

Securities Regulation Daily Wrap Up, NASAA NEWS AND SPEECHES—NASAA addresses SEC release on conflicts of interest associated with predictive data analytics, (Oct 24, 2023)

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New regulation is needed to address self-directed brokerage conflicts.

A letter submitted on behalf of NASAA espouses support for the SEC's proposal in Release No. 34-97990, *Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers*, which seeks to "eliminate, or neutralize the effect of, certain conflicts of interest associated with broker-dealers' or investment advisers' interactions with investors through these firms' use of technologies that optimize for, predict, guide, forecast, or direct investment-related behaviors or outcomes."



The NASAA [press release](#) explains that it supports the proposal because it is "focused on protecting retail investors, addresses *inter alia* conflicts presented by self-directed brokerage, is consistent with existing registrant duties, and is the most effective way to handle technology-based conflicts." Despite its support, NASAA does recommend a revision to the proposed definition of "covered technology" to focus on technologies with a defined level of capability. In addition, NASAA recommends that proposed procedures be revised to account for conflicts that stimulate trading, and that significant time be allowed between adoption and implementation.

NASAA also recognizes that under the proposal broker-dealers, investment advisers, and their associated persons would be required to "undertake significant efforts to discover and address conflicts of interest posed by covered technologies," but believes that the Commission is right to propose the manner in which those technologies should be regulated as the benefits of using covered technologies are only as good as the motivations of the persons who use them.

Among other things, the NASAA letter acknowledges that new regulation is needed to address self-directed brokerage conflicts, that the SEC's proposal is consistent with existing duties, and that rulemaking is the most efficient way to address technology-based conflicts.

In concluding, NASAA reiterated its support for the proposal, reasserted its recommendations that the SEC make changes to the proposal to address its concerns, and recommended that the post-adoption implementation period be at least a year.

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