Press Release

SEC Proposes New Requirements to Address Risks to Investors From Conflicts of Interest Associated With the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers

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Washington D.C., July 26, 2023 — The Securities and Exchange Commission today proposed new rules that would require broker-dealers and investment advisers (collectively, “firms”) to take certain steps to address conflicts of interest associated with their use of predictive data analytics and similar technologies to interact with investors to prevent firms from placing their interests ahead of investors’ interests.

“We live in an historic, transformational age with regard to predictive data analytics, and the use of artificial intelligence,” said SEC Chair Gary Gensler. “Today’s predictive data analytics models provide an increasing ability to make predictions about each of us as individuals. This raises possibilities that conflicts may arise to the extent that advisers or brokers are optimizing to place their interests ahead of their investors’ interests. When offering advice or recommendations, firms are obligated to eliminate or otherwise address any conflicts of interest and not put their own interests ahead of their investors’ interests. I believe that, if adopted, these rules would help protect investors from conflicts of interest — and require that, regardless of the technology used, firms meet their obligations not to place their own interests ahead of investors’ interests.”

The use by broker-dealers and investment advisers of technologies to optimize for, predict, guide, forecast, or direct investment-related behaviors or outcomes has accelerated. Use of such technologies can be beneficial to investors in providing greater market access, efficiency, and returns. To the extent that firms are using certain technologies in a manner that places their own interests ahead of investors’ interests, however, investors can suffer financial harm. Given the scalability of these technologies and the potential for firms to reach a broad audience at a rapid speed, any resulting conflicts of interest could cause harm to investors in a more pronounced fashion and on a broader scale than previously possible.

Building off existing legal standards, the proposed rules generally would require a firm to evaluate and determine whether its use of certain technologies in investor interactions involves a conflict of interest that results in the firm's interests being placed ahead of investors' interests. Firms would be required to eliminate, or neutralize the effect of, any such conflicts, but firms would be permitted to employ tools that they believe would address these risks and that are specific to the particular technology they use, consistent with the proposal. The proposed rules would also require a firm to have written policies and procedures reasonably designed to achieve compliance with the proposed rules and to make and keep books and records related to these requirements.

The proposing release will be published in the Federal Register. The public comment period will remain open until 60 days after the date of publication of the proposing release in the Federal Register.

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Related Materials

- Proposed Rule
- Fact Sheet