Public Statement

Statement on Request for Information and Comments on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches

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Aug. 27, 2021

Today, the Commission published a request for public comment on the use of new and emerging technologies by financial industry firms.[1]

While these 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. These apps use a host of features that have come to be familiar in our increasingly online world. Digital engagement practices (DEPs), including predictive data analytics, differential marketing, and behavioral prompts (such as gamification), are integrated not only into streaming platforms and fitness apps, but also in robo-advising, wealth management platforms, brokerage platforms, and other financial technologies.

Many of these features encourage users to engage more with a digital platform. In the last few years we've seen a proliferation of trading apps, wealth management apps, and robo-advisers that use these practices to develop and provide investment advice to retail investors. 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, in part, with optimization functions to increase platform revenues, data collection, and customer engagement, leading to potential conflicts between the platform and investors.

I'm interested in the answers to the many questions included in the request for comment, but I'm particularly focused on policy questions about how we protect investors engaging with technologies that use DEPs:

1. How might we protect investors in light of the potential conflicts of interest that may exist when DEPs' optimization practices have a statistically significant impact on platform revenues, data collection, or investor behavior?

2. To the extent that DEPs' underlying predictive data analytics use "optimization functions" that, at least in part, optimize on revenues, data collection, or investor engagement — and to the extent that

optimization leads to statistically significant changes in investor behavior — how does that affect the determination of whether DEPs are making a recommendation or providing investment advice?

With all this in mind, the Commission would like to hear from you about your experiences with these platforms and their digital engagement practices. Your comments will help us better understand how firms are approaching new technologies and how these practices affect retail investors. Thank you for your feedback.

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[1] https://www.sec.gov/rules/other/2021/34-92766