October 10, 2023

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

Re: Request for Comment on 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,

The American Consumer and Investor Institute (ACII) submits this letter in response to the U.S. Securities and Exchange Commission's ("Commission" or "SEC") request for comment on new rules addressing Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers (the "Proposal" or "proposed rules").[1]

ACII's mission is to advocate on behalf of American consumers and investors for more choice and access to U.S. financial markets, products and services, including in the areas of consumer banking, securities and cryptocurrencies – all accompanied by robust financial education. ACII believes that every American should enjoy broad, affordable access to U.S. financial markets so that they can build a better future for themselves and their families.

The SEC's Luddite Proposal risks reversing years of progress for retail investors, particularly as it related to broker-dealers and investment advisers' use of technology to reduce costs and barriers to participation in the financial markets. ACII is opposed to the proposed rules, which will stifle innovation and harm retail investors.

As laid out below, we believe that technology has been a critical component in educating investors and making markets more accessible, allowing for a much broader population to invest for the long term. The SEC's Proposal is simply bad policy. The vague and overly broad language of the proposed rules reaches far beyond advanced predictive data analytics and artificial intelligence, impacting just about every tool used by any broker-dealer or investment advisor to provide information that may be relevant to an investor's investment decisions. It would stifle innovation that has brought down barriers to investing and would deprive the public of access to the tools and information they need to learn about markets and make educated investment decisions. The Proposal is operationally so cumbersome as to be unworkable. It is a drastic and unwarranted departure from the existing regulatory framework, which has long relied

[1] Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers, 88 Fed. Reg. 53960 (Aug. 9, 2023).

on full and fair disclosure to address potential conflicts of interest and has served investors well for decades. It also sets a dangerous precedent for applying this new paternalistic standard to other parts of the financial services sector (e.g., banks and insurance companies) and other industries that rely on technology to communicate with customers. Unsurprisingly, this unreasonable, onerous, and intrusive Proposal also exceeds the Commission's statutory authority. Indeed, it unconstitutionally interferes with communications to investors.[2]

I. Technology has Educated and Empowered Retail Investors

According to Pew Research, 97% of Americans today own a cellphone (85% own smartphones), 77% own a desktop or a laptop and 53% own tablets.[3] Consumers leverage connected devices and digital tools to consult their physicians, buy a car, find job opportunities, learn about and track their physical well-being, manage their finances and find solutions to all sorts of needs that pop up in life. Instead of waiting three months for a doctor's appointment, they can schedule a video consultation. Instead of walking into the bank branch, they can manage their banking online. Americans expect and want to access and engage their service providers through their phones, laptops and other devices.

Broker-dealers and investment advisers understand that a diverse group of Americans today demands and expects the ability to bank and invest, as well as conduct other forms of personal finance and commerce, via full-service websites and apps on their mobile phones.[4] With the support of the SEC (at least until now), financial services companies have started to meet this demand through intuitive, modern apps that promote financial engagement and education, and eliminate traditional frictions – such as lengthy, paper-based account sign-up processes and slow, cumbersome websites – that have kept many individuals from participating in the financial markets.

This collaboration has worked. Customers have flocked to online and app-based banking, for ease of use and to be able to customize their interactions to fit their goals and needs. Americans are happier when their banks understand their financial goals, simplify the management of finances, and help them make better financial decisions.[5] Banking that provides advanced, customized advice remains the optimal method for meeting many individuals' needs, and delivery through online and mobile systems increases the accessibility of these services.

Similarly, innovative technologies have expanded access to capital markets for the average consumer, by enabling offerings such as commission-free investing, fractional shares

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[2] *See* William P. Barr and Barbara Comstock, "Gary Gensler's Plan to Control Information" (September 10, 2023), https://www.wsj.com/articles/gary-genslers-plan-to-control-information-sec-financial-regulation-firms-investors-technology-market-927579dc.

[3] *See* Pew Research Mobile Fact Sheet (April 7, 2021), https://www.pewresearch.org/internet/fact-sheet/mobile/.

[4] *See* Digital Banking Attitudes Study by Chase (July 11, 2023), https://www.cnbc.com/select/why-millennials-gen-z-use-mobile-banking-apps/.

[5] *See* Bank Customers Need Personalized Financial Wellbeing Support by Gallup (November 29, 2019), https://www.gallup.com/workplace/268157/bank-customers-need-personalized-financial-wellbeing-support.aspx.

and delivery of model portfolios through robot advice. Innovations in the way financial products and services are being delivered to investors are helping record numbers of Americans engage in our markets and take greater control of their finances. According to Gallup's April Economy and Personal Finance survey, 61% of Americans report that they own stock, either in an individual stock, a stock mutual fund or in a self-directed 401(k) or IRA. [6] This is up from 56% in 2021 and 55% in 2020, and the highest it has been since 2008. It is estimated that retail investors accounted for 52% of global assets under management in 2021 and that share is expected to grow to over 61% by 2030.[7]

ACII believes that these trends are unequivocally positive, enabling millions of new investors of all backgrounds and socio-economic status to participate in the markets today.[8] Investors at all levels can now independently participate in markets by researching investments and leveraging technology to manage personal portfolios in a simple, efficient online format, finally reversing decades-long trends of stock ownership being highly correlated with race and age[9] and low financial literacy correlated to worsening inequality[10].

The long-term impact of stock ownership on wealth building is compelling and well-documented. The Schwab Center for Financial Research calculated that over the period 1970 – 2020, the annual returns on stocks (S&P 500 Index), bonds (Ibbotson Intermediate U.S. Government Bond Index) and cash (Ibbotson 30-day Treasury bills), after taxes and inflation, were 4.7%, 0.1% and -1.4%. This means that $100 invested in stocks for this 51-year period compounded to an amount 10 times the amount that $100 invested in bonds did.[11]

The SEC's proposal would severely disrupt or eliminate the tools and information that have created opportunities for retail investors to access the markets, placing those opportunities at risk and directly contradicting the SEC's statutory mandate under the Securities Exchange Act of 1934 to "promote fair competition, and consistent with the promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and the maintenance of fair and orderly markets."

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[6] *See* Jeffrey M. Jones, "What Percentage of Americans Own Stock?" Gallup (May 24, 2023), https://news.gallup.com/poll/266807/percentage-americans-owns-stock.aspx.

[7] *See* Imedi Group, "The Future is Now: Five Waves Reconfiguring Asset Management" (March 10, 2022), https://www.prnewswire.com/news-releases/deglobalization-to-dominate-asset-management-by-2030-with-cross-border-strategies-taking-less-than-a-fifth-of-investment-flows-indefi-report-301499684.html.

[8] *See* Financial Industry Regulatory Authority ("FINRA") Foundation, "New Investors 2022: Entering the Market in Novel and Traditional Ways" (April 2023), https://www.finrafoundation.org/sites/finrafoundation/files/New-Investors-2022-Entering-The-Market-In-Novel-and-Traditional-Ways.pdf.

[9] *See supra* n.6.

[10] *See* FINRA, "New Research: Financial Literacy Is Significant Indicator of Positive Future Financial Outcomes and Behaviors" (October 29, 2020), https://www.finra.org/media-center/newsreleases/2020/new-research-financial-literacy-significant-indicator-positive.

[11] *See* Charles Schwab Moneywise, "Stocks, Bonds and Cash", https://www.schwabmoneywise.com/essentials/stocks-bonds-cash.

Rather than welcoming and supporting these new investors, who are seeking stock ownership as a path to building long-term wealth, the SEC's Proposal is so far-reaching and prescriptive as to effectively ban many technologies, returning retail investors to an era when markets were less accessible and less understandable. The SEC fails to provide the data, analysis, and justification for such a drastic reversal.

II. The Proposed Rules are Anti-Technology

Three factors – the terms "covered technology" and "investor interaction", along with the proposed rules' redefinition of conflict of interest – together make the Proposal so sweeping as to directly affect every technological tool today's retail investors want and rely on, perhaps to the point where firms will no longer provide such tools at all.

"Covered Technology"

The SEC's attempt to frame the Proposal as addressing predictive data analytics, machine learning, and artificial intelligence is misleading. As a disclosure agency with a statutory mission to protect investors, the SEC should know better than to use this marketing ploy. As written, the Proposal's definition of "covered technology" is not limited to more complex technologies, as the SEC suggests. Instead, the definition is so broad that it includes simple technologies such as any "analytical function", "computational function", or "algorithm," which would apply to many of the basic investor- and institutional-facing tools currently in use by every broker-dealer and investment adviser, including Microsoft Excel and other widely available tools. As Commissioner Hester Peirce observed, the proposed definition could include harmless technologies long used by retail investors such as "spreadsheets, commonly used software, math formulas, [and] statistical tools."[12] In addition, the SEC's definition of "covered technology" includes technology that could be deemed to "guide" an investor's investment-related behaviors or outcomes. Such broad, vague, and subjective language would apply to almost any aspect of the design or user experience of a website or mobile application.

"Investor Interaction"

The proposed rules define "investor interaction" as engaging or communicating with an investor, including by exercising discretion with respect to an investor's account; *providing information* to an investor; or soliciting an investor. This means that the proposed rules would cover basically any form of technology used by any retail broker or adviser to interact directly or indirectly in almost any way with a retail customer. And this is true when the broker or adviser is using technology not only to make investment recommendations or to provide investment advice, but also to offer simple financial education or to share research or other relevant information with a customer so that she can make her own informed investment decisions.

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[12] *See* Statement of SEC Commissioner Hester M. Peirce, "Through the Looking Glass : Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers Proposal" (July 26, 2023), https://www.sec.gov/news/statement/peirce-statement-predictive-data-analytics-072623.

"Conflict of Interest"

The SEC's proposed rules are also a stark departure from the existing Regulation Best Interest requirements for broker-dealers and the Commission's interpretation of investment advisers' fiduciary duty, which both permit firms to address conflicts through full and fair disclosure to investors. To start, the Proposal defines a conflict as the firm simply considering "an interest" associated with the use of any given technology. Therefore, even if the investors' interest and the firms' interests are aligned, the proposed rules apply. The Proposal then requires the broker-dealer or investment adviser to "eliminate or neutralize" that supposed conflict. It is impossible for any business to eliminate or neutralize any interest in what it does – a business has to get paid, or it ceases to be a business. A requirement to "eliminate or neutralize" "an interest" would effectively result in the barring of many, if not most, technologies used by broker-dealers and advisers now and in the future.

These three terms interact in such a way as to threaten the availability of even the most basic and beneficial information firms provide to customers. For example, the proposed rules could impact firms' ability to display financial news to investors on websites and mobile apps. Customers who previously struggled to educate themselves on markets and investing are now able to access often free, digestible market news and other educational tools offered by online and app-based brokerage and advisory platforms. These offerings are key to maintaining a knowledgeable and independent investor base. But under the Proposal, financial news provided to customers in electronic format would be a covered technology used in an investor interaction. A customer receiving a news alert about a stock they own may decide on his or her own accord to trade based on that news. Under the proposed rules, this poses a conflict of interest that may need to be neutralized or eliminated. In the face of burdensome compliance requirements and liability from regulators second-guessing firms' decisions, many online broker-dealers and investment advisors may simply decide not to provide customers with market news. And the same analysis will apply to other "investor interactions" that give customers the information they want and need to become more informed investors.

Even a cursory review of the SEC's Proposal shows that it is not a set of "technology neutral," "principles-based" rules, as the SEC alleges. "Requiring firms to subject certain types of technologies to a uniquely onerous review and conflict remediation process is not technology neutral," Commissioner Pierce correctly noted in her dissenting statement regarding the proposed rules. "Let us be honest about what we are doing here: banning technologies we do not like."

U.S. Senator Tim Scott, Ranking Member of the Senate Committee on Banking, Housing, and Urban Affairs, also warned that the SEC appears to be targeting technology about which it has preconceived views: "I am concerned that the SEC has entered this process with a predetermined view on the use of DEPs and a fully formed plan for how these tools and practices should be regulated. I strongly urge the Commission against pursuing any changes to the existing ecosystem – which the average retail investor benefits from more than at any other point in history – without a thorough data collection process and careful consideration of retail investor

input."[13] The Proposal is not based on any thorough data collection effort or careful consideration of retail investor input.

In fact, the Proposal's overly broad definitions reflect serious misconceptions about the technology being used – or not used – by brokers and asset managers, as well as baseless assumptions, uninformed by data, about how and why this technology is being used, how retail investors actually interact with the technology, and how different types of technology impact their behaviors or outcomes.

By imposing such broad definitions of "covered technology", "investor interaction" and "conflict of interest", the Proposal is likely to cause firms to pass along higher compliance costs to investors or simply decline to offer the very tools that retail investors want and rely on to learn about markets and make more informed investment choices, thereby depriving investors of the benefits of decision-useful information and technological advancement. This means either less-informed investors, or less participation in markets, both of which are bad for the future financial security of all Americans. In the absence of these technologies, firms may raise prices and reimpose cost as a barrier to market participation.

The proposal's broad definition of covered technology, as outlined in the proposed rules, risks hindering future market innovation and accessibility, to the detriment of investors. Chair Gensler highlighted in a 2022 speech before the Exchequer Club of Washington, D.C.: "I believe that innovation can bring greater access, efficiency, and innovation to our capital markets, as well as economic growth."[14] We agree. Unfortunately, Chair Gensler's words are not consistent with the language of the Proposal. Aggressively limiting the use of new technologies will only stifle innovation and take us back to the old days when the wealthy interacted with their broker or adviser by phone or by visiting a brick-and-mortar office, while retail investors without sufficient means were left out of the markets entirely.

III. The Proposal Threatens Financial Education

American investors have traditionally been challenged by low levels of financial literacy while facing daunting amounts of quickly changing information about increasingly complex and volatile markets. As recognized by FINRA, financial literacy is highly correlated with positive future financial outcomes and behaviors.[15] Furthermore, as mentioned above, differing levels of financial literacy may contribute to inequality. Given what we know, access to easy-to-

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[13] Letter from Chairman Tim Scott to SEC (October 1, 2021), https://www.sec.gov/comments/s7-10-21/s71021-9316493-260088.pdf.

[14] SEC Chairman Gary Gensler, Prepared Remarks: "Dynamic Regulation for a Dynamic Society" Before the Exchequer Club of Washington, D.C." (January 19, 2022), https://www.sec.gov/news/speech/gensler-dynamic-regulation-20220119.

[15] *See* FINRA, "New Research: Financial Literacy Is Significant Indicator of Positive Future Financial Outcomes and Behaviors" (October 29, 2020), https://www.finra.org/media-center/newsreleases/2020/new-research-financial-literacy-significant-indicator-positive.

understand financial education and investing tools is fundamental to enabling new investors to engage with markets and build wealth.

A 2021 Charles Schwab survey found that new investors are hungry for access to investing education and advice. Ninety percent of respondents want access to educational information to help improve their investing/trading skills, while 82% are interested in access to an investment professional to provide ongoing help and guidance. Ninety-one percent of respondents also highlighted wanting access to a platform to execute trades that is easy to use.[16] The SEC itself recognized the importance of investor education efforts in the Regulation Best Interest ("Reg BI") Adopting Release, agreeing that "Regulation Best Interest should not stifle investment education as a means to encourage financial wellness."[17]

Technology makes financial education accessible to investors at their convenience, at any time and at any place. Requiring every firm to conduct and document an onerous "conflict review" of investor education tools will simply reduce the availability of these tools and the important information they convey to investors, including interactive messages that can encourage retail investors to educate themselves about particular products and services, make investors aware of important corporate actions, encourage them to consider their cash positions when making financial decisions, incentivize them to invest in their retirement and save more effectively across their financial goals, and provide them with easy access to financial professionals for additional guidance when needed. By limiting now ubiquitous and helpful technological tools, the SEC is severely damaging the entire financial services infrastructure that facilitates the IRA and 401K savings and financial planning of millions of Americans, not just their ability to invest in and trade stocks.

IV. The Proposal's Compliance Requirements are Unworkable

The SEC's proposed rules raise serious questions about the feasibility and costs of compliance given how broadly the proposal defines "covered technology," "investor interaction," and "conflict of interest."

Firms will need to set up extensive internal processes to review each and every one of their "covered technologies" – which could number in the hundreds or thousands – to determine whether their use poses a "conflict," as that term is broadly defined in the Proposal. If a conflict of interest is found that places the firm's interest ahead of the customer's interest, the firm must "eliminate or neutralize" the conflict – under the Proposal, disclosure is not an option for addressing a potential conflict of interest. Each firm will have to adopt policies and procedures designed to prevent violations of the proposed rules while also conducting annual compliance reviews. Moreover, these processes and assessments must be rigorously documented in a firm's

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[16] *See* Charles Schwab, "The Rise of the Investor Generation", https://www.aboutschwab.com/generation-investor-study-2021.

[17] Regulation Best Interest: The Broker-Dealer Standard of Conduct (July 12, 2019), https://www.federalregister.gov/documents/2019/07/12/2019-12164/regulation-best-interest-the-broker-dealer-standard-of-conduct.

books and records. Uncertainty about the reach and enforcement of the proposed rules will likely lead to firms pulling back on technology and innovation, including in the areas of investor education and basic low-cost investing tools.

Perhaps most troubling from a compliance perspective, regulators seeking to examine firms for compliance with the proposal may in some cases need to review a broker-dealer or investment adviser's software code to determine whether the firm adequately eliminated or neutralized conflicts of interest. Not only is this a frightening and potentially illegal extension of government oversight into the proprietary technology of financial services firms, the SEC is not a technology regulator and lacks the expertise to make such assessments.

Furthermore, the SEC's proposed definition of "covered technologies" would include those "developed or maintained at a firm or licensed from third parties," meaning that a firm's compliance and review obligations would extend to third-party vendors and partners. This would force compliance officers to have the skills of a software engineer and have full transparency of third-party software to be able to analyze a technology, including understanding its code.

While ACII strongly believes that robust compliance benefits investors and the integrity of our markets, the proposed rules impose unreasonable and expensive operational and compliance challenges on broker-dealers and investment advisers, which can only lead firms to abandon their use of certain technologies or push the costs of compliance onto customers. Higher costs and less technology translate into increased barriers to market access, particularly for those historically underserved retail investors who need it most. It will make it nearly impossible for there to be any new entrants in the sector, stifle innovation, and create perverse incentives for existing players to consolidate. The SEC has proposed these onerous rules without citing compelling authority or significant evidence of abuse or malfeasance associated with broker-dealers' or investment advisers' use of technology.

V. Robust Existing Regulatory Frameworks

Broker-dealer and investment adviser communications and customer engagement practices are already subject to extensive regulations under SEC rules. Broker-dealers' public communications and customer interactions are also heavily regulated by FINRA rules. As Commissioner Mark Uyeda noted following the release of the proposed rules, "This proposed rulemaking is also wholly unnecessary. The Commission has spent considerable time recently to strengthen the regulatory framework to address broker-dealers' and investment advisers' conflicts of interests."[18]

For example, under the SEC's recently established Reg BI, as well as the long-standing fiduciary duty under the Investment Advisers Act, broker-dealers and investment advisors are

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[18] SEC Commissioner Mark T. Uyeda, "Statement on the Proposals re: Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers" (July 26, 2023), https://www.sec.gov/news/statement/uyeda-statement-predictive-data-analytics-072623.

already prohibited from placing their interests ahead of their clients' when providing personalized investment advice and are required to disclose conflicts of interest (such as commissions earned through the sale of financial products) and, if necessary, eliminate or mitigate those conflicts.[19] By requiring firms to "eliminate or neutralize" potential conflicts untethered to the provision of personalized investment advice, the proposal will effectively prevent broker-dealers and investment advisers from interacting with investors using business models that are expressly permitted, with appropriate investor protections, under Reg BI and the Advisers Act.

In addition, broker-dealers and investment advisers are subject to an extensive set of specific SEC rules governing communications with the public, including advertising and marketing communications. All communications must be based on principles of fair dealing and good faith, be fair and balanced, and comply with other FINRA regulations.[20] And the SEC already has strong rules against fraud and manipulation.

The SEC has provided no compelling rationale as to why this existing regime cannot be effectively applied to technology, and no evidence that technology inherently poses a conflict that cannot be managed through this existing regime. The proposed rules simply assume that technological tools serve the interests of the firm over the interests of the customer, with no proof. The SEC must first identify and prove real conflicts that cannot be managed by the existing regime before implementing vast regulatory changes impacting the entire securities industry.

In fact, the Proposal states that the existing regulatory frameworks already "play a fundamental role in protecting retail investors of broker-dealers, clients of investment advisers, and investors in pooled investment vehicle clients of investment advisers from the negative effects of firms placing their own interests ahead of investors' interests." In moving away from this long established regime, the SEC would set a precedent for similar changes to conflict management in all parts of the financial services sector.

Given the vast implications of this proposal, the SEC should have conducted extensive outreach and engagement to understand the use of technology in the industry today. The SEC failed to conduct this outreach and analysis necessary to formulate a proper understanding of what technologies investors use and how and why they use them. The SEC's current economic analysis fails to meaningfully assess and quantify the current benefits of technology for investors and fails to quantify any potential, speculative benefits of the rule, while vastly underestimating potential costs to the industry.

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[19] *See* SEC Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Conflicts of Interest (August 3, 2022), https://www.sec.gov/tm/iabd-staff-bulletin-conflicts-interest.

[20] *See* FINRA 2021 Report on FINRA's Examination and Risk Monitoring Program, Communications with the Public, https://www.finra.org/rules-guidance/guidance/reports/2021-finras-examination-and-risk-monitoring-program/communications-with-public.

VI. Legal Authority

The proposed rules also lack legal authority. In the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), Congress authorized the SEC to restrict "certain … conflicts of interest."[21] But the proposed rules adopt an expansive conception of "conflict" that departs radically from decades of settled law and existing conflict rules. A conflict of interest exists only when a firm with an interest contrary to a customer recommends a transaction or provides investment advice to that customer. The proposed rules apply any time a firm has "an interest." Thus, the rules apply even if the investors' interests and the firm's interests are aligned. In no world is that a "conflict of interest."

The proposed rules also stretch Dodd-Frank beyond its breaking point. Just last Term, the Supreme Court reiterated, once again, that Congress does not hide sweeping authority in vague language or ancillary provisions. When Congress wants to assign to an agency a matter of vast "economic and political significance," it makes "a clear statement to that effect."[22] Nothing like that exists here. In a paragraph of Dodd-Frank titled "Other Matters," Congress authorized the SEC to restrict "certain … conflicts of interest,"[23] not to regulate new and transformative technologies like AI, much less to oversee a firm's use of virtually anything technological, such as a simple spreadsheet. If Congress really intended to give the SEC the authority to second-guess a firm's use of Microsoft Excel, Congress would have said something along those lines in clear terms, not vaguely referenced "conflicts of interest."

Congress not only never authorized the proposed rules; they raise glaring constitutional issues. The rules would restrict, in advance, the communication (via technology) of virtually any information to an investor, unless a firm first jumps through a number of onerous SEC-constructed hoops. But as courts have recognized, there is no securities-law exception to the First Amendment.[24] Under the U.S. Constitution, unless a communication is deceptive, the mere fact that it imparts to a customer information consistent with a speaker's own interests cannot possibly justify the sweeping restraints the SEC proposes here.

VII. Conclusion

In its proposed rules the SEC fails to provide any evidence that there is anything inherently problematic about investor interactions conducted through web- or app-based technologies that would require more stringent regulation than is already applied to in-person, written, or oral engagement. In fact, the SEC doesn't demonstrate any fraud or harm to retail investors stemming from the use of technology – particularly the many simple forms of

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[21] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 913(g)(1), 124 Stat. 1376, 1828 (2010) (codified at 15 U.S.C. § 78o(*l*)(2)).
[22] *Biden v. Nebraska*, 143 S. Ct. 2355, 2375 (2023).
[23] Dodd-Frank § 913(g)(1).
[24] *See Nat'l Ass'n of Mfrs. v. SEC*, 800 F.3d 518, 521 (D.C. Cir. 2015).

technologies being used today. The proposal doesn't answer the most basic question – what real, concrete problem is the SEC trying to solve?

In spite of the lack of evidence, data or analysis, the SEC has taken a heavy-handed regulatory approach that is inconsistent with the agency's statutory mandate, in conflict with its existing rules, and harmful to investors. This approach reflects a lack of understanding of human behavior and the technology it seeks to regulate (assuming the SEC has the authority to do so in the first place, which it does not). People turn first to technology to accomplish all kinds of everyday needs and pursuits. The existing regulatory framework enables the SEC to protect investors from fraud, manipulation and conflicts of interest, no matter what tools a broker-dealer or investment advisor uses to communicate with customers.

We urge the SEC to withdraw this uninformed, unnecessary, and harmful proposal, which would reverse much of the progress that has been made towards bolstering market access and financial literacy to the benefit of everyday investors' long-term financial health.

Sincerely,

Barbara Comstock
Executive Director, American Consumer & Investor Institute