

SEC Requests Information and Comment on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches; Information and Comments on Investment Adviser Use of Technology

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Washington D.C., Aug. 27, 2021 —The Securities and Exchange Commission today announced that it is requesting information and public comment on matters related to the use of digital engagement practices by broker-dealers and investment advisers. These tools include behavioral prompts, differential marketing, game-like features (commonly referred to as gamification), and other design elements or features designed to engage with retail investors on digital platforms (e.g., websites, portals, and applications), as well as the analytical and technological tools and methods (collectively called digital engagement practices (DEPs)).

"While new technologies can bring us greater access and product choice, they also raise questions as to whether we as investors are appropriately protected when we trade and get financial advice," said SEC Chair Gary Gensler. "In many cases, these features may encourage investors to trade more often, invest in different products, or change their investment strategy. Predictive analytics and other DEPs often are designed with an optimization function to increase revenues, data collection, or customer time spent on the platform. This may lead to conflicts between the platform and investors. I'm interested in the varied questions included in the Request for Comment, and I'm particularly focused on how we protect investors engaging with technologies that use DEPs."

The Commission is issuing the Request, in part, to develop a better understanding of the market practices associated with firms' use of DEPs and the related analytical and technological tools and methods. The Commission also is hoping to learn what conflicts of interest may arise from optimization practices and whether those optimization practices affect the determination of whether DEPs are making a recommendation or providing investment advice.

The Request also is intended to provide a forum for market participants, including investors, and other interested parties to share their perspectives on the use of DEPs and the related tools and methods. This includes potential benefits that DEPs provide to retail investors, as well as potential investor protection concerns. The Request will facilitate the Commission's assessment of existing regulations and consideration of whether regulatory action may be needed to further the Commission's mission.

The public comment period will remain open for 30 days following publication of the Request in the Federal Register. The Commission encourages retail investors to comment on their experiences by submitting a Feedback Flyer, available here: <https://www.sec.gov/rules/other/2021/online-trading-investment-platforms-feedback-flyer.html>.

Fact Sheet

Request for Information and Comments on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches; Information and Comments on Investment Adviser Use of Technology to Develop and Provide Investment Advice

Action

The Securities and Exchange Commission (Commission) is requesting information and public comment (the Request) on matters related to broker-dealers' and investment advisers' use of digital engagement practices. These tools include behavioral prompts, differential marketing, game-like features (commonly referred to as gamification), and other design elements or features designed to engage with retail investors on digital platforms (e.g., websites, portals, and applications), as well as the analytical and technological tools and methods (collectively called digital engagement practices (DEPs)).

Background

Broker-dealers and investment advisers employ a variety of DEPs when interacting with retail investors through digital platforms. Investment advisers also use these tools to develop and provide investment advice, including through online platforms or as part of more traditional investment advisory services. Investment advisers can use analytical tools to learn more about their clients and develop and provide investment advice based on that information.

Highlights

With respect to the use and development of DEPs by firms on their digital platforms, the Commission is issuing the Request to:

1. Assist the Commission and its staff in better understanding and assessing the market practices associated with the use of DEPs by firms, including: (1) the extent to which firms use DEPs; (2) the types of DEPs most frequently used; (3) the tools and methods used to develop and implement DEPs; and (4) information pertaining to retail investor engagement with DEPs, including any data related to investor demographics, trading behaviors, and investment performance.
2. Provide a forum for market participants (including investors), and other interested parties to share their perspectives on the use of DEPs and the related tools and methods, including potential benefits that DEPs provide to retail investors, as well as potential investor protection concerns.
3. Facilitate an assessment by the Commission and its staff of existing regulations and consideration of whether regulatory action may be needed to further the Commission's mission, including protecting investors and maintaining fair, orderly, and efficient markets in connection with firms' use of DEPs and related tools and methods.

The Commission is also issuing the Request to assist the Commission and its staff in better understanding the nature of analytical tools and other technology used by investment advisers to develop and provide investment advice to clients, including (1) oversight of this technology; (2) how investment advisers and clients have been affected by technology; (3) potential risks to investment advisers, clients, and the markets more generally related to this technology; and (4) whether regulatory action may be needed to enhance investor protection while preserving the ability of investors to benefit from investment advisers' use of technology.

The Commission is hoping to learn what conflicts of interest may arise from optimization practices and whether those optimization practices affect the determination of whether DEPs are making a recommendation or providing investment advice.

What's Next

The public comment period will remain open for 30 days following publication of the Request in the Federal Register. The Commission will post all comments on the Commission's website. The Commission encourages retail investors to comment on their experiences by submitting a short Feedback Flyer, available here: <https://www.sec.gov/rules/other/2021/online-trading-investment-platforms-feedback-flyer.html>.

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