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Edward Jones

October 10, 2023

Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

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:

Edward D. Jones & Co., L.P. appreciates the opportunity to comment on the Securities and Exchange Commission's (the "Commission") proposed rule on Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers (the "Proposed Rule").[1]

Edward Jones is one of the largest financial services firms in the United States, serving the needs of eight million U.S. investors through personalized service provided by over 19,000 financial advisors. Our financial advisors work in all fifty states and, through deep personal relationships bolstered by innovation, serve individual investor clients from all economic backgrounds and income levels.

At Edward Jones, we are focused on using artificial intelligence and other sophisticated technologies responsibly to achieve a positive impact for our clients. We are excited by the possibilities of innovation to deliver more value for our clients and to deepen relationships between clients and advisors. Consistent with our client-focused philosophy, our governing principles for the use of artificial intelligence prioritize human-centeredness, accountability, security and privacy, inclusiveness, and transparency. We hold ourselves accountable for using artificial intelligence to better serve clients, reduce unnecessary inefficiencies, and improve experiences. At the same time, we aim to ensure that our use of technology not only complies with regulations but also remains true to our firm purpose to improve the lives of our clients and colleagues and better our communities and society.

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[1] Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker Dealers and Investment Advisers, July 26, 2023, *available at* https://www.sec.gov/files/rules/proposed/2023/34-97990.pdf. ("Predictive Data Analytics Proposal")

While we expect that the Proposed Rule would have significant impact on Edward Jones as a firm, more importantly, we view the proposal through the lens of our clients. We support the Commission in seeking to advance regulation to meet the challenges and opportunities of artificial intelligence and other technologies but are concerned the Proposed Rule, as written, would create unintended impediments to our clients' ability to achieve financially what is most important to them.

As we discuss in further detail below, we are confident that the Commission did not intend for the Proposed Rule to stifle the use of current and future technologies used to identify and protect vulnerable investors or to help retail clients identify their own financial priorities, among other important services that enrich the financial lives and futures of our clients. Nonetheless, the vagueness and breadth of the definitions used in the Proposed Rule would limit these and other client-supporting technologies.

We therefore recommend that, if the Commission moves forward with this proposal, it should narrow the scope of the Proposed Rule to prevent undermining the adoption of technologies that efficiently and effectively benefit investors. After developing a rule proposal more narrowly tailored to address investor protection concerns, the Commission should then revisit its economic analysis and provide opportunity for robust public feedback.

Our comment letter will focus on the impact of the Proposed Rule on our clients from our unique lens in providing human-centered financial services to Main Street investors across the United States. Our concerns are more far-reaching than expressed in this letter, though, and we share the concerns expressed in the comment letters submitted by the Investment Company Institute, SIFMA, the Insured Retirement Institute, and the U.S. Chamber of Commerce. We urge the Commission to carefully consider these comments regarding the challenges of the proposal and the chilling effect it could have on the use of technologies that could ultimately aid and protect investors.

A. The Proposed Rule would make firms' use and development of beneficial technology burdensome, to the detriment of clients

We acknowledge the Commission's perspective on the risk of conflicts of interest, but we worry that the Commission has undervalued the real-life opportunities that technology delivers to serving retail clients. Artificial intelligence and other sophisticated technologies can, for example, give human financial advisors the opportunity to expand their capacity to serve clients more deeply. It can help pinpoint client priorities, enhance compliance, accelerate responsiveness to clients, and find patterns that develop value and lower costs for clients.

The Proposed Rule's broad definition of "covered technology," however, would undercut the opportunity to promote effectiveness and efficiency using *any* technology—including, as the Commission acknowledges, well-established uses of current

technology,[2] automation that is shared with clients, and manual and human processes that are based on underlying computation, even when valuable to investors. Such beneficial technologies potentially within the scope of the Proposed Rule's broad definition could include:

- A website that provides financial education to clients, prospective clients, and the public, used primarily to serve and educate clients and communities, but also to promote better-informed discussions between financial advisors and clients and to enable prospective clients to access reliable information.
- A machine learning tool that identifies risk factors indicating that older adult clients may be at risk for exploitation, used primarily to comply with supervision and regulation, but also to better protect, serve, and educate clients.
- An "app" that allows clients to select and rank their financial goals, used to provide information for financial advisors to discuss with the clients and develop investment recommendations tailored to clients' own unique priorities.
- A website function that asks potential clients to input their geographic location and investment priorities, used to best match with a local financial advisor who specializes in certain relationships or strategies that the prospective client is seeking.
- A practice management dashboard that provides feedback and suggestions, used to help financial advisors be even more responsive to clients.

While these and other technologies may be valuable to investors, the broad definition that the Commission proposes for "covered technology" would predictably have the effect of disincentivizing firms from utilizing existing technologies and innovating to better serve investors. In particular, technologies falling under the broad definition—nearly *any* type of computation or automation—would trigger costly compliance requirements, despite their benefits for investors. Under the compliance provisions of the Proposed Rule, firms would need to identify all covered technologies, evaluate whether those technologies incorporate any firm factor or interest, record whether a "conflict" exists, periodically re-evaluate the technology, and implement significant documentation requirements throughout*, even when a firm knows that a technology it uses would not result in elevating firm interests above investor interests.* These requirements would discourage firms' use and development of technology to avoid undertaking substantial compliance resources to disprove what ultimately would be a phantom conflict.

Overall, the prospect of expending wholly unnecessary compliance resources to prove a negative will be a key consideration for firms in employing *any* technology—and will likely lead to firms declining to use or develop technologies that would have been helpful to retail investors. Disincentivizing the adoption of technology not only deprives

[2] *See* Predictive Data Analytics Proposal at 44 (discussing the application of the Proposed Rule to algorithms in a spreadsheet used to optimize asset allocation recommendations.)

clients of value-enhancing tools but also inhibits efficiencies for firms, resulting in firms serving fewer clients or shifting their focus to wealthier clients. This outcome would be antithetical to the Commission's goals to preserve and promote Main Street investors' access to the markets and high-quality investment advice.

B. If the Commission proceeds with proposal, it should narrowly tailor any final rule to observed risks that are not within the scope of current regulation

We agree with the Commission that the use of new technologies in novel ways can present potentially unforeseen risks to investors—if those uses are not already regulated by existing rules. We believe that the Commission's concerns about the potential conflicts of interest that may be embedded in firms' use of technology are already fully addressed by existing regulation, including Regulation Best Interest,[3] the fiduciary duty for investment advisers,[4] and marketing rules promulgated by the Commission and FINRA. As Chair Gary Gensler recently stated, "[t]hese challenges of data analytics are not new,"[5] and investment advisers and broker-dealers already must act in the best interests of clients in making recommendations, whether using technology or not. In view of the already-robust standards of conduct and regulations combined with the risk of depriving investors from the opportunities of valuable technology, as discussed above, we do not believe the Commission identifies an additive benefit that warrants moving forward with this proposal.

If the Commission does move forward, however, we recommend that it refine its current proposal by more precisely matching any truly novel risks posed by artificial intelligence and other new technologies with pinpointed regulation, keeping in mind that some risks that the Commission seeks to address may already be in scope of the current regulatory framework. A more narrowly tailored rule keyed to address the novel risks specifically posed by firms' use of artificial intelligence would better promote investor protection and avail clients of access to value-enhancing and efficient technology, all while preventing unnecessary regulation that discourages firms from using or developing client-beneficial or well-established tools.

We recommend that the Commission narrow its proposed rule in the following ways, as discussed in further detail below:

- Limit any rule to apply only to artificial intelligence technologies;
- Limit any rule to apply only to technologies that interact directly with investors; and

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[3] Regulation Best Interest: The Broker-Dealer Standard of Conduct, June 5, 2019, *available at* https://www.sec.gov/files/rules/final/2019/34-86031.pdf. ("Regulation Best Interest")

[4] Commission Interpretation Regarding Standard of Conduct for Investment Advisers, June 5, 2019, *available at* https://www.sec.gov/files/rules/interp/2019/ia-5248.pdf. ("Fiduciary Duty Release")

[5] *See* Chair Gary Gensler, "Isaac Newton to AI:" Remarks before the National Press Club, (July 17, 2023), *available at* https://www.sec.gov/news/speech/gensler-isaac-newton-ai-remarks-07-17-2023.

- Align any rule with Regulation Best Interest and the Advisers Act fiduciary duty.

1. Limit any rule to apply only to artificial intelligence technologies

While we are concerned that any new rule focused on technology would undercut innovation that benefits clients, we are particularly concerned that the current proposal is overbroad in applying to established, nascent, and future technologies, all at once. If the Commission moves forward with this rule, we recommend that it redefine "covered technologies" to apply only to present technology and reasonably foreseeable developments.

With respect to already developed, used, and established technologies, such as simple algorithms applied in spreadsheets to support advisors' recommendations, we believe those technologies are already within scope of existing regulation such as Regulation Best Interest and the Advisers Act Marketing Rule. The risks associated with the uses of these established technologies have not fundamentally changed and therefore do not merit further regulation. Complying with a new rule would not create any benefits for investors and would instead only increase the costs for firms to continue to deploy extant technologies, with predictable downstream effects on firms' capacity to serve retail investors.

With respect to yet-unknown future technologies, while we appreciate the Commission's goal of making any new rule technology-neutral for the future, we cannot predict the benefits and risks of technology that is yet to be developed or assume any rule adopted today would stretch to apply to those circumstances.

Because re-regulating the past is duplicative and pre-regulating the future is unpredictable, we recommend that the Commission focus only on present and reasonably identifiable foreseeable challenges. Specifically, we suggest that the Commission redefine "covered technology" to target solely artificial intelligence and machine learning, defined as technology that is designed to learn from experience without being explicitly programmed to do so.

This narrow and more precise definition would clarify that established and manual processes, like those employed in Excel spreadsheets, fall far outside of the scope of the Proposed Rule, as do future technologies with structures, objectives, and uses we cannot yet accurately foretell. Rather, technologies covered by any prospective rule should meet the present focus on artificial intelligence by applying only to technology that evidences autonomy in how it learns. Indeed, these are the technologies that appear to pose the greatest concern for the Commission due to their complexity, speed, and wide-scale deployment.

We further recommend that the Commission remove from the definition of "covered technologies" any technologies that merely “predict,” “guide,” “forecast,” or “optimize for” investment-related behaviors or outcomes. Rather, a covered technology should have to actually “direct” investment behaviors to fall within the scope of the Proposed Rule.

Doing so would narrow the definition to focus on the actual risks concerning the Commission and not tip over into uses that have no connection with investors' actual decision-making, investments, or transactions.

2. **Limit any rule to apply only to technology that interacts directly with investors**

If the Commission proceeds with this rulemaking, we also recommend that it limit the scope of any rule to apply only to covered technologies that interact directly with investors, *without* human intermediation.[6] "Human intermediation" would mean a human reviewing a technology—including the output, outcome, or results of a technology—before communicating to an investor. Under such a revision, a "covered technology" would not, for example, include the circumstances in which a financial advisor emails the results from a proprietary tool to an investor to explain projected retirement savings or recommends a technology-generated investment portfolio to a client based on the client's profile. In those scenarios, the financial advisor exercises significant discretion based on his or her human experience in connection with those investor interactions.

Where humans associated with registered investment advisers and broker-dealers apply their judgment to evaluate, recommend, communicate, or otherwise intermediate between a technology and an investor, further regulation is unnecessary for two reasons.

First, the humans associated with investment advisers and broker-dealers are already subject to robust regulation when interacting with retail investors. These regulations include standards of conduct that impose a duty of care and duty of loyalty and Commission and FINRA solicitation rules that limit how tools are shared with prospective clients. Such regulation already requires, for example, that broker-dealers act in the best interest of a retail customer when making recommendations (Regulation Best Interest), and that investment advisers desist from using fraudulent, deceptive, or manipulative practices to solicit clients (Advisers Act Marketing Rule). Adding the obligations of the Proposed Rule would merely add compliance costs without providing any additional benefits to our clients or the Commission.[7]

Second, direct human interactions between advisors and investors do not elevate the same (or same level of) risks that direct technology interactions raise for the Commission. Specifically, human interactions do not automate behavioral prompts or create a risk of manipulation that may be present in technologies of concern to the Commission. Nor do human interactions have the potential for speed or the "inherent

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[6] Alternatively, we recommend that the Commission limit the Proposed Rule by scoping out any interactions, whether directed through technology or intermediated by humans, that are already subject to governance by existing regulations.

[7] We further recommend that, instead of proposing overlapping standards and compliance requirements through the Proposed Rule, the Commission should issue targeted guidance on how to apply the elements of the existing regulatory framework on the use of technology.

complexity and ability to rapidly scale transmission of conflicted actions across a firm's investor base" that raise the Commission's concerns about technology. Regulating human interactions from the technology lens alone does not fairly address the very different potential risks posed by different methods of interaction.

3. **Align any rule with Regulation Best Interest and the Advisers Act fiduciary duty**

Regulation Best Interest established a standard of conduct for broker-dealers to act in the best interest of their retail customers when making a recommendation and to address conflicts of interest by disclosing and mitigating or eliminating those conflicts.[8] Similarly, the Commission's 2019 interpretation of investment advisers' fiduciary duty plainly stated that "the adviser must, at all times, serve the best interest of its client and not subordinate its client's interest to its own."[9] Regulation Best Interest and the fiduciary duty for investment advisers have created a robust regulatory framework that protects investors and provides clear guidelines to firms serving retail clients. As Chair Gensler has said, "At the heart of Reg BI and the IA fiduciary standard is something my mom…would have said: You have to put your client's interests first."[10] We agree.

Given that Regulation Best Interest and the Advisers Act fiduciary duty are the gold standards for "put[ting] your client's interest first," we recommend that the Commission align any final rule entirely with those regulations. The Proposed Rule, however, deviates from this valuable regulatory framework in two notable ways.

The first deviation is that the Proposed Rule defines "conflict of interest" widely to apply to technology uses that take into consideration a firm or financial professional's interest, *regardless of whether that interest is placed ahead or behind a client's interest*. That definition is different from both the traditional use of the term and the Commission's own regulations. We suggest instead that the Commission redefine "conflict of interest" to be consistent with how that term is used in Regulation Best Interest—recommendations that actually place a firm's or professional's own interests ahead of an investor's interests.

The second deviation from the standards of conduct framework is that the proposal establishes new requirements for resolving those conflicts of interest that do place firm interests over investor interests—*i.e.*, those conflicts must be eliminated or "neutralized." We instead recommend that the Commission align any final rule to allow firms to resolve conflicts of interest that manifest through technology through the same "eliminate, mitigate, and disclose" rubric used in Regulation Best Interest. We believe that the effective layered disclosure and mitigation strategies required under Regulation

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[8] *See* Regulation Best Interest.

[9] Fiduciary Duty Release at 8.

[10] *See* Chair Gary Gensler, "Good Counsellors": Remarks Before the Investment Adviser/Investment Company National Seminar: Compliance Outreach Program, (Nov. 15, 2022), *available at* https://www.sec.gov/news/speech/gensler-ia-ic-national-seminar-20221115.

Best Interest fulsomely address conflicts of interest, including those that may be embedded in firms' and financial professionals' use of technology.

Aside from the benefits of clarity and alignment across the regulatory framework, harmonizing the definition of "conflict of interest" and the means of conflict resolution with Regulation Best Interest levels two advantages:

- Allowing firms to funnel supervision resources on the precise behavior that could lead to actual harm to investors through firms' use of technology, *i.e.*, recommendations that lead to transactions.
- Eliminating many of the costly, duplicative, and innovation-chilling compliance requirements that would otherwise adhere to the technologies that we noted earlier in our letter. Further, doing so would allow firms to build on their current, tested, and robust conflicts compliance processes, rather than starting from scratch to develop a new compliance process for a new kind of "conflict."

Overall, such harmonization would be effective not only to prevent firms and financial professionals from putting their interests ahead of investors through the use of technology, just as under Regulation Best Interest and the Advisers Act fiduciary duty, but also to preserve firms' abilities to provide useful technology to clients to drive results, identify risks, and reduce client costs.

4. The Commission must seek public comment before adopting any alternative as a final rule

We believe our recommendations for alternative rule text would meet the Commission's appeal to address unregulated spaces while still fostering innovation to benefit clients. We think such a tailored rule would be well capable of addressing the risks that raise the most salient concerns for the Commission.

While we believe that clients and firms would benefit from the Commission adopting our alternative as a final rule, we are aware that most commenters to the Proposed Rule will concentrate on responding to the elements of the rule that the Commission actually proposes, and not on alternatives.

We thus urge the Commission to seek additional public input and subject any alternatives that it is considering to a robust cost-benefit analysis before adopting any alternative as a final rule. Such input will be valuable and appropriate given the varied potential alternatives discussed in the Proposed Rule, the different means by which any alternative version of the rule can be structured, and the broad impact across investors and the industry of any rule that the Commission ultimately adopts.

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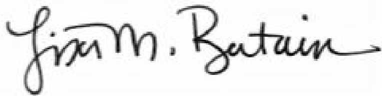
For over 100 years, Edward Jones has worked to create a better future for our clients, their families, and communities. We applaud the Commission's commitment to protecting and supporting Main Street investors and stand ready to work with the Commission and its staff on this significant proposal.

Sincerely,



Lisa Bertain

Interim General Counsel

cc: Hon. Gary Gensler, Chair
Hon. Hester M. Peirce, Commissioner
Hon. Caroline A. Crenshaw, Commissioner
Hon. Mark T. Uyeda, Commissioner
Hon. Jaime Lizárraga, Commissioner