

October 10, 2023

Vanessa A. Countryman
Secretary
US Securities and Exchange Commission
100 F Street NE
Washington, DC 20546-1090

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,

Dimensional Fund Advisors LP (“Dimensional”) appreciates the opportunity to comment on the US Securities and Exchange Commission’s (the “Commission”) proposed rules on conflicts of interest associated with the use of predictive data analytics by broker-dealers and investment advisers (the “Proposal”).¹ Dimensional is a registered investment adviser and together with its advisory affiliates, has approximately \$634 billion in global assets under management.² We are very concerned by the overly broad and sweeping nature of the Proposal and strongly encourage the Commission to reconsider the Proposal or significantly narrow the scope of the Proposal. In our view, the Proposal will directly constrain the technology solutions available to investors.

1. ***The Proposal is so broad that advisers will incur significant compliance costs, even when the technologies they use do not present the theoretical concerns raised by the Commission.***

There is a disturbing mismatch between what the Commission states are its investor protection concerns and the Commission’s proposed rule. In the introduction to the Proposal, the Commission focuses on the potential risk that an algorithm using artificial intelligence could drift and result in the rapid transmission of conflicted advice or recommendations to investors on a large scale.³ The Proposal seeks to address this by requiring an adviser that uses any “covered technology” in an “investor interaction” to “eliminate or neutralize” what the Commission believes are conflicts of interest that could place the adviser’s interest ahead of investors’ interests. Then the Commission proposes to define the terms “covered technology”, “investor interaction”, and “conflicts of interest” so broadly that the Proposal would affect advisers that do not automate the transmission of investment advice or recommendations directly to investors, much less use artificial intelligence to do so.

For example, the Commission expresses concerns over firms’ increased use of certain complex technologies, including what the Commission describes as algorithms that use deep learning, supervised learning, unsupervised learning, and reinforcement learning processes, yet the proposed definition of “covered technology” would stretch far beyond these types of algorithms

¹ US Securities and Exchange Commission, *Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers*, Release No. IA-6353 (July 26, 2023).

² As of June 30, 2023.

³ See, for example, Proposal at 6, 10, 11, 13 and 20.

to include even spreadsheets that use straightforward mathematical models.⁴ The Commission expresses concerns over technologies that automatically develop advice that is transmitted directly to investors through a chatbot, push notification on an app, or robo-advisory platform, yet the proposed definition of “investor interaction” would include even a situation where a human adviser uses technology to prepare materials for an in-person meeting with a client.⁵ The Commission expresses concerns about conflicted advice resulting from a drifting algorithm that becomes more biased toward investments more profitable to a firm, yet the proposed definition of a “conflict of interest” would mean that a conflict exists if the technology considers *any* firm-favorable information.⁶

These overly broad definitions will mean that advisers will be required to have policies and procedures in place to review, test, and make determinations about conflicts of interest associated with even the use of a basic spreadsheet to prepare for an in-person client meeting. The sweeping nature of the Proposal will result in increased costs for advisers, which are likely to be passed on to investors, and will divert advisers’ attention away from their primary role—providing investment advice. In our view, the Commission has not justified why it is necessary to require advisers to undertake such expansive reviews and assessments of practically all types of technology in order to protect investors from what the Commission believes could hypothetically occur in the rather specific event that artificial intelligence makes decisions that favor a firm’s interests and then rapidly deploys that information to investors on a large scale.⁷ We feel certain that the costs of complying with the Proposal will far outweigh any possible benefit to investors.

2. **Technology has contributed to lower costs for investors, yet the Proposal would impose unjustified compliance costs on advisers that may discourage advisers from using technology in ways that can benefit investors.**

Advisers have long been using and developing technology for the benefit of investors. Technology has helped advisers to operate more efficiently and to make valuable educational tools and materials available to their clients. In our view, it is not a coincidence that mutual fund expenses have decreased substantially since the year 2000.⁸ Technological advances have contributed to the ability of advisers to reduce their costs, and advisers have passed these benefits on to investors in the form of lower fees. We believe it would be a grave mistake for the Commission to adopt a rule that would effectively make it more expensive for advisers to use technology to provide services to investors in a more efficient manner.

Furthermore, the costs and burdens that advisers will incur to comply with the Proposal may discourage advisers from using technology to make educational materials and useful tools available to their clients. For example, the Commission states the proposed rules would cover a firm’s use of technology to enable investors to affirmatively sign up for and customize alerts,

⁴ Proposal at 16-17 and 139.

⁵ Proposal at 11 and 53.

⁶ Proposal at 11 and 82.

⁷ See Proposal at 11.

⁸ For example, the average expense ratio for equity mutual funds fell 56% from 2000 to 2022. Investment Company Institute, *2023 Investment Company Fact Book* (2023), available at <https://www.icifactbook.org/pdf/2023-factbook.pdf>.

research reports, news, quotes, and charts.⁹ Thus, if an investor opts in to receive reports from their adviser, and the adviser uses technology to fulfill the investor's request, the adviser would be required to determine that this technology does not place the firm's interests above the investor's interests. But what if the investor chooses to receive reports about the firm's proprietary products and nothing else? Would this mean that the technology—by only sending reports about the firm's proprietary products, as requested by the investor—has put the firm's interests above the investor's? Advisers—particularly smaller advisers—may simply decide not to make these tools available to their clients, rather than be forced to make tricky determinations that could be second guessed with the benefit of hindsight.

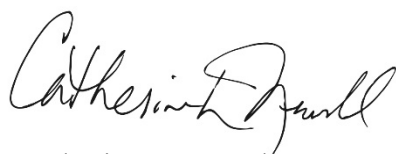
3. **The Commission should allow advisers to use disclosure to address potential conflicts of interest.**

Finally, we are concerned that the Proposal would require advisers to eliminate or neutralize conflicts of interest, rather than allow advisers to make investors aware of potential conflicts of interest through disclosure. Disclosure is an integral part of the US securities law framework; in his testimony before the Senate Committee on Banking, Housing, and Urban Affairs, Chair Gensler stated that it is investors who “get to decide what investments they make and risks they take based upon...disclosures.”¹⁰ However, in the case of this Proposal, the Commission denies investors the opportunity to decide for themselves what investments to make and what risks to take. By summarily rejecting disclosure as a way to mitigate potential conflicts of interest, the Commission effectively attempts to substitute its judgment in place of investors'. In our view, the Commission must permit advisers to use disclosure to address potential conflicts of interest.

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We are very concerned that the Proposal will harm investors by increasing costs for advisers, which will detract from investors' returns, and by reducing the availability of useful educational tools and materials for investors. For these reasons, we strongly urge the Commission to reconsider the Proposal. If we can be of further assistance, please do not hesitate to contact Stephanie Hui, Lead Counsel, Global Public Policy and Vice President. We would welcome the opportunity to expand on our discussion of these issues.

Sincerely,



Catherine L. Newell
General Counsel and Executive Vice President

⁹ Proposal at 54. The Proposal also appears to cover commonly used tools like spell check, website search functions, and retirement-related calculators. We note that the US government has recognized the value of retirement-related calculators for investors by making three such calculators available to Thrift Savings Plan participants at <https://www.tsp.gov/calculators/>.

¹⁰ Gensler, Gary, *Testimony Before the United States Senate Committee on Banking, Housing, and Urban Affairs* (Sept. 12, 2023), available at: <https://www.sec.gov/news/testimony/gensler-senate-testimony-091223>.