October 8, 2021

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

By Email: rule-comments@sec.gov

Re: File Number S7-10-21 - 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 (the "RFI")

Dear Ms. Countryman:

Wealthfront Corporation ("Wealthfront") appreciates the opportunity to engage with the U.S. Securities and Exchange Commission ("SEC") on matters related to the use of digital engagement practices ("DEPs") by broker-dealers and investment advisers (collectively, "firms") and the use of technology by investment advisers to develop and provide investment advice. As interactions between financial services companies and clients increasingly shift online, we appreciate the SEC's engagement of market participants when developing a framework for evaluating online technology in financial services.

In this letter, we hope to describe Wealthfront's development and implementation of DEPs and to discuss how we believe the SEC should approach the regulation of DEPs. To summarize our positions:

1. Wealthfront utilizes DEPs to encourage clients to accumulate wealth, obtain sufficient information to make informed financial decisions, and increase their financial literacy.
2. The SEC's regulation should be technology-neutral, and the current regulatory framework adequately serves the SEC's mission to protect investors.
3. The SEC should evaluate a firm's usage of DEPs in the context of a firm's relevant standard of care.

Background

Wealthfront provides a suite of online, software-based financial services to its clients. Our mission is to build a financial system that favors people, not institutions. We believe that technology is the most powerful means to accomplish this mission.

Our platform has attracted nearly 500,000 clients who have entrusted Wealthfront Advisers LLC ("Wealthfront Advisers") and Wealthfront Brokerage LLC ("Wealthfront Brokerage") with the management of nearly $27 billion in assets. Wealthfront utilizes technology to reach an important demographic that has historically been underserved by the traditional financial sector – young adults who are in the early stages of wealth accumulation.

Investment Management

Wealthfront Advisers was one of the first companies to offer a globally diversified and regularly rebalanced portfolio of low-cost index funds that, through technology, could be managed automatically for a quarter of the average advisory fee charged by traditional advisers. Wealthfront Advisers was also one of the first to offer to a broad audience investment features that were previously only available through advisers that generally required large account minimums (sometimes as much as $10 million). These features include ETF-based tax-loss harvesting, tax-loss harvesting within an index, multi-factor smart beta, risk parity, and tax-minimized transitions to more optimized portfolios.

Wealthfront Advisers neither uses proprietary trading algorithms nor attempts to outperform the market by picking individual securities. We do not engage in these practices because academic research has shown that it is almost impossible to outperform the market over the long term. Instead, we pursue passive investment strategies based on "Modern Portfolio Theory" (personalized to the risk tolerance of each of our clients) and deliver value by minimizing fees and taxes through the use of software.

Cash Management

Wealthfront Brokerage offers a cash sweep program that allows clients to earn interest on cash balances awaiting investment. Wealthfront Brokerage also offers a margin lending product that provides clients with fast and flexible access to capital at a low rate.

Free Financial Planning

Wealthfront also offers a free, interactive, software-based financial planning tool directly to consumers ("Path"). Path allows users to set financial goals such as purchasing a home, funding college tuition, and retiring. Then, with users' consent, using data linked from users' financial accounts (including banks, brokerage firms, 401(k) accounts, credit card accounts, and mortgages) and third-party sources like Redfin and Zillow for home pricing estimates and the Department of Education for college tuition costs, Path allows users to visualize how their spending and saving patterns affect their financial goals.

Wealthfront's Approach to DEPs

Wealthfront utilizes DEPs for purposes of meaningful engagement with and for the education of clients. Wealthfront does not utilize DEPs to encourage clients to unnecessarily increase risk. We believe that if we can engage with clients in a way that resonates with them, we can encourage long-term thinking, savings, and sound investing practices. Specifically, we utilize DEPs to (*i*) deliver relevant account and product notifications, (*ii*) encourage participation and savings through the creation of a more engaging website, (*iii*) provide educational content, and (*iv*) inform clients if their actions are inconsistent with their financial objectives and risk tolerance.

Notifications

Wealthfront offers both a mobile application and a website and communicates with clients via email, mobile notifications, and text messages. Wealthfront does not use notifications to "spam" clients with information that is not relevant to their account on our platform or long-term investment objectives, such as notifications concerning short-term market fluctuations or price movements on a particular security. Rather, from time to time, Wealthfront sends a limited number of mobile notifications and emails to clients to keep them abreast of account transactions or to provide them with information that may be beneficial to their wealth accumulation journey. For example, we deliver notifications (*i*) when actions have been completed, such as a deposit having been processed, (*ii*) when Path detects a meaningful change to the rate of a client's savings, (*iii*) to inform clients of new products and services or current investment opportunities that may be beneficial to them,[1] and (*iv*) to deliver educational content on a variety of topics related to personal finance.

Wealthfront also provides in-product notifications such as tooltips and "pop-ups" that can help clients identify actions that may be inconsistent with their financial objectives and risk tolerance. For example, if a client attempts to modify the investment allocation in their account, we provide them with an automated notification if the modification would expose the client to too much or too little risk based on their known financial profile and objectives.

Engaging Interface

As stated before, Wealthfront positions itself as a platform for young adults who are in the early stages of wealth accumulation. Young adults on our platform are inherently familiar with the internet, and a visually pleasing and engaging website is not just appreciated, it is expected. As a company, Wealthfront is passionate about building a website and streamlined interface that delights our clients, inspires confidence by meeting clients' expectations, and makes long-term investing seamless and empowering.

As described above, Path is an interactive planning tool found on our website and mobile application that gives users insights into their personal finances. Because Wealthfront enables users to link their external accounts directly to Path, they never have to manually update their information. Additionally, if users start saving more or get a pay-raise, Path automatically updates.

[1] If a client informs us of a new birth in the family, we may, for example, send a notification to remind them to set up a 529 account.

Path's sophisticated software empowers users to make informed decisions about their financial future without spending the time and money required to engage a traditional financial planner. Path engages users by depicting, through charts and "sliders," how changes to their investing, saving, and spending habits can help them achieve their long-term personal financial objectives.

Finally, in specific instances, the Wealthfront application also shows confetti, a feature specifically highlighted as a DEP in the RFI. Wealthfront displays confetti whenever clients deposit additional funds to their investment accounts, "rewarding" activity associated with long-term wealth accumulation. Our use of confetti is meant to convey excitement and to reinforce good decision-making.

Informative Content

In the current online environment, young adults no longer appear to rely on newspapers and physical media as primary sources of financial information. Additionally, many young adults in the early stages of wealth accumulation cannot afford a personal financial planner. Today, young adults seem to be increasingly reliant on influencers, blogs, and investment websites to inform their financial decision-making process.[2]

We strongly believe that the content we create needs to engage our clients and the public in a familiar format. Providing engaging information in a familiar format allows for greater accessibility, which enables us to provide our clients and the public with valuable information that we deliver in waves of increasing sophistication. The more time clients spend on our website learning about personal finance, the more likely they are to make informed decisions about their financial future.

We create educational material to be consumed by a wide variety of visitors with varying levels of financial expertise and experience. We develop content that we believe is relevant to

[2] Credit Karma, *Gen Z Turns to TikTok and Instagram for Financial Advice and Actually Takes It, Study Finds.*, (13 July 2021), /www.creditkarma.com/about/commentary/gen-z-turns-to-tiktok-and-instagram-for-financial- advice-and-actually-takes-it-study-finds.

consumers in different stages of their financial journey and that is presented in a way that encourages engagement and excitement for prudent investing and wealth accumulation. We generally accomplish this through the use of blog posts and informative videos[3] where we provide data-driven content, not just opinions or "rules of thumb."

Once potential clients are excited and interested in investing, we expose them to increasingly more advanced financial content. We do this through tooltips, FAQs/Help Center articles, and eventually white papers that we believe will increase their financial literacy thus facilitating informed decisions about investing with Wealthfront, including whether Wealthfront is the right platform for them.

The Current Framework

We agree with the Investment Adviser Association that the SEC should take a technology-neutral, principles-based approach to regulation of DEPs and that the current legal and regulatory framework—which applies to digital and non-digital advisers alike—adequately serves the SEC's investor protection mission.[4]

Reg BI and Broker-Dealer Obligations

As the SEC noted in the RFI, broker-dealers that make recommendations of securities transactions or investment strategies involving securities to retail customers must act in the best interests of such customers. Therefore, broker-dealers that make such recommendations may not place their interests ahead of their customers' interests. If a DEP constitutes a recommendation, the regulatory framework requires that broker-dealers utilize DEPs in a manner that does not place

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[3] We are in the process of making the financial content in our blog posts available through videos on YouTube, because we believe that our target audience prefers to consume such information in video format.

[4] The SEC should not, however, lose sight of the inherent differences associated with providing investment services online (e.g. limited space and layered disclosures). Online advertising, for example, works best when firms deliver an increasingly granular flow of information to clients. Providing too much information at irrelevant times is confusing and does not aid in comprehension or understanding of a product. See Wealthfront's comment letter to the SEC's then proposed Marketing Rule (Mar. 3, 2021), available at https://www.sec.gov/comments/s7-21-19/s72119-6904025-211131.pdf.

their interest ahead of their clients and meets their Reg BI obligations of disclosure, care, conflicts of interest, and compliance.[5] More broadly, even if a DEP does not constitute a recommendation, broker-dealers still must deal fairly with their customers and observe high standards of commercial honor and just and equitable principles of trade in the use of DEPs.[6]

Fiduciary Duty

As the SEC also noted in the RFI, under Federal law investment advisers are fiduciaries. As fiduciaries, investment advisers owe their clients both a duty of care and a duty of loyalty.[7] This means that advisers must make full and fair disclosure of all material facts and eliminate or fully disclose conflicts of interest.[8] It also means that advisers have a duty to provide investment advice that is in the best interest of the client, a duty to seek best execution, and a duty to provide advice and monitoring at a frequency that is in the best interest of the client.[9] These obligations are established based on the nature of the adviser-client relationship[10] and are enforceable under Section 206 of the Investment Advisers Act of 1940 (the "Advisers Act"). Because these obligations extend "to all services undertaken on behalf of the client,"[11] the SEC is well equipped to regulate an investment adviser's use of DEPs.

Anti-Fraud Provisions

The anti-fraud provisions currently in place are well-established and adequately enable the SEC to regulate firms that engage in manipulative and deceptive conduct. Under Rule 10b-5 of the Securities Exchange Act of 1934 it is "unlawful for any person, directly or indirectly to … make

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[5] 17 CFR 240.15l-1.
[6] FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade).
[7] See Commission Interpretation Regarding Standard of Conduct for Investment Advisers, 84 FR 33669 (July 12, 2019) (Fiduciary Interpretation), available at https://www.govinfo.gov/content/pkg/FR-2019-07-12/pdf/2019-12208.pdf.
[8] We encourage the SEC to consider modernizing the requirements for delivery of disclosures and regulatory documents by allowing firms to use technology, including DEPs, to improve the distribution of that information to investors.
[9] Commission Interpretation Regarding Standard of Conduct for Investment Advisers, *supra* Note 7.
[10] *See Hughes v. SEC, 174 F.2d 969 (May 9, 1949).*
[11] *See Proxy Voting by Investment Advisers, Adv. Act Rel. No. 2106 (Jan. 31, 2003).*

any untrue statement of a material fact or to omit to state a material fact … in connection with the purchase or sale of any security."[12] In addition, Section 206 of the Advisers Act prohibits misstatements or misleading omissions of material facts and other fraudulent acts and practices in connection with the conduct of an investment advisory business. Therefore, purposefully engaging in actions that are deceptive and manipulative and to the detriment of retail clients fall squarely under the SEC's existing anti-fraud authority. Just as the SEC enforces compliance with these provisions in connection with firms' communications with the public,[13] the SEC can also apply anti-fraud principles to misleading or deceptive DEPs.

<u>The SEC's Approach</u>

The SEC should not regulate DEPs as a discrete form of communication but should instead evaluate whether their use is appropriate under the above-noted standards of conduct and anti-fraud provisions. We would urge the SEC to avoid developing a "one size fits all" approach to the use of DEPs as such an approach could have a chilling effect on appropriate or, even, beneficial usage of DEPs. Instead, the SEC should evaluate the use of DEPs on a case-by-case basis, carefully considering the relevant facts and circumstances and applying the relevant requirements ensuing from the existing regulatory standards. Under the current legal and regulatory framework, the SEC could, for example, exercise its enforcement authority to promptly take action against firms using DEPs that contain fraudulent misstatements or misleading omissions of material facts.

We would further urge the SEC to consider the underlying business purpose of a firm's use of DEPs. Although this analysis is arguably inherent in determining whether a firm has violated an applicable conduct or care standard, we encourage the SEC to commit to this analysis and, when applicable, articulate it in settlement agreements or enforcement actions. For example, situations

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[12] 17 CFR § 240.10b-5.
[13] "A set of seven principles-based general prohibitions will apply to all advertisements. These are drawn from historic anti-fraud principles under the Federal securities laws and are tailored specifically to the type of communications that are within the scope of the rule." *See Investment Adviser Marketing*, 86 FR 13026 (Mar. 5, 2021), available at https://www.federalregister.gov/documents/2021/03/05/2020-28868/investment-adviser-marketing.

may arise when firms use DEPs to encourage investment behavior that is inconsistent with a client's objectives or unsuitable for a client's risk tolerance. A firm might even use DEPs in a manner that encourages inappropriate, high-risk activity for the firm's own financial interest at the expense of their clients' interests. In such cases, if SEC enforcement focused on the nature or character of a particular DEP without taking into account the firm's economic incentives for encouraging such risk-taking or investment behavior, a likely, potentially unintended, consequence would be to deter other firms' use of similar DEPs for beneficial purposes. By evaluating the use of DEPs discretely and in the specific context of a firm's business purpose, the SEC could mitigate the chilling effect that a "one size fits all" approach would likely have on financial industry usage of DEPs.

In closing, we urge the SEC to recognize that DEPs may be used to serve a wide range of beneficial purposes. Firms using DEPs to encourage healthy investment behavior should not be constrained by overbroad rulemaking or enforcement approaches. In fact, we hope the SEC shares our belief that, when used appropriately, DEPs have immense potential to act in clients' interests. Today, DEPs help Wealthfront increase financial literacy, promote informed financial decision-making, and support our clients' wealth accumulation. We encourage the SEC to extend its view and consider the future of financial services and the nearly unlimited utility of DEPs, not only to meet or exceed existing standards of care or conduct but also to help consumers achieve their desired financial futures.

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We appreciate the SEC's efforts and willingness to explore investment adviser and broker-dealer implementation of digital engagement practices in providing financial services. We hope that our letter sheds light on how we view and utilize DEPs to provide financial services to our clients and how we believe the SEC should approach regulation and enforcement of the ever-growing number of firms that utilize DEPs in light of the SEC's mission to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. We thank the SEC for considering our comments, and we would very much appreciate the opportunity to further discuss our views on DEPs as well as other matters in the SEC's RFI that we did not have the opportunity to discuss in this letter. If you have any questions or would like to discuss these comments, please do not hesitate to contact me at [redacted]

Respectfully,

Julius Leiman-Carbia
Chief Legal Officer
Wealthfront Corporation