October 10, 2023

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
Submitted electronically to rule-comments@sec.gov

Re: Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers (SEC Release Nos. 34-97990, IA-6353; File No. S7-12-23)

Ameriprise Financial appreciates the opportunity to comment on the proposal by the Securities and Exchange Commission (the "Commission" or the "SEC") to create new rules under the Securities Exchange Act of 1934 ("Exchange Act") and the Investment Advisers Act of 1940 ("Advisers Act") to address conflicts of interest it perceives are associated with the use of predictive data analytics (the "Proposal").[1]

We write to share our perspective as a longstanding leader in financial planning and advice in the U.S. We serve more than 2 million individual, institutional and small business clients who entrust us to manage their assets and help them achieve their goals, including long-term financial security. Through our multiple businesses, we manage or administer more than $1.2 trillion, and are a leading wealth manager with more than 10,000 financial advisors in the U.S., a global asset manager and a high-quality insurance and annuity company. And it is through our broad capabilities and personal, long-term relationships that we develop with clients that consistently results in Ameriprise being listed among the most trusted financial services firms.

- Ameriprise Financial is a longstanding leader in financial planning and advice.
    - Our financial advisors have a focus on comprehensive financial planning tailored to the unique needs and goals of each investor. We currently employ or associate with

[1] *Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers*, Advisers Act Release No. 6353 (July 26, 2023), available at https://www.sec.gov/files/rules/proposed/2023/34-97990.pdf.

more than 10,000 dually-registered financial advisers, including 4,000 CERTIFIED FINANCIAL PLANNER™ professionals.

- We serve retail clients and provide solutions for investors with moderately sized accounts as well as those who have more substantial savings.

- Our firm offers insurance and annuity products which provide important protection, growth and guaranteed lifetime income solutions to our clients.

- We operate Columbia Threadneedle Investments, a leading global asset manager offering mutual funds, separate accounts, ETFs, and institutional asset management capabilities with over $600 billion in assets under management.

Ameriprise Financial supports the comment letters filed by our trade association partners, including those by the Securities Industry and Financial Markets Association ("SIFMA"), American Council of Life Insurers ("ACLI"), the U.S. Chamber of Commerce (the "Chamber") and the Investment Company Institute ("ICI").

The below discussion summarizes key concerns relating to the Proposal that Ameriprise Financial wishes to bring to the Commission's attention.

I. The Proposal upends current law and would result in client harm.

At a high level, the Proposal would require broker-dealers and investment advisers to:

- Evaluate any use or potential use of a covered technology by the firm or its financial advisors in a client or prospective client interaction to determine whether there is a conflict of interest;
- Determine if the conflict of interest places the interests of the firm and its financial advisors ahead of the interests of clients;
- "Eliminate or neutralize" the effect of conflicts associated with the use of covered technologies that influence client decisions or behavior and place the firm's or its financial advisors' interest ahead of clients' interests; and
- Adopt written policies and procedures, implement comprehensive controls, and generate detailed records to memorialize compliance with the proposed rules.

We respectfully request that the Commission withdraw this rulemaking in its totality. The Proposal inappropriately reframes the existing standard of conduct rules and regulations that apply to broker-dealers and investment advisers with respect to conflicts of interest, rather than address the use of predictive data analytics. As explained below, and in letters submitted by numerous trade associations, the Proposal is overly broad and unworkable.

Ameriprise Financial is concerned that the Proposal would result in a crushing compliance burden on firms without any corresponding benefit for clients. Indeed, it is likely that the Proposal would inhibit and discourage the use of beneficial technology to the detriment of retirement savers, retirees, small business owners and institutional investors. In addition, the Commission cites to

questionable authority as its basis for adopting such sweeping reforms[2] and its economic analysis of the impact of the Proposal on firms is based on faulty assumptions and data.[3]

The Proposal's defined terms are exceedingly broad, making compliance unreachable. For example, the Proposal defines a covered technology as an "analytical, technological, or computational function, algorithm, model, correlation matrix, or similar method or process that optimizes for, predicts, guides, forecasts, or directs investment-related behaviors or outcomes." This definition is so vague that it could be interpreted to encompass every piece of software—or any other technology—that a firm may use to provide services to clients, either directly or through its advisors.[4] In the financial services industry, routine means of providing clients with investment advice includes tracking customer positions and sharing market trends, and communicating with clients about these, and other, topics through phone calls or emails, which can lead to prompting clients to take actions (or not take actions). Clients of financial services firms expect this level of service from their advisors. The Proposal would place significant compliance burdens on these helpful services by defining them as using "covered technology" in an "investor interaction," and thereby creating a chilling effect on the development of technologies and services that are beneficial to clients.

Similarly, the definition of an "investor interaction" is so overreaching that it would cover virtually every substantive interaction between a firm and its current and prospective clients. This definition includes even discretionary investment management services, which is remarkable given that the exercise of investment discretion does not involve any client interaction as commonly understood.

Further, this Proposal would extend to technology developed, maintained, or licensed from third parties who would surely take issue with firms accessing their proprietary and confidential software in search of potential ways their applications could be construed to consider any firm interest. And if a firm were able to sift through a vendor's trade secrets and determine that a potential conflict exists, it seems unlikely the third party developer would take instruction on how to "neutralize" that conflict. Further, such examination of third party technology is completely unnecessary in instances where a firm is not providing its own client or product data as inputs to drive the underlying methodology. This is the case for many digital engagement software and data packages made available to financial planning firms.

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[2] *See* Joint Trade Association Comment Letter to SEC Regarding Predicative Analytics Proposal (Sept. 11, 2023), available at https://www.lsta.org/content/trade-association-pda-comment-letter/.

[3] The SEC estimates that even firms which deploy several types of covered technologies would spend only $156,000 to come into compliance, with costs of $78,000 per year. Given the various business units (including legal, compliance portfolio management, investment technology and operations) within a firm that would be involved in identifying and addressing potential conflicts for potentially thousands of communications and applications every year, these estimates cannot possibly be close to accurate. This is particularly clear when considering that, in cases where regulations either conflict or are ambiguous, third parties may be needed to assist firms in interpreting and developing compliance controls, driving up costs even more.

[4] We note that when the SEC's Director of Investment Management spoke in September 2023 before the House Financial Services Committee, he was asked to point to specific technologies that would not be subsumed under the definition of "covered technology" under the Proposal. The Director failed to provide any examples of technology that would not be regulated. *See* "Oversight of the SEC's Division of Investment Management" Subcommittee on Capital Markets (September 19, 2023).

In addition, the Proposal creates a new definition of a conflict of interest. According to the Proposal, "a conflict of interest would exist when a firm uses a covered technology *that takes into consideration an interest of the firm or its associated persons*" (emphasis added).[5] This definition effectively redefines the concept of a conflict of interest in a way that disregards current regulation and guidance, including with the SEC's own Regulation Best Interest ("Reg BI") and the Fiduciary Interpretation.[6] Both of those standards address situations where there is an actual conflict of interest, not merely the presence of any firm interest.[7] Importantly, the Proposal does not consider the vast majority of scenarios where a firm's interests are aligned with those of its clients – for instance in growing a client's retirement savings or recommending affiliated products that align with the client's financial goals and investment objective, has performance returns above the peer group average, and charges a substantially similar fee to reasonably available non-affiliated products.

Because there are no meaningful limitations on the defined terms, firms would under the first prong of the proposed rules[8] need to dedicate staggering resources to develop compliance programs that would effectively inventory, review, test, and monitor every covered technology to determine whether there is a potential conflict of interest. After such an exhaustive review, firms would then need to determine whether the conflict of interest actually puts the interest of the firm and its advisors ahead of the interests of clients such that the firm would have to eliminate or neutralize the effect of the conflict. A firm would then need to maintain voluminous documentation and perform continuous diligence to ensure any improvements made to the covered technology would not introduce a potential conflict of interest necessitating another exhaustive evaluation.

We respectfully submit that this process is inefficient and inconsistent with how broker-dealers and investment advisers currently evaluate and address conflicts of interest. The Commission's approach here requires firms to conduct an exhaustive review of covered technology regardless of whether the use of that technology creates an actual conflict of interest between the firm and its clients. The likely result is that firms will soon find themselves being in the business of evaluating covered technology, or worse, preventing innovations in covered technology so as to not add to the burden of the never-ending evaluations of covered technology — rather than being in the business of serving clients.

II. The Proposal overrides and conflicts with Reg BI and the Fiduciary Interpretation.

The Commission is proposing to apply a different, yet overlapping standard to addressing conflicts of interest than that currently required under Reg BI and the Fiduciary Interpretation. The Proposal would require firms to not eliminate or disclose, but to "neutralize" the effects of conflicts of interest in covered technologies used in investor interactions. This neutralization approach contradicts the Fiduciary Interpretation, which permits advisers to manage conflicts with advisory

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[5] *See* Proposal at 80.

[6] *Commission Interpretation Regarding Standard of Conduct for Investment Advisers*, Advisers Act Release No. 5248 (June 5, 2019) (the "Fiduciary Interpretation").

[7] The Interpretation reaffirms the principle that "[u]nder its duty of loyalty, an investment adviser must eliminate or make full and fair disclosure of all conflicts of interest which might incline an investment adviser – consciously or unconsciously – to render advice which is not disinterested such that a client can provide informed consent to the conflict. Interpretation at p.8. *See also* Exchange Act Rule 15l-1(b)(3) (defining a conflict of interest as "an interest that might incline a broker, dealer, or natural person who is an associated person of a broker or dealer - consciously or unconsciously - to make a recommendation that is not disinterested").

[8] *See* proposed Advisers Act Rule 211(h)(2)-4(b)(1) and proposed Exchange Act Rule 15l-2(b)(1).

clients by providing full and fair disclosure and obtaining informed consent. The Proposal also seeks to apply different standards for mitigating conflicts of interest when those conflicts involve a covered technology as opposed to when those conflicts involve investment recommendations under Reg BI. The imposition of different standards is unworkable in practice, given that technology is often embedded in the investment recommendation process and cannot be parsed out to comply with competing and conflicting standards.

Moreover, the definition of "investor" under the Advisers Act includes investors in pooled funds (i.e., mutual funds and certain private funds) and institutional clients, which would impose unreasonable compliance burdens on investment advisers detached from any discernable benefit to such investors and clients. We stress that each mutual fund is already subject to oversight by a board of directors that has a fiduciary duty to protect the interests of the fund and its shareholders, and has oversight responsibilities for the operation and management of the fund. Sophisticated private fund investors and institutional clients do not need the purported protections that the Proposal seeks to impose. In this regard, the Proposal is fundamentally inconsistent with the Fiduciary Interpretation, which acknowledges the differences that exist when an adviser provides discretionary investment services to retail clients, mutual funds and institutional clients.

We respectfully submit that if the Commission wishes to revisit the treatment of conflicts of interest under Reg BI and the Fiduciary Interpretation, it should have proposed amendments directly rather than creating another conflict of interest regime that is inconsistent with the existing regulatory framework.

III. Clients are well-served under existing regulation.

The Commission fails to make a compelling argument that existing regulations are insufficient to protect clients from conflicts related to covered technology. The current regulatory framework governing broker-dealers and investment advisers has proven to be highly effective in protecting clients, and flexible and adaptable in order to encourage innovation that benefits clients.

From an investment adviser perspective, communications with clients and prospective clients are subject to the general anti-fraud provisions under Advisers Act Section 206 and the rules thereunder, including extensive recent regulation under the Advisers Act Rule 206(4)-1(the "Marketing Rule"). Likewise, broker-dealers are required to comply with stringent regulatory guidance when it comes to communications with the public. FINRA Rule 2210 governs communications with the public and FINRA Rules 2241 and 2242 specifically require broker-dealers to identify and manage conflicts of interest that relate to a recommendation, rating or price target produced by a research analyst.

Advisers Act Rule 206(4)-7 and Exchange Act Rule 15l-1(a)(2)(iii) already require firms to adopt and implement written policies and procedures reasonably designed to prevent regulatory violations. In addition, FINRA Rules 3110, 3120 and 3130 require broker-dealers to establish, maintain, review, test, and modify written compliance policies and written supervisory procedures. Investment advisers and broker-dealers have implemented conflict inventories and assessments, as well as a process for revisiting conflicts periodically based on changes in the business, the market, and the regulatory environment. The Commission fails to demonstrate why the existing regulations

covering a firm's policies and procedures and annual testing requirements are inadequate to address conflicts of interest associated with emerging technology.

IV. Conclusion

We respectfully request that the Commission withdraw this Proposal in its entirety. Given our concerns, which are shared across the financial services industry, Ameriprise recommends that the Commission solicit further input from firms and industry participants regarding emerging technology, including artificial intelligence and machine learning. We ask that any Commission action relating to emerging technology be carefully considered and weighed in light of the robust protections already provided to retirement savers, retirees, small business owners and institutional investors under the regulatory framework that governs investment advisers and broker-dealers and the potential negative impact on those clients. Ameriprise Financial would welcome the opportunity to participate in further discussions regarding the risks and benefits of emerging technology, but the current Proposal is premature and deeply flawed.

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We appreciate the Commission's consideration of our comments. We are proud to be a constructive voice in the regulatory process advocating for our clients and look forward to continued discussion on this important topic.

Respectfully Submitted,

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Ameriprise Financial Services, LLC.

cc: The Honorable Gary Gensler, Chair
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