Statement

Statement on Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers Proposal

Commissioner Caroline A. Crenshaw

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With the growth of digital platforms for investing, such as online brokerages and robo-advisers, and more recently, mobile investment apps and portals, opportunities for retail investors to invest and trade in securities have multiplied.[1] In fact, increased accessibility has been one of many factors associated with increasing retail investor participation in U.S. securities markets in recent years. Now investors can place a trade in an instant directly through an app on a smart phone and, instead of interacting with a human to receive recommendations, they may receive push notifications by phone potentially designed to affect their trading behavior. Concomitant with this increased investor engagement, firms have accelerated their use of certain newer technologies, such as predictive data analytics and artificial intelligence, and are applying them to various business functions across the investment industry.

While firms' adoption of these technologies can yield potential benefits for both firms and investors, in terms of market access, efficiency, and even possibly returns, that same use can also raise potential conflicts of interest, potentially to the detriment of investors. Such conflicts of interest could lead firms to influence investors to use more services, increase transactions, or invest in risky investments that yield higher profits for the firm at the investor's expense.[2] Further, these conflicts of interest could also be transmitted more rapidly and to a wider segment of investors as the use of new technology grows. For example, if a firm's artificial intelligence makes decisions favoring the firm's interests over investor interests, it could rapidly deploy that conflicted information to investors via means such as push notifications.

Acknowledging the considerable promise and great risk offered by artificial intelligence in particular, on Friday the White House announced that seven leading artificial intelligence companies in the United

States have agreed to voluntary safeguards on the technology's development, pledging to manage the risks posed by these new tools.[3] It is similarly important for the SEC to build in safeguards to protect investors from the potential for harm posed by firms using new technologies that are optimized in a way that could place their interests ahead of investor interests.

In other words, considering the role evolving technology plays in increasing retail investor participation and in our growing financial markets overall – with increased accessibility comes great responsibility. Consistent with this theme, today's proposal is designed to address conflicts of interest associated with firms' use of certain technologies when engaging in interactions with investors.[4]

Given the potentially transformative impact these technologies could have on user interfaces, and the interactions that investors have on digital platforms, I look forward to hearing feedback from commenters regarding the unique issues presented by firms using these technologies in investor interactions. For example, is the scope of the proposal appropriate? Are there other concerns or implications related to how artificial intelligence is being used in the market that we should consider? I look forward to reviewing comments on these and all other issues on which the release solicits feedback.

Finally, I would like to thank the staff in the Divisions of Trading and Markets, Investment Management, Economic and Risk Analysis, and the Office of the General Counsel. I am deeply appreciative of your hard work on this proposal, and I am pleased to support it.

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[1] *See* Request for Information and Comments on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches, Rel. No. 34-92766 (Aug. 27, 2021), 86 FR 49067 (Sept. 1, 2021).

[2] *See* Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers, Rel. No. 34-97990 (July 26, 2023) (hereinafter "Proposing Release") at 180.

[3] *See* The White House, Fact Sheet: Biden-Harris Administration Secures Voluntary Commitments from Leading Artificial Intelligence Companies to Manage the Risks Posed by AI (July 21, 2023) *available at*: https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/21/fact-sheet-biden-harris-administration-secures-voluntary-commitments-from-leading-artificial-intelligence-companies-to-manage-the-risks-posed-by-ai/

[4] To do this, the proposal would require, among other things, that broker-dealers and investment advisers eliminate, or neutralize the effect of, conflicts of interest associated with the use of covered technologies in investor interactions that place their interest ahead of investors' interests. *See* Proposing Release at 97.