

Congress of the United States

Washington, DC 20515

February 27, 2024

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

Dear Chair Gensler,

We write to request that the U.S. Securities and Exchange Commission (SEC) withdraw its proposed rule, “Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker Dealers and Investment Advisers” (“PDA rule”). While we support protecting U.S. investors from conflicts of interest associated with brokers’ and advisers’ use of technologies employing predictive data analytics like artificial intelligence, we have significant concerns about this rule. Specifically, we are concerned that the PDA rule’s overly broad scope would increase investors’ costs, limit choice, and cause firms to stop offering the tools that help individuals prepare for retirement, develop healthy financial habits, and participate in the stock market. This rule would harm historically underserved, low- and moderate-income retirement savers and investors who rely on low-cost brokerage services and self-directed investment tools.

The SEC seems to have intended the PDA rule to address conflicts of interest associated with brokers’ and advisers’ use of new technologies employing predictive data analytics, like artificial intelligence. But the definition of “covered technology” used is so vague and expansive that it would include tens of thousands of technologies that have been in common use for decades, including spreadsheets, basic investment analysis tools, and web-based retirement calculators. These and other more innovative tools have been critical to increasing participation in our markets among low-income and underserved investors. Recent Federal Reserve data showed that 58 percent of households owned stock in 2022, an all-time high, driven by record-high rates among investors who are low-income, racial minorities, under 35 years old, and renters.¹ It is our understanding that the SEC did not develop this rule with input from stakeholders. Without adequate public consultation during the rulemaking process, the SEC has not fully considered the immense benefits these technologies provide customers, especially retirement savers and retail investors, from diverse economic backgrounds.

The PDA rule would also overhaul the current approach to preventing conflicts of interest. Existing regulations, like Regulation Best Interest and the SEC’s interpretive guidance on advisers’ fiduciary duty, protect investors by prohibiting brokers and advisers from placing their interests ahead of customers’ interests, including when technology is involved. But under the PDA rule, a firm merely having an interest would qualify as a conflict and require ongoing testing and documentation procedures even where the firm’s interest is aligned with the interests of the investor. Moreover, while existing rules allow firms to address many conflicts through full

¹https://www.federalreserve.gov/econres/scf/dataviz/scf/chart/#series:Stock_Holdings;demographic:all;population:1;units:have

and fair disclosure with informed client consent, the PDA rule would require firms to “eliminate or neutralize” its potential conflicts when using technology. Disclosure would no longer be an option.

The PDA rule also poses unique challenges for investment advisers by applying requirements to both institutional and retail clients, unlike the broker-specific rule that applies only to retail investors. The PDA rule does not explain or justify the decision to include institutional investors and other sophisticated entities within the definition of “investor,” which is inconsistent with other mandated disclosure regulations that require and allow informed consent by these groups.

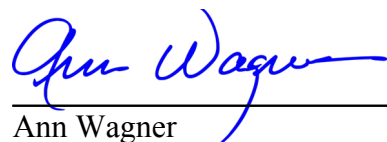
Importantly, the SEC’s Investor Advisory Committee (IAC) seems to share our concerns about the PDA rule. The IAC was established by the Dodd-Frank Act to advise the SEC on how best to protect investors, promote investor confidence, and ensure the integrity of our securities markets.² In December 2023, after a multi-year examination of digital engagement practices (“DEPs”), the IAC published a draft report with an assessment of the PDA rule and recommendations for future rulemaking and enforcement action related to brokers’ and advisers’ use of DEPs.³ Affirming the importance of “strenuous regulation” to protect investors against the potential dangers of novel technologies, the IAC recommended the SEC take “the more direct regulatory path” and avoid “creating a parallel standard.”⁴

For these reasons, we request that the SEC withdraw the PDA rule. We encourage the SEC to rely on the existing authorities to protect investors from DEPs that violate the law, consult with stakeholders, and thoroughly analyze all potential impacts that future changes to regulations governing DEPs could have on retirement savers and retail investors.

Sincerely,



Ritchie Torres
Member of Congress




Ann Wagner
Member of Congress

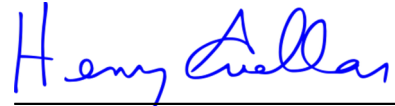
² The IAC is comprised of state regulators, scholars, lawyers, investment professionals, the SEC’s Investor Advocate, and non-profit leaders.

³ <https://www.sec.gov/files/20231117-recommendation-use-dep.pdf>

⁴ In this draft report, the IAC found that the PDA rule “may have unintended consequences that negatively impact the very investors [it] is intended to protect,” most notably by “overly curtailing access to valuable information, tools, and assistance, and impeding the adoption of new, beneficial technologies.”



Andy Barr
Member of Congress



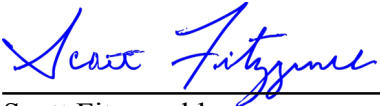
Henry Cuellar
Member of Congress



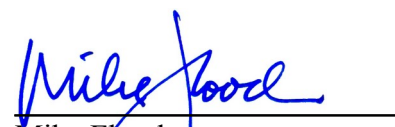
Monica De La Cruz
Member of Congress



Byron Donalds
Member of Congress



Scott Fitzgerald
Member of Congress



Mike Flood
Member of Congress



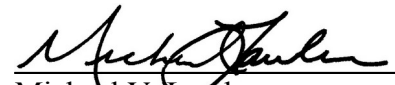
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Member of Congress



Vicente Gonzalez
Member of Congress



Erin Houchin
Member of Congress



Michael V. Lawler
Member of Congress



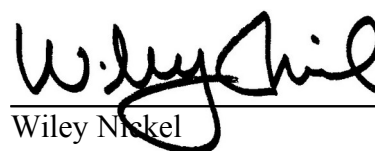
Barry Loudermilk
Member of Congress



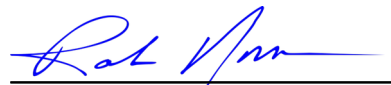
Dan Meuser
Member of Congress



Alex X. Mooney
Member of Congress



Wiley Nickel
Member of Congress



Ralph Norman
Member of Congress



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