

Congress of the United States  
House of Representatives  
Washington, DC 20515-3215

November 30, 2023

The Honorable Gary Gensler  
Chair  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

Dear Chair Gensler:

I write to request that the U.S. Securities and Exchange Commission withdraw its recent rule proposal, “Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker Dealers and Investment Advisers” (“PDA proposal”).<sup>1</sup> I am concerned that the PDA proposal’s overly broad scope and application will result in financial services firms passing significant compliance costs along to retail investors and abandoning the same technologies that have empowered millions of Americans to participate in the stock market.

In a letter I sent to you on September 23, 2022, I urged the SEC to collect relevant information and data and study the impacts any potential changes to regulations governing equity market structure and digital engagement practices may have on retail investors’ long-term participation and their costs to invest.<sup>2</sup> Unfortunately, the SEC has not done so in the PDA proposal. Instead, the SEC has rushed ahead without collecting the necessary data to justify its actions.

The PDA proposal is not limited to new and complex predictive data analytics and AI, as the rule claims is the focus of this change. Instead, it would allow the SEC to regulate any “analytical, technological, or computational function, algorithm, model, correlation matrix, or similar method or process that optimizes for, predicts, guides, forecasts, or directs investment-related behaviors or outcomes”.<sup>3</sup> In other words, this rule could include virtually all technology used by brokers and advisers. Even if the PDA proposal was limited to new, advanced technologies, it does not provide nearly any detail or data on how these technologies are actually being used by brokers and advisers to interact with their customers, and what effect this has on investor behavior and outcomes.

In addition, the PDA proposal changes decades of securities regulations on disclosures. SEC rules have long allowed firms to use disclosure to address potential conflicts of interest in a variety of areas, including when providing personalized investment advice to retail investors. As you said yourself, “Over the generations, the SEC has stepped in when there’s significant need for the disclosure of information relevant to investors’ decisions. Our core bargain from the

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<sup>1</sup> <https://www.sec.gov/files/rules/proposed/2023/34-97990.pdf>.

<sup>2</sup> <https://www.sec.gov/comments/s7-32-22/s73222-20163713-333891.pdf>.

<sup>3</sup> PDA proposal at 42.

1930s is that investors get to decide which risks to take, as long as public companies provide full and fair disclosure and are truthful in those disclosures.”<sup>4</sup> The PDA proposal, however, abandons disclosure as a means to address potential conflicts of interest when using technology. The SEC has failed to provide any compelling, evidence-based explanation for why it departs from nearly 90 years of securities regulation beyond vague allegations about the “complexity”, “opacity”, and “scalability” of technology, and paternalistic claims that retail investors may not be sophisticated enough to understand customer disclosures.<sup>5</sup> The investing public deserves a more careful analysis before a change this significant.

I am also concerned that the PDA proposal will harm the investors it claims to protect. Firms are likely to face significant costs complying with the PDA proposal, which would likely be passed along to retail investors. Moreover, difficulties complying with the PDA proposal’s heightened legal standard will likely cause many firms to stop providing investors with the digital tools and information that have made markets more accessible today than at any time in history. In fact, the PDA proposal explicitly acknowledges these likely bad outcomes:

- “In addition, to the extent that the firm’s existing obligations do not require the elimination, neutralization, or disclosure of covered conflicts of interest, the requirement to identify conflicts of interest in a technology could dissuade firms from using certain technologies when it is too difficult or costly to adequately evaluate the use of the covered technology, identify a conflict of interest, or determine whether they place the firm’s or an associated person’s interest ahead of an investor’s. . . . Investors would lose the benefit of such technologies if firms determine that the process of eliminating, or neutralizing the effect of, conflicts is too difficult, costly, or uncertain to succeed.”<sup>6</sup>
- “The overall costs, including recordkeeping costs, of the proposed conflicts rules and proposed recordkeeping amendments could also cause some firms to avoid using certain covered technologies in investor interactions, even if the technologies did not create any conflicts of interest. This might happen if the costs of complying with the proposed rules and amendments exceed the revenue that can be gained and/or costs that can be saved by using the technology. For example, a firm might opt not to use an automated investment advice technology because of the costs associated with complying with the proposed rules and amendments. In these types of situations, firms would lose the potential revenues that these technologies could have generated, and investors would lose the potential benefits of the use of these technologies. In addition, in the absence of these technologies, firms might raise the costs of their services, thus increasing the costs to investors.”<sup>7</sup>

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<sup>4</sup> Chair Gary Gensler, Statement on Proposed Mandatory Climate Risk Disclosures, March 21, 2022, <https://www.sec.gov/news/statement/gensler-climate-disclosure-20220321>.

<sup>5</sup> PDA proposal at 25-26, 104.

<sup>6</sup> PDA proposal at 188-89.

<sup>7</sup> PDA proposal at 188.

Recent data from the Financial Industry Regulatory Authority (“FINRA”) shows that taxable investment account ownership increased significantly starting around 2018 among Millennials, Gen Z, and racial and ethnic minority groups.<sup>8</sup> I am concerned that the PDA proposal will reverse these recent positive trends in participation and disproportionately harm historically underserved communities, including women, minorities, and younger individuals with less money to invest.

The PDA proposal should be immediately withdrawn, and the SEC should study the use of predictive data analytics and AI in the financial services industry before proposing any new rules.

Sincerely,

A handwritten signature in black ink that reads "Ritchie" followed by a stylized flourish.

Ritchie Torres  
Member of Congress

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<sup>8</sup> “2023 FINRA Industry Snapshot,” August 23, 2023, at 59-60, <https://www.finra.org/sites/default/files/2023-04/2023-industry-snapshot.pdf>.