NASP
National Association of Securities Professionals

October 10, 2023

Chair Gary Gensler
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chair Gensler:

This letter is submitted on behalf of the National Association of Securities Professionals (NASP), an organization dedicated to supporting people of color and women in achieving inclusion in the financial services industry since our founding in 1985. From a core group of 44 people in attendance at our first organizational meeting, NASP has grown to become a resource for diverse professionals within the securities and investments industry. Headquartered in Washington, D.C., NASP currently has 11 local chapters throughout the United States and boasts a membership of over 500.[1] Today, NASP continues to serve as a resource and a voice for its members at the federal, state and local levels of government working to promote and advance the inclusion of minorities in corporate America, both in the workforce and as a valued customer base.

We appreciate the opportunity to comment on the SEC's proposed rule regarding "Conflicts of Interest Associated with the Use of Predictive Data Analytics by BrokerDealers and Investment Advisers" (the "PDA Rule").[2] While we recognize the Commission's attempts to protect investors from potential misuses by broker-dealers and investment advisers of certain emerging technologies, the SEC has proposed to subject essentially every form of technology in almost any customer interaction to additional, prescriptive regulations – all without collecting sufficient data to meaningfully assess the costs and benefits of its proposed approach.[3] Similar to the concerns set forth in our February 28, 2023 comment letter in response to the Commission's December 2022 market structure proposals,[4] NASP believes that the PDA Rule (both individually and in conjunction with the SEC's market structure proposals) could result in a lack of access to the stock market for underserved demographics. This lack of access could negatively impact the ability of minorities, women, and individuals with smaller accounts to build wealth and, in turn, further widen the existing diversity gap in investing.

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[1] NASP website, https://nasphq.org/about-us/.
[2] https://www.sec.gov/files/rules/proposed/2023/34-97990.pdf.
[3] See https://www.sec.gov/comments/s7-12-23/s71223-258279-605062.pdf; https://www.sec.gov/comments/s7-12-23/s71223-261319-615782.pdf.
[4] https://www.sec.gov/comments/s7-31-22/s73122-20158251-326339.pdf

As described in more detail below, NASP is also concerned that the PDA Rule's overly-broad approach to regulating technology in the financial industries is likely to make it more difficult for minority financial services firms and vendors to compete and in turn harm investors by exacerbating the existing diversity gaps in investing. For these reasons, among others, we respectfully request that the Commission withdraw the PDA Rule.

I. The PDA Rule May Make it More Difficult for Minority-Owned Firms to Compete

The financial services industry continues to suffer from a lack of diversity. As House Financial Services Committee Ranking Member Maxine Waters has stated, "despite rapidly changing demographics, the financial services industry remains mostly white and male."[5] According to a recent study, among retail broker-dealers and financial advisors, 85% of employees are white, 5% are Hispanic, 4% are Asian, and 3% are Black.[6] Alan Hughes has pointed out that for Black employees with access to retirement plans, "retirement assets are managed almost entirely by people who look nothing like them."[7] Moreover, "the lack of color in the industry means fewer Black asset management firms of scale that are more likely to hire minority professionals and invest in minority-owned businesses."[8]

As the U.S. Senate Committee on Small Business & Entrepreneurship notes, while the number of businesses in minority communities has grown, "there is still a disparity when it comes to access to capital, contracting opportunities and other entrepreneurial development opportunities for minority-owned firms. Though minorities make up 32 percent of our population, minority business ownership represents only 18 percent of the population."[9] In the financial services sector, minority-owned banks, broker-dealers, investment advisers, and vendors continue to struggle to compete with large incumbent firms.[10]

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[5] *See* Ranking Member Waters Urges Fortune 100 Financial Services CEOs to Remain Committed to Diversity and Inclusion Efforts Despite Republican Threats (August 25, 2023), https://nasphq.org/ranking-member-waters-urges-fortune-100-financial-services-ceos-to-remain-committed-to-diversity-and-inclusion-efforts-despite-republican-threats/.

[6] Miriam Rozen, Nearly a Decade After Landmark Case, Brokerage Industry Shows Scant Progress on Diversity (October 4, 2022), https://www.advisorhub.com/nearly-a-decade-after-landmark-case-brokerage-industry-shows-scant-progress-on-diversity/#:~:text=Among%20retail%20brokers%20and%20financial,Diversity%20%26%20Inclusion%20Leadership%20Summit.%E2%80%9D.

[7] Black Asset Managers and the Fight for Investment Capital (May 12, 2022), https://atlantatribune.com/2022/05/12/black-asset-managers-and-the-fight-for-investment-capital/.

[8] *Id.*

[9] Minority Entrepreneurs, https://www.sbc.senate.gov/public/index.cfm/minorityentrepreneurs.

[10] *See supra* n.19 ("The non-profit John S. and James L. Knight Foundation found that firms owned by women and people of color managed just 1.4% of assets in the $82.24 trillion asset management industry as of September 2021. In fact, diverse-owned management firms' collective assets under management (AUM) barely increased from where they stood in 2016 (1%) to the current 1.4% over five years – despite an increasingly diverse workforce contributing to retirement plans.").

Much work remains to be done to increase diversity in the financial services industry, and legislators and regulators play an important role in achieving this important goal. NASP is concerned that the PDA Rule may stifle innovation and make it even more difficult for financial services firms to utilize technology to effectively operate their businesses and service their customers.[11] The PDA Rule will further exacerbate the competitive challenges facing minority-owned financial services companies, which are often smaller and depend on technology to compete with their larger, better resourced peers. As the PDA Rule acknowledges:

> The proposed conflicts rules could also result in costs that could act as barriers to entry or create economies of scale, potentially making it challenging for smaller firms to compete with larger firms utilizing covered technologies – as firms continue to increasingly rely on covered technologies for investor interactions. Ensuring compliance with the proposed conflicts rules would require additional resources and expertise, which could become a significant barrier to entry, potentially hindering smaller firms from entering the market or adopting new technologies. Moreover, larger firms with a larger client or customer base may have a competitive advantage over smaller firms because they may be better able to spread the (fixed) cost of the proposed conflicts rules across their clients, or more effectively negotiate with third party providers to obtain compliant technology externally. Smaller firms subject to the proposed conflicts rules could also face a competitive disadvantage compared to larger firms when negotiating with technology companies to build software that complies with the proposed conflicts rules.[12]

NASP is also concerned that the PDA Rule could disproportionately impact small minority-owned financial services vendors, which are likely to be indirectly affected by the Proposal.[13]

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[11] While emerging technologies are likely to replace certain low-tech jobs where minorities are often overrepresented as a percentage of the total workforce, "digitalization holds out significant opportunities for less-educated or historically marginalized workers or groups to move up the employment ladder," including in the financial services industry. https://www.brookings.edu/wp-content/uploads/2017/11/mpp_2017nov15_digitalization_full_report.pdf
In addition, according to recent research, younger Americans value working for companies that employ modern technology and "relate technology with work-life balance and morale," with 70% of Gen Z employees reporting that they would leave their job for better technology."
https://www.cfo.com/news/70-of-gen-z-employees-would-switch-jobs-for-better-tech-weekly-stat/654527/#:~:text=According%20to%20researchers%2C%20Gen%20Z,when%20contemplating%20a%20job%20move.

[12] *See* PDA Rule at 193-94.

[13] The SEC recognizes that "third-party providers play a growing role with respect to the development of covered technologies," and that the PDA Rule "could also indirectly affect third-party service providers that provide covered technologies used by [broker-dealers and investment advisers]." *See id.* at 151, 154.

II. Targeting Technologies that Serve a New Generation of Investors is Likely to Make Investing More Expensive, Less Accessible, and Less Relevant

Recent data shows higher levels of engagement in the stock market among younger minorities, women and other historically underserved communities since the industry's adoption of the zero commission model in 2019.[14] For example, a 2021 study by the Financial Industry Regulatory Authority ("FINRA") Investor Education Foundation found that investors who opened a taxable income account in 2020-2021 were younger, had smaller incomes, and were more diverse than in previous years.[15] A 2020 study by Ariel-Schwab confirms that growing engagement in the stock market is in fact being led by younger Black Americans; three times as many black investors as white investors (15% vs. 5%) reported having invested in the market for the first time in 2020, and 29% of Black investors under the age of 40 were new to investing in 2020 compared to 16% of white investors.[16] Additionally, when it comes to growing and protecting their assets, Black Americans are less trusting of people (32% vs. 45%) and more trusting of technology (31% vs. 21%), than white Americans.[17]

NASP believes that "the rise of retail investing has been fueled by a new generation of companies that are leveraging technology and innovative approaches to empower individual investors. These companies have dismantled barriers to entry, making it easier for people from all walks of life to participate in the financial markets."[18] The expansive approach and burdensome compliance requirements targeting the use of technology in the PDA Rule, however, risk harming retail investors and reversing the trends of rising participation and inclusivity in U.S. capital markets.

III. Conclusion

Adopting new regulations that disincentivize the development and use of technology in the financial services industry is likely to make investing more expensive, less accessible, and less relevant to a new generation of Americans who until recently were often unable to take advantage

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[14] *See* Deloitte Center for Financial Service, "The rise of newly empowered retail investors" (2021), https://www2.deloitte.com/content/dam/Deloitte/us/Documents/financial-services/us-the-rise-of-newly-empowered-retail-investors-2021.pdf.

[15] FINRA, "Investing 2020: New Accounts and the People Who Opened Them" (February 2021), https://www.finrafoundation.org/sites/finrafoundation/files/investing-2020-new-accounts-and-the-people-who-opened-them_1_0.pdf.

[16] Ariel-Schwabb, "New Ariel-Schwab Black Investor Survey Shows Black Americans Continue to Trail Their White Counterparts in Building Wealth" (December, 2020), https://www.aboutschwab.com/ariel-schwab-black-investor-survey-2021?utm_source=morning_brew.

[17] Ariel-Schwab Black Investor Survey (January 2022) ("Ariel-Schwab Black Investor Survey 2022"), https://www.schwabmoneywise.com/tools-resources/ariel-schwab-survey-2022.

[18] Konstantin Rabin, "New Platforms, Apps Help Retail Investors Grow Their Wealth," Yahoo!Finance (September 20, 2023), https://finance.yahoo.com/news/platforms-apps-help-retail-investors-095900415.html?guccounter=1.

of the wealth-creating benefits of U.S. stock and fixed income markets. For the reasons set forth above, among other concerns, NASP respectfully requests that the Commission promptly withdraw the proposed PDA rule.

Ronald C. Parker – NASP President & CEO

cc: Commissioner Hester Peirce
Commissioner Caroline Crenshaw
Commissioner Jaime Lizárraga
Commissioner Mark Uyeda
Pamela Gibbs, Director of the SEC Office of Minority and Women Inclusion
Robert Marchman, SEC Senior Policy Advisor on Diversity and Inclusion
Cristina Martin Firvida, Director of the SEC Office of the Investor Advocate