Standards Board for
Alternative Investments Limited
7 Henrietta Street
London
WC2E 8PS
United Kingdom
www.sbai.org

tel: +44 20 3405 9042

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Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington D.C. 20549

Re: Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker Dealers and Investment Advisers

Dear Mrs. Countryman

At the Standards Board for Alternative Investments ("SBAI"), we would like to add our comment to the responses on the U.S. Securities and Exchange Commission's (the "Commission") proposed Rule on Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers.[1]

At the SBAI, we are an active alliance of over 150 asset managers and over 90 institutional investors dedicated to advancing responsible practices, partnership and knowledge. Our community includes asset managers with over $2 trillion in AUM and institutional investors responsible for over $6 trillion in assets, with a large proportion of them based in the U.S. or invested with investment managers in the U.S. We aim to improve industry outcomes through our Alternative Investment Standards[2], practical industry guidance[3] and engagement with the global regulatory community[4]. Our mission is to bring asset managers and investors together to achieve new best practices and improve industry outcomes.

We support efforts to facilitate fair, orderly, and efficient markets, reduce systemic risk, and enable investors to make well informed investment decisions. SBAI is an Affiliate Member of the International Organization of Securities Commissions (IOSCO).

In our response to your request for input, we do not answer the specific questions raised, but highlight key positions and their rationale that we view as important when developing rules in the area of Predictive Data Analytics. Not answering the detailed questions should not be considered an endorsement of any or all the suggestions contained in that question.

[1] https://www.sec.gov/news/press-release/2023-140
[2] https://www.sbai.org/standards.html
[3] https://www.sbai.org/toolbox.html
[4] https://www.sbai.org/regulatory-engagement.htmll

Key Positions on the Proposal

1. **The Commission failed to consider the effects of the rule on alternative investment managers, and arbitrarily proposed to apply the requirements to a significantly broader scope of clients for investment advisers.**
    - **a.** It is not clear if the rule was even intended to apply to alternative investment managers and their institutional investor clients.
    - **b.** For broker-dealers the Commission clearly limits the scope of the rule to interactions with a broker-dealer's retail clients. For investment advisers, the proposal applies whenever the adviser is interacting with a prospective or current "client." Thus, even an adviser's interactions with an institutional client, including discretionary management of a fund, would trigger the proposed rule.
    - **c.** The Commission's stated concerns appear to relate entirely to concerns involving retail clients (for example in the context of gamification of trading, incentives for excessive trading, etc.).
    - **d.** The Commission provided no explanation for applying the proposed rule to institutional clients of investment advisers but limiting the rule to broker-dealer retail clients.
    - **e.** The Commission also failed to provide any analysis or discussion of the rule's application to institutional investors.
    - **f.** At minimum, the Commission must not apply the rule to investment adviser institutional clients.
2. **The proposed definitions are significantly overbroad.**
    - **a.** The definition of "covered technology" encompasses virtually any tool, whether analogue or digital, that supports an investment adviser's day-to-day business. The definition lacks any limiting principle and would categorize almost every use of math in the investment management process as a "covered technology".
    - **b.** The definition of "investor interaction" captures all management of a client's portfolio, including where the client has expressly agreed not to interact with the adviser (i.e., discretionary management).
    - **c.** The definition of conflict of interest is unreasonable and illogical. The proposal states a "conflict of interest exists when an investment adviser uses a covered technology that takes into consideration an interest of the investment adviser." This would include situations where an investor and an adviser's interests are aligned, such as any situation where a fund is compensated based on the performance of the fund (or even more generally, where an adviser is compensated based on assets under management).
3. **The proposed requirements are unworkable.**
    - **a.** Given the significantly overbroad definitions described above, the proposed compliance obligations contemplated by the rule are unworkable.
    - **b.** The documentation, testing, and analysing of all of an adviser's "covered technology" (as that term is defined) would consume inordinate resources, and create material impediments to adopting new, or modifying existing, covered technologies. Delays that will ultimately harm investors.
4. **Existing rules and obligations already address conflicts of interests between investment advisers and their clients. Specifically, the Investment Advisers Act of 1940 lays out the fiduciary duties that all investment advisers owe to their clients including the duty of loyalty and the duty of care.**

a. The Commission's recent 2019 fiduciary interpretation specifically addresses conflicts of interest. Noting that "The duty of loyalty requires that an adviser not subordinate its clients' interests to its own. In other words, an investment adviser must not place its own interest ahead of its clients' interests."[5]

b. For investment advisers, it is thus entirely unclear what gap in regulation the proposal is designed to address.

Thank you for the opportunity to provide comments on the Proposal beyond the response deadline. If you have any questions on our comment letter, please feel free to contact Thomas Deinet at +44 203 405 9043.

Respectfully Submitted

Thomas Deinet
Executive Director – The Standards Board for Alternative Investments www.sbai.org

[5] See Commission Interpretation Regarding Standard of Conduct for Investment Advisers at 21 (June 5, 2019).