

October 10, 2023

Vanessa A. Countryman
Secretary, Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090.9

RE: Securities and Exchange Commission Proposed Rule S7-12-23

Dear Ms. Countryman:

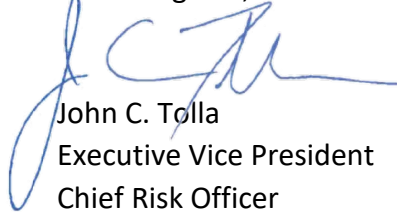
Axos Financial, Inc., and its registered subsidiaries (collectively "Axos"), submits this comment in response to the Securities and Exchange Commission's (the "Commission") notice of proposed rulemaking S7-12-23. Axos appreciates the opportunity to comment on the proposed rule and provide the Commission with its perspective. Axos Bank supports the Commission's mission to ensure the safety and stability of the United States securities industry. Because S7-12-23 is demonstrably injurious to free speech, free markets, and competition, Axos writes to oppose S7-12-23.

Among the many noble objectives of the Securities Act of 1933 was the elimination of fraud, deceit and misrepresentations during the sale of securities and investment products. Since the 1933 Act, thousands of pages of statutes and implementing regulations have been passed and issued to bolster the Commission's ability to protect investors from financial harm in the securities markets.

Notably absent from these massive volumes is any securities regulation exception to the First Amendment of the U.S. Constitution. The Commission's S7-12-23 proposed Rule apparently assumes that a speaker, in this case a broker-dealer or investment advisor, and a listener, in this case a retail investor, cannot ever have a mutual interest in the offering of the an investment product. In the Commission's eyes, a rising tide shall not ever float all boats. However, in accordance with the U.S. Constitution, broad prior restraints on commercial speech cannot be justified absent a broker-dealer or investment advisor's deception or dishonesty.

Because deceptive speech in connection with the commercial offering of investment products is already thoroughly, completely, and effectively prohibited, Axos respectfully opposes the new rules proposed by S7-12-23.

Warm regards,

A handwritten signature in blue ink, appearing to read "JCTolla", written over the typed name and title.

John C. Tolla
Executive Vice President
Chief Risk Officer