary support of actual harm to investors, nor do they support a finding of any gaps or weaknesses in existing laws and regulations designed to protect investors from conflicts of interests. Without adequate analysis or support, the Proposed Rules would fundamentally change well-established, disclosure-based legal principles for addressing potential conflicts of interest into an all-encompassing, prescriptive framework, thereby threatening the broad array of investment advisory services and investor interactions that have substantially helped investors, particularly retail investors, meet their financial planning, retirement objectives and financial literacy needs. We support the comments by the Investment Company Institute and Securities Industry and Financial Markets Association – Asset Management Group[1] and urge the Commission to withdraw the Proposed Rules.

Capital Group is one of the oldest and largest privately held investment management organizations in the United States with more than 90 years of investment experience. Through our investment adviser subsidiaries, we actively manage equity and fixed income investments across all market sectors in various collective investment vehicles and institutional client separate accounts.

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[1] *See* Letter to Vanessa Countryman, Secretary, Securities and Exchange Commission, from Securities Industry and Financial Markets Association and the Securities Industry and Financial Markets Association's Asset Management Group, dated October 10, 2023. *See also* Letter to Vanessa Countryman, Secretary, Securities and Exchange Commission, from Susan Olson, General Counsel at ICI, Sarah Bessin, Deputy General Counsel at ICI, Mitra Surrell, Associate General Counsel at ICI, dated October 10, 2023.

The majority of these assets consist of the American Funds family of mutual funds as well as other U.S. regulated investment companies managed by Capital Research and Management Company.

As a registered investment adviser, the Proposed Rules would apply to our discretionary investment management activity on behalf of current and prospective investors, the design of our investment offerings and communications with investors and financial intermediaries. This letter seeks to show a sample of the consequences of the Proposed Rules in these areas, as well as the negative impacts for investors.

Our fundamental investment research process has relied on significant advances in technology over the last 90 years to continue to provide high quality investment services at low cost to our investors. This imperative has only deepened with the advance of technology and a more global competitive marketplace. The broad and expansive definitions of covered technology and conflicts of interests under the Proposed Rules would constrain the use and development of technology to help us engage in investment management, trading activities and client-facing services for the benefit of our investors.

Other than technology used to provide investors with clerical or administrative support, all technology used directly or indirectly by an adviser (or a natural person associated with the adviser) for investment advisory services or communications with current or prospective investors would be considered a covered technology. This would capture thousands of applications an adviser (or a natural person associated with the adviser) uses to analyze investments or strategies, including older, simpler models or computational functions such as investment algorithms or spreadsheets with embedded financial modeling tools. The Proposed Rules would consider all interests of an adviser potential conflicts, with the limited exception of conflicts related to advisers opening new investor accounts. The Proposed Rules are a transformative shift from the consent and disclosure regime to one where advisers will be required to search for, identify, document, and neutralize or eliminate conflicts associated with all covered technology. The shift caused by the Proposed Rules will severely strain and impede portfolio making decisions, product and strategy developments, and investor communications. While advisers may bear the direct costs of compliance, these costs could influence the availability or pricing of investment services to clients and impose significant opportunity costs on investors from deferred or reduced technology. The Commission's unsupported concerns of technology would unjustifiably stifle innovation and reduce investment options for investors.

Investors would ultimately bear these costs, without receiving proportionate benefits. Existing laws, regulations and enforcement authority currently protect investors from conflicts arising from investment management activity. For example, there is no question that the Commission can already protect investors from inappropriate investments in affiliated transactions, issues with side-by-side management of funds or accounts with performance fees, inappropriate valuations, misleading advertising and marketing practices, and other potential conflicts in the investment management process. Indeed, the Commission's own adoption of advanced data analysis and technology will support and scale appropriate enforcement of existing laws and regulations to protect investors from conflicts without the Proposed Rules.

U.S. investors and capital markets benefit from clear disclosure and investor choice and consent. This is a well-established, effective framework the Commission has utilized to address conflicts of interests to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation. The Proposed Rules require advisers to neutralize or eliminate potential conflicts, which removes the investors' ability to consent, limiting investor choice and advisors' ability to make

optimal investment decisions. If adopted, the Proposed Rules could call into question the design of investment services. Would technology used to monitor asset allocations and execute reallocations for target date funds or funds-of-funds that utilize a well-designed and disclosed portfolio of low-cost affiliated underlying funds be prohibited as unlawful, since the use of affiliated funds benefit the adviser and it would be extremely costly or unfeasible for the adviser to make the conflicts of interest determination (i.e., demonstrating these funds are the same or superior to all other offerings during all relevant periods)? The broad scope of in-house and third-party technologies that would be considered a covered technology, the need to analyze, document and periodically test for the existence or preclusion of conflict for each technology, and the uncertainty and potential liability of applying the Proposed Rules would cause significant unintended consequences for investors. Would asset managers be forced to choose between no longer using certain technologies, which could negatively impact services for investors, or largely exiting the field of providing well disclosed investment products that incorporate or replicate affiliated investment offerings, on which millions of American investors currently rely? If so, this would result in sweeping changes to the experience and choices available to investors that the Commission did not analyze in the proposal.

The Commission cites its concern that the rapidly increasing use of technology would harm investors more broadly or introduce new and unique risks as vague justification for broadly imposing a new standard to require neutralization and elimination of conflicts. These concerns are not present with respect to discretionary trading, where the proprietary output of any technology is used internally to make investment decisions. The Commission also fails to show how the current disclosure and consent regime is insufficient to mitigate conflicts of interests for sophisticated institutional investors and investors in pooled vehicles. Indeed, under the recently issued Private Fund Advisers Rule, the Commission affirmatively supported a disclosure and consent based approach for practices it deemed "contrary to the public interest and the protection of investors" such as preferential treatment given to certain private fund investors and transactions where the adviser is on the opposite side of the private fund and its investors.[2] By broadly abandoning this disclosure and consent standard[3] for technology platforms, the Proposed Rules will result in less successful design of investment offerings, impose higher costs, frustrate investor choice, and reduce overall rates of investment, ultimately dwarfing potential benefits for conflict mitigation.

Investors benefit from advice. Advice makes a significant difference in investors' ability to initially invest, to stay invested and to take distributions in a manner that improves their lives. Over the years, we have observed that technology such as "robo-advisers" is increasingly important to address the need of retail investors for advice. Current laws, regulations and enforcement authority allow the Commission to protect investors from conflicted activity, such as activity that misrepresents fees or provides conflicted advice in a manner that is undisclosed or inconsistent with existing standards. The vague overbreadth of the Proposed Rules would impose costs and risks that would cause some providers to cease to provide advice to retail investors, particularly those who are inexperienced and unsophisticated in financial markets, have modest investment

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[2] *See* Final Rule: Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Rules [File No. S7-03-22] at 28 – 31.

[3] Similar to the Proposed Rules, the Final Rule: Private Fund Advisers promulgates Section 21 1(h) of the Adviser's Act as "facilitatin[g] the provision of simple and clear disclosures to investors regarding the terms of their relationships with…investment advisers" and "examin[ing] and, where appropriate, promulgat[ing] rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors." *Id*. at 29-30.

amounts, and are most in need of such advice. The Proposed Rules would ironically accelerate the long trend of eroding access by underserved groups to investment advice.

Investors and the advisers who work with them benefit from investment education. We generate a range of communications that are intended to help investors and advisers better understand our investment offerings, to support investment decisions that are consistent with investment objectives, risk tolerances and market color, which are essential to informed decisions. Would a nudge to encourage investors to consider the benefits of diversification, to understand the relationship between their investment time horizon and objectives, or consider factors to help generate income for life be impermissible since it could encourage greater investment in our funds? Encouraging investors to invest in a diversified portfolio to better achieve long-term investment objectives is easily distinguishable from "gamification" challenges the Commission may have originally intended to target with the Proposed Rules. Would educational materials and websites helping investment advisers better understand our mutual funds and compare them to other offerings be prohibited for similar reasons? Although websites that provide current balances are not within the scope of the Proposed Rules, would help or answers that we offer our existing investors when they inquire about their balances be considered guiding or influencing investment-related behaviors and outcomes and therefore restricted? Would investment analysis tools that help advisers more efficiently assess an investor's portfolio be restricted? If so, on what basis is the Commission comfortable that it has struck the right balance in reducing information to investors, even the underserved?

There are few meaningful limits to the Proposed Rules, as it would extend a new conflicting, vague, and absolute standard for potential conflicts of interest across nearly the entire technology backbone of broker-dealers and registered investment advisers. We do not believe that the Commission has adequately identified the problems posed by technology that it is unable to solve through current authority, nor do we believe that the Commission recognizes the negative impacts of the Proposed Rules on investors. For those reasons, we ask the Commission to withdraw the Proposed Rules and engage with investors and the industry in a more targeted and careful way.

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We appreciate the opportunity to comment on the Proposed Rules and are grateful for your consideration of our views and recommendations. If you have any questions regarding our comments, please feel free to contact Don Rolfe at (213) 615-0457 or Nelson Lee at (213) 615-4080 or Katie Gorham at (213) 615-5928.

Sincerely,

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cc: The Hon. Gary Gensler, Chairman
The Hon. Hester M. Peirce, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner
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The Hon. Jaime Lizárraga, Commissioner

William A. Birdthistle, Director, Division of Investment Management