Morgan Stanley

By electronic submission

October 10, 2023

Vanessa A. Countryman
Secretary
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:

Morgan Stanley appreciates the opportunity to comment on the Securities and Exchange Commission's ("**SEC**") proposed rules regarding Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers ("**Proposed Rules**").[1]

Morgan Stanley is a leading full-service global financial services company.[2] Since our founding in 1935, Morgan Stanley has been a client-focused organization providing a range of financial services and advice to individuals, corporations, and institutions. Our employee code of conduct stresses the primacy of client interests over those of the company or individual employees, and five "Core Values" guide our business approach, the two of which are "Do the Right Thing" and "Put Clients First."[3]

In accordance with our Core Values, Morgan Stanley acknowledges the SEC's objectives to protect investors and support responsible implementation of technology, including technology such as predictive data analytics ("**PDA**"). However, we respectfully believe the Proposed Rules' scope and significant obligations are overly broad in light of the robust and

[1] *See* Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers, 88 Fed. Reg. 53960 (Aug. 9, 2023), *available at* https://www.govinfo.gov/content/pkg/FR-2023-08-09/pdf/2023-16377.pdf ("Proposing Release").

[2] Morgan Stanley (NYSE: MS) maintains significant market positions in each of its business segments—Institutional Securities, Wealth Management, and Investment Management—and through its subsidiaries and affiliates provides products and services to a large and diversified group of clients and customers. Morgan Stanley Smith Barney LLC (doing business as "Morgan Stanley Wealth Management," which includes the E*TRADE from Morgan Stanley business) is an SEC-registered broker-dealer and investment adviser, Morgan Stanley Investment Management's several wholly-owned subsidiaries are SEC-registered investment advisers and broker-dealers, and Morgan Stanley & Co. LLC is an SEC-registered broker-dealer.

[3] *See* Morgan Stanley Core Values | Morgan Stanley. The other Core Values are "Lead with Exceptional Ideas," "Commit to Diversity and Inclusion," and "Give Back."

comprehensive regulatory framework that is already in effect for broker-dealers and investment advisers.

Morgan Stanley also supports the comments on the Proposed Rules submitted by the Securities Industry and Financial Markets Association, the Investment Company Institute, and the Investment Advisers Association, particularly where such letters observe that the possible harms identified by the SEC do not justify the expansive scope of the Proposed Rules. We are submitting this comment letter to amplify the issues raised in these letters, which would impact how each of our wealth management, institutional securities, and investment management business segments provides services to clients.

We respectfully urge the SEC to deeply consider the adverse impact of the Proposed Rules on investor access and choice, innovation in the financial industry, and the efficient business operations of affected firms. We encourage the SEC to consider instead how its existing regulatory framework may be applied to meet its important objectives.

The Proposed Rules are disproportionately broad

The SEC's concerns around protecting investors from the potential irresponsible use of PDA and related technology, while important, do not require the adoption of new rules. The Proposed Rules pose a set of new requirements premised on the SEC's position that a conflict of interest exists any time a firm uses a covered technology that takes into consideration the firm's interest in an investor interaction. This definition of "conflict of interest," combined with the scope of what is a "covered technology" that is used in connection with an "investor interaction," brings into the Proposed Rules' scope almost every technologically-driven interaction and communication across institutional and retail client platforms, including what have long been understood as marketing or advertising. Further, the subsequent obligations for firms under the Proposed Rules,[4] and the indeterminacy of how firms will effectuate such requirements, all pose significant and potentially impracticable implementation and operational burdens and, as a result, may harm market participants.

The existing securities regulatory framework provides significant and sufficient protection for investors and established principles by which firms can address the concerns of the SEC, including but not limited to the existing standard of care frameworks for broker-dealers and investment advisers.[5] We believe there should be thoughtful, tailored solutions for any

[4] Pursuant to the Proposing Release, these include evaluating and determining if the investor's interest is placed ahead of the firm's, the availability of only conflict elimination or neutralization as remedies if not, and extensive documentation obligations.

[5] Regulation Best Interest for broker-dealers and the fiduciary standard for registered investment advisers (as interpreted by the SEC in its 2019 release). *See* Regulation Best Interest: The Broker- Dealer Standard of Conduct, 84 Fed. Reg. 33335 (Jul. 12, 2019); Commission Interpretation Regarding Standard of Conduct for Investment Advisers, SEC Release No. IA-5248, 84 Fed. Reg. 33669 (Jul. 12, 2019). The Investment Advisers Act of 1940 and the Investment Company Act of 1940 require advisers and investment companies to comply with various rules and regulations thereunder that are designed to address conflicts of interest. Both broker-dealer and registered

empirically established harms posed by the industry's use of complex technologies, and we respectfully urge the SEC to leverage current regulations instead of establishing an entirely new set of requirements.

The Proposed Rules may result in adverse consequences for investors

Morgan Stanley supports continued technological innovation in the financial services industry. Responsible technological advances have for the past several decades benefited investors by increasing access, participation, education, and choice, promoting healthy market competition, and increasing efficiency for both investor and industry participants, all while steadily driving down costs.

The overly broad scope of the Proposed Rules may result in investors losing the very access and choice that technological advances have made possible. Even well-resourced firms may be challenged to shoulder the implementation and ongoing operational burdens that compliance with the Proposed Rules will necessitate, and many firms, regardless of resourcing, may be discouraged to innovate under the Proposed Rules. The inability or disinclination by the industry to incorporate technological development into their operating models could result in unavailability of broader market choice for investors and the diminishment of investor participation. We respectfully encourage the SEC to view scalability and innovation as not adversarial to investor interests but the driving force behind widespread market participation and resiliency and deeply consider the harm the Proposed Rules could have on investors and the financial services industry.

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Morgan Stanley looks forward to continuing to engage with the SEC and other stakeholders on this important topic, and we thank you for consideration of our comments.

Sincerely,

Eric Grossman
Chief Legal Officer and
Chief Administrative Officer
Morgan Stanley

investment adviser standards recognize that disclosure is an established and appropriate remedy to mitigate certain conflicts of interest.