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

RE: File No. S7-12-23: Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers

Dear Ms. Countryman:

On behalf of the North American Securities Administrators Association, Inc. ("NASAA"),[1] I am writing in response to U.S. Securities and Exchange Commission ("SEC" or the "Commission") Release No. 34-97990, *Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers* (the "Proposal"),[2] which seeks to "eliminate, or neutralize the effect of, certain conflicts of interest associated with broker-dealers' or investment advisers' interactions with investors through these firms' use of technologies that optimize for, predict, guide, forecast, or direct investment-related behaviors or outcomes."[3]

NASAA supports the Proposal because it is focused on protecting retail investors, addresses *inter alia* conflicts presented by self-directed brokerage, is consistent with existing registrant duties, and is the most effective way to handle technology-based conflicts. However, NASAA recommends that the proposed definition of "covered technology" be revised to focus on technologies with a defined level of capability, that the proposed procedures be revised to specifically account for conflicts that stimulate trading, and that significant time be allowed between adoption and implementation.

[1] Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA's membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

[2] The Proposal is available at https://www.sec.gov/files/rules/proposed/2023/34-97990.pdf.

[3] Proposal at 1.

I. Regulating Technology-Based Conflicts Is Appropriate.

NASAA recognizes that the Proposal would require broker-dealers, investment advisers and their associated persons (collectively, "registrants") to undertake significant efforts to discover and address conflicts of interest posed by covered technologies. However, we regard the Proposal to be an appropriate application of registrants' existing duties to a new context that offers both benefits and dangers to retail investors.

Advanced technologies can provide substantial benefits for retail investors, whether through things like automated retirement planning tools that make clear how much an individual needs to save and invest, or education tools that address the specific questions posed by investors when making life-planning decisions. Just thinking about investing is hard for many people.[4] Technologies that lower information barriers and make the process of investing more welcoming are of great help to retail investors and should be encouraged.

However, technologies are just tools, and like all tools they can be helpful or harmful. The Proposal logically recognizes that the benefits of covered technologies are as good as the motivations of the persons who use them. The Commission is therefore right to propose that the manner in which these technologies connect with investors should be regulated. Further, a proposal that approaches the challenge of technology from the standpoint of controlling conflicts has the potential to encourage investor-friendly applications of technology while prohibiting harmful applications.

a. New Regulation is Needed to Address Self-Directed Brokerage Conflicts.

While the Proposal seeks to address conflicts in the use of covered technologies by all registrants, a primary focus of the Commission's April 2021 request for information[5] was the question of whether digital engagement practices ("DEPs") constitute recommendations. This is a particularly nettlesome issue when it comes to how technology influences investor behavior. NASAA believes some DEPs constitute recommendations. As we commented:

> Applications or platforms that encourage trading through prompts and "nudges" are making recommendations, even if they are limited to recommendations simply to trade. DEPs that constantly pull their customers' attention serve only to urge those customers repeatedly to consider whether they should trade, for whatever reason offered by the DEP feature. A reasonable person can recognize these prompts as calls to action.

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[4] One recent study found that 54% of respondents wished there was a technology that would simply handle their finances for them. Envestnet, *The Financial Life National Study: The Unexpected Intersection Between Technology, Clarity, and the Human Connections* (2022) at 9, https://www.envestnet.com/intelligent-financial-life/national-study#report.

[5] SEC Rel. No. 34-92766, *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* (Apr. 27, 2021), https://www.sec.gov/files/rules/other/2021/34-92766.pdf.

> Conversely, it is not reasonable to accept that anything but an individualized recommendation to purchase or sell a particular security qualifies as a recommendation.[6]

This is still NASAA's position. On September 5, 2023, NASAA issued a request for public comment on proposed revisions to our model rule on *Dishonest or Unethical Business Practices of Broker-Dealers and Agents*.[7] Among the proposed revisions is the following:

> If the broker-dealer or agent utilized any means, method or mechanism to feature or promote an account type, specific security or investment strategy to a retail customer, whether directly or through a third-party, then that transaction will not be deemed an unsolicited transaction, but rather will be deemed a recommendation to which all of the foregoing obligations set forth in this subsection apply.[8]

The NASAA Proposal explains that "[w]ith the advent of fintech and proliferation of sophisticated algorithmic digital engagement practices that feed on and cater to the unique personal attributes of individual retail investors, especially vulnerable unsophisticated investors, securities regulators are updating their guidance about what qualifies as a recommendation" and when broker-dealers use DEPs as described above "the requisite 'call to action' occurs and a 'recommendation' is made."[9] While we note that the above is merely a proposal at this stage, it does reflect NASAA's belief that some DEPs act as recommendations for which broker-dealers should be held responsible.

Regulatory action is particularly appropriate here because at least one prominent firm and a trade organization maintain that neither Regulation Best Interest nor a fiduciary standard applies to self-directed brokerage.[10] Without regulation, firms offering self-directed brokerage services intertwined with persuasive DEPs will continue to operate in conflict with their customers.

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[6] Letter of NASAA President Melanie Senter Lubin to SEC Secretary Vanessa Countryman re: File No. 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* (Oct. 1, 2021) ("RFI Comment Letter") at 3, https://www.nasaa.org/wp-content/uploads/2021/10/NASAA-Comment-Letter-for-File-No-S7-10-21-Digital-Engagement-Practices-and-Investment-Adviser-Technologies.pdf.

[7] NASAA, *Notice of Request for Public Comment Regarding Proposed Revisions to NASAA's Dishonest or Unethical Business Practices of Broker-Dealers and Agents Model Rule* (Sept. 5, 2023) ("NASAA Proposal"), https://www.nasaa.org/wp-content/uploads/2023/09/Request-for-Public-Comment-on-BD-Best-Interest-Model-Rule.pdf.

[8] *Id.* at 7.

[9] *Id.*

[10] *See* Letter from Robinhood Financial, LLC President David Dusseault to SEC Secretary Vanessa Countryman re: *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 Advisor Use of Technology to Develop and Provide Investment Advice* (Oct. 1, 2021) at 8, https://www.sec.gov/comments/s7-10-21/s71021-9316498-260092.pdf (stating that "[w]e do not

While the Proposal does not deem DEPs to be recommendations or investment advice, it would reach a similar result by recognizing that the use of covered technologies by firms offering self-directed brokerage services can put firm interests ahead of customer interests by encouraging frequent or risky trading.[11] This approach is consistent with NASAA's position that "firms should be understood to be acting against the interests of their customers generally where they craft DEPs or develop technologies that, by design or effect, encourage investors to make poor trading decisions or form bad investment habits."[12]

NASAA recognizes, as does the Commission, that self-directed brokerage has brought numerous retail investors into the markets. But no matter the form of interaction, registrants have duties to their customers. In this case, firms offering self-directed brokerage services make choices about how their DEPs are constructed and deployed. NASAA supports innovations that empower retail investors to participate in the public markets. However, we want those investors to be cautious and informed, rather than reckless and misled. Investing is not a game, and gambling is not investing. Firms that use DEPs to encourage or stimulate frequent trading, or worse excite investors to play with their money, are doing their customers a disservice. As we noted in response to the Commission's request for information, more frequent trading leads to lower returns for retail investors.[13] The Commission recognizes this problem as well.[14] We both want to control technologies and processes that victimize investors by encouraging them to drop their guard.

In sum, despite differences between the proposed state and federal approaches, NASAA supports the Commission's goal to regulate the pernicious effects of DEPs.

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use technology to recommend securities or investment strategies involving securities" and that "[u]nder well-established securities law precedent, Robinhood's current customer engagement does not involve making 'recommendations'"); and *Brief of Amicus Curiae the Securities Industry and Financial Markets Association in Support Plaintiff's Motion for Preliminary Injunction, Robinhood Financial, LLC v. William F. Galvin et al.*, Mass. Sup. Ct., Suffolk Dept., Civil Action No. 2184 cv 00884 BLS (May 21, 2021) (arguing throughout that the Massachusetts Fiduciary Rule does not apply to Robinhood because its activities do not constitute "investment advice" or "recommendations").

[11] Proposal at 150-51.

[12] RFI Comment Letter at 2 (citation omitted).

[13] RFI Comment Letter at 5 (citation omitted).

[14] Proposal at 28-29.

b. The Proposal Is Consistent with Existing Duties.

As the Commission puts it, the proposed protections "complement" those already required under existing frameworks.[15] NASAA finds the Proposal to be consistent with existing registrant duties. It is established that registrants must understand the products and services they are selling in order to give acceptable advice.[16] It follows that registrants must understand the means by which those products and services are sold. The Proposal provides a framework to do so. Registrants are already devoting time and effort to developing and applying covered technologies. While NASAA expects that some registrants are addressing technology-based conflicts of interest, the Proposal would help ensure that all registrants exercise the same level of scrutiny and care with respect to their regulatory obligations.

Further, while registrants can look to the Commission's fiduciary standard interpretation, the Regulation Best Interest releases, and previous staff guidance and regulatory actions for examples of conflicts in person-to-person recommendations and advice, our collective understanding of technology-based conflicts is less well developed. That is a problem because some registrants may not appreciate how new technologies can create conflicts, but nevertheless feel compelled to use them to stay competitive. Other registrants may be developing subtle conflicts in the belief that they do not violate the securities laws. The Proposal does a good job of describing how technology-based conflicts can occur, and it would help ensure that existing concepts of best interest, care and loyalty are applied to new contexts.

c. Rulemaking Is the Most Effective Way to Address Technology-Based Conflicts.

Creating a uniform process to evaluate, identify, and address conflicts is the most effective way to control registrants' uses of covered technologies. It would be much less effective to address covered technologies (which evolve by the day) by issuing staff guidance, followed by examination sweeps, followed by risk alerts, and ultimately followed by enforcement. Such an approach would take years, lead to inconsistent results, and leave regulatory gaps unaddressed while leaving investors vulnerable to conflicts. Further, defining covered technologies as proposed would create a distinct area of conflict identification and response that does not exist. As things stand now, registrants are using numerous technologies to different degrees likely with varying levels of tolerance for violating regulatory standards. Regulatory uncertainty can embolden firms to disregard conflicts in the search for new ways to generate revenue. The Proposal would benefit industry and investors alike by injecting regulatory certainty.

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[15] *Id.* at 7.

[16] *See* Rule 15l-1(a)(2)(ii)(B) under the Securities and Exchange Act ("Exchange Act") (Regulation Best Interest Care Obligation); and SEC Rel. No. IA-5248, *Commission Interpretation Regarding Standard of Conduct for Investment Advisers* (June 5, 2019), at 15-18 (discussing how an adviser's duty of care applies to the selection of various products).

NASAA also supports the approach of the Proposal to match a broad definition to a clear set of policies, procedures, and record-keeping requirements. NASAA's Regulation Best Interest examination sweeps have shown that some firms are reluctant to embrace the spirit of new regulations, and some are reluctant even to adhere to the letter of new requirements.[17] Some of that reluctance reflects uncertainty about how to carry out Regulation Best Interest duties. Defining the regulatory goal and spelling out the specific steps to reach it, as the Proposal does, would help registrants adopt new practices more quickly.

d. The Proposed Policies and Procedures Make Sense.

One of the unique risks of covered technologies is that conflicts can be imperceptible. The Proposal addresses these unique risks by requiring registrants to undertake and document a thorough process of discovery and response. NASAA believes such a process is helpful because it would allow registrants to understand what their technologies can do, and perhaps even to uncover unintended conflicts.[18] On the other hand, we should not excuse registrants from undertaking these efforts because doing so may be difficult.

NASAA is particularly concerned with the possibility that associated persons, acting in good faith, could still give conflicted advice because they are relying on covered technologies to help generate recommendations or strategies. Just as the effects of covered technologies can be imperceptible to investors, they can also be imperceptible to financial professionals simply using the tools provided to them. Accordingly, the Proposal would help prevent firms from subtly engaging in conflicts that their associated persons would avoid in direct investor interactions.

Another positive feature of the proposed process is the annual review requirement. Periodic reviews will be important for covered technologies, which can entail huge and growing databases, detailed formulas, and unpredictable artificial intelligence engines. Complex technologies can develop in unexpected ways. The Proposal cites the possibility that machine

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[17] *See* NASAA, *Report and Findings of NASAA's Regulation Best Implementation Committee, National Examination Initiative Phase II(A)* (Nov. 2021), https://www.nasaa.org/wp-content/uploads/2021/11/NASAA-Reg-BI-Phase-II-A-Report-November-2021_FINAL.pdf (finding *inter alia* that: a majority of surveyed broker-dealer firms were not discussing lower-cost or lower-risk products with customers when recommending complex, costly and risky products; a significant number of surveyed broker-dealer firms were still utilizing product-agnostic sales contests, differential compensation, and extra forms of compensation; and pluralities of surveyed broker-dealer firms had compensation conflicts when recommending leveraged or inverse exchange-traded funds, private securities, variable annuities, and non-traded real estate investment trusts); and NASAA, *Report and Findings of NASAA's Broker-Dealer Section Committee, National Examination Initiative Phase II(B)* (Sept. 2023), https://www.nasaa.org/wp-content/uploads/2023/08/Reg-BI-Phase-II-B-Report-Formatted-8.29.23.pdf (finding *inter alia* that: some surveyed broker-dealer firms were still ignoring common lower-cost and lower-risk products when recommending complex, costly and risk products; firms are still relying on financial incentives to sell complex, costly and risky products; firms have not enhanced point-of-sale disclosures; and "[e]fforts to address the standard of care concepts established by Reg BI remain perfunctory").

[18] *See* Proposal at 30 (recognizing that conflicts can reflect either intentional design choices or failures to fully understand the effects of covered technologies).

learning models can "drift" over time.[19] Artificial intelligence is also purportedly prone to unexpected changes. It is widely recognized that generative artificial intelligence applications can "hallucinate," meaning that they sometimes make up facts.[20] Recent research has also shown that attempts to improve one aspect of an artificial intelligence engine's performance can harm performance elsewhere.[21] Accordingly, even when a registrant mitigates or eliminates a conflict, there is no guarantee it will not reemerge.

e. Mitigation and Elimination Are Appropriate for Some Conflicts.

NASAA recognizes that some conflicts need to be mitigated or eliminated rather than disclosed. That is the current state of the law. NASAA also recognizes that covered technologies present unique risks that can make effective disclosure difficult. As the Commission notes, the scalability of technology-based conflicts is an important reason to identify and address those conflicts before numerous investors are exposed to them.[22]

Disclosure of some technology-based conflicts could also be futile. Some technology-related disclosures would need to be lengthy and technical to convey all material information. Natural persons investing "primarily for personal, family or household purposes"[23] likely do not have the time or expertise to evaluate such disclosures. Also, while issuer disclosures can be explained to retail investors by their financial professionals, registrant disclosures are made directly to investors with no one but the conflicted registrants themselves available to explain their meaning. Last, when conflicts are built into things like investment allocation or recommendation models, investors may not be able to tell when or how the conflict is occurring. Disclosure is not helpful when an informed investor cannot do anything about it.

Current rules recognize that some conflicts cannot be handled by disclosure, one example being the requirement under Regulation Best Interest to eliminate sales contests, sales quotas, bonuses, and non-cash compensation based on the sale of specific securities or types of securities within a limited period of time.[24] In that case, the Commission found that such conflicts could not

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[19] Proposal at 77 n.157.

[20] *See*, *e.g.*, New York Times, *When A.I. Chatbots Hallucinate* (May 9, 2023), https://www.nytimes.com/2023/05/01/business/ai-chatbots-hallucination.html; CNN, *AI tools make things up a lot, and that's a huge problem* (Aug. 29, 2023), https://www.cnn.com/2023/08/29/tech/ai-chatbot-hallucinations/index.html#:~:text=What%20is%20an%20AI%20hallucination,Center%20for%20an%20Informed%20Public.

[21] *See* Wall Street Journal Tech News Briefing, *ChatGPT is Getting Dumber at Math. What Does It Mean for AI's Future?* (Aug. 10, 2023), https://www.wsj.com/podcasts/tech-news-briefing/chatgpt-is-getting-dumber-at-math-what-does-it-mean-for-ais-future/b45c40c0-6b1c-4134-b390-5c4e778c503a#:~:text=An%20updated%20version%20of%20ChatGPT,to%20explain%20what's%20going%20on.

[22] Proposal at 25-26.

[23] Proposed rules 15l-2(a) and 211(h)(2)-4(a) (definition of "investor").

[24] Rule 15l-1(a)(2)(iii)(D) under the Exchange Act.

be mitigated and therefore needed to be eliminated.[25] NASAA's recently proposed revisions to our model rule on *Dishonest or Unethical Business Practices of Broker-Dealers and Agents*[26] acknowledges and incorporate Regulation Best Interest and would, if adopted as proposed, likewise assert that certain obligations "cannot be satisfied through disclosure alone."[27] We have found that "many firms are relying too heavily on disclosure as their primary or sole means of complying with the care and conflict of interest obligations under Reg BI."[28]

However, the current state of the law is also that certain conflicts, even very consequential conflicts, can be addressed adequately through disclosure.[29] The ability to address certain conflicts through disclosure can allow firms to operate with greater flexibility. Further, disclosure practices are well-engrained in firm practices, and the enforceability of inadequate disclosures as fraud is also well-established. While NASAA agrees that some technology-based conflicts will be too subtle and dangerous to be addressed through ineffective disclosures, others may be transparent in the ways they offer firm-favored options and therefore amenable to disclosures that adequately describe the conflict inherent in the recommendation.[30] NASAA encourages the Commission to consider whether either principles or specific prohibitions can be built into the Proposal to define what kinds of conflicts must be mitigated or eliminated and which can be disclosed in the manner currently allowed, despite being delivered to investors digitally.

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[25] SEC. Rel. No. 34-86031, *Regulation Best Interest: The Broker-Dealer Standard of Conduct* (June 5, 2019), at 61-62, https://www.sec.gov/files/rules/final/2019/34-86031.pdf.

[26] NASAA Proposal, *supra* note 6.

[27] *Id.* at 10, Section 1.d.(1).

[28] *Id.* at 3.

[29] *See*, *e.g.*, Rule 206(3)-2 under the Investment Advisers Act of 1940 under which agency cross trades, otherwise prohibited, are acceptable if the client authorizes the transaction in writing and the adviser discloses in writing the capacities in which it will act and the conflicts that will arise.

[30] *See*, *e.g.*, *Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Conflicts of Interest* (last modified Aug. 3, 2022), https://www.sec.gov/tm/iabd-staff-bulletin-conflicts-interest#_ftnref42 (discussing *inter alia* the disclosures Commission staff expects registrants to provide when recommending proprietary products).

II. The Definition of "Covered Technology" Should Be Revised.

NASAA agrees that "covered technology" should be defined broadly.[31] A definition that refers to specific technologies could go stale quickly. Technology is becoming more central to investing, and technology moves faster than regulation.

However, criticisms of the definition make a point; if the definition can be read to include things like "spreadsheets" and "calculators," cautious registrants could waste time on technologies no one is worried about.[32] We do not read the Proposal to cover such simple and mundane technologies, and we do not believe the Commission does either. However, the preamble's descriptions of current cutting-edge technologies[33] may insufficiently limit the definition because the preamble is not the rule. Also, while the Commission could consider enumerating more specifically in the preamble what technologies are covered, we also appreciate that the Commission wants the Proposal to apply without change to new technological developments.

Therefore, it may be worthwhile to describe the technological threat that the Proposal seeks to control in the definition itself. The apparent defining characteristic sought to be addressed by the Proposal is that certain technologies – by virtue of their operation alone – can stimulate or produce conflicted investment-related behaviors and outcomes, while less sophisticated technologies cannot. NASAA therefore suggests the following revision:

> *Covered technology* means an analytical, technological, or computational function, algorithm, model, correlation matrix, or similar method or process that **is designed to or has the potential to generate a conflict of interest due to the manner in which it** optimizes for, predicts, guides, forecasts, or directs investment-related behaviors or outcomes.

The suggested revision would better focus on technologies that are capable of operating in a manner that itself generates investment related outcomes. While registrants can use simple technologies to help them reach particular outcomes, a person must generate the conflict. For example, an associated person can use a spreadsheet of fees to determine which products or strategies to recommend, but the formulation of intent and the delivery of the recommendation is human. The Proposal, on the other hand, is focused on technologies whose operations can reasonably be viewed as those that are designed to generate investor behaviors and investment outcomes.

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[31] *See* proposed rules 15l-2(a) and 211(h)(2)-4(a) (definition of "covered technology").

[32] *See* Commissioner Mark T. Uyeda, *Statement on the Proposals re: Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers* (July 26, 2023), at 1-2, https://www.sec.gov/news/statement/uyeda-statement-predictive-data-analytics-072623; Commissioner Hester M. Peirce, *Through the Looking Glass: Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers Proposal* (July 26, 2023) at 1, https://www.sec.gov/news/statement/peirce-statement-predictive-data-analytics-072623.

[33] *See* Proposal 34-38.

In the alternative, a proviso could be added to the definition to exclude older technologies that are not built into or do not contribute to technology-generated investment recommendations or advice.

III. The Proposed Rules Should Address DEP-Influenced Trading Specifically.

A primary concern with the use of DEPs by self-directed brokerage firms is that they will cause retail investors to trade unnecessarily or recklessly.[34] However, the effects of DEPs are subtle and open to interpretation by self-interested registrants. For example, if a DEP is designed to cause an investor to spend more time on a platform, a registrant might argue (or rationalize to itself) that it is in the investor's best interest to do so because self-directed investors should spend more time thinking about their investments. Other DEPs, like nudging an investor to read an article or learn about investing options, could be similarly justified. The Commission should therefore consider identifying trading stimulated by covered technologies as a specific conflict to address.

NASAA suggests making three changes to include this particular conflict of interest as additive to the conflicts already defined in the Proposal.[35] First, the definition of "conflict of interest" in proposed rule 15l-2(a) could be revised as follows:

> *Conflict of interest* exists when a broker or dealer uses a covered technology that **causes an investor to trade or otherwise** takes into consideration an interest of the broker or dealer, or a natural person who is an associated person of a broker or dealer.

Second, proposed rule 15l-2(b)(1) could be revised as follows:

> Evaluate any use or reasonably foreseeable potential use of a covered technology by the broker or dealer, or a natural person who is an associated person of a broker or dealer, in any investor interaction to identify any **increase in investor trading or any other** conflict of interest associated with that use or potential use (including by testing each such covered technology prior to its implementation or material modification, and periodically thereafter, to determine whether the use of such covered technology is associated with a conflict of interest);

Last, proposed rule 15l-2(c)(1) could be revised as follows:

> A written description of the process for evaluating any use or reasonably foreseeable potential use of a covered technology in any investor interaction pursuant to paragraph (b)(1) of this section and a written description of any material features of, including any **increase in investor trading or any other** conflicts of interest associated with the use of, any covered technology used in any investor interaction prior to such covered

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[34] *See id.* at 26.

[35] NASAA does not perceive unnecessary trading to be a problem with covered technologies employed by investment advisers, but we would not oppose parallel changes to proposed rule 211(h)(2)-4 if the Commission concluded that it is appropriate to do so.

technology's implementation or material modification, which must be updated periodically;

Together, these changes would require broker-dealers to recognize the stimulation of investor trading as a distinct conflict of interest, specifically look for this effect in their evaluations of covered technologies, and memorialize how they search for this particular conflict when evaluating covered technologies. While proposed rule 15l-2 is a sound approach for addressing technology-based conflicts generally, the subtle effects that DEPs have on retail investors require special emphasis.

IV. If Adopted, the Commission Should Set a Lengthy Implementation Period.

While NASAA finds the Proposal to be an appropriate application of registrant duties to a new context, we also know it will be difficult to implement. One reason cited by the Commission is the challenge of "black box" technologies, and the tools that may need to be developed to explain them.[36] Another is simply the burden, particularly on smaller firms, of developing processes for a new kind of conflicts analysis, one that combines both regulatory and technical knowledge. It will take time for registrants to perform these sorts of analyses routinely and competently. NASAA therefore suggests a post-adoption implementation period of at least one year.

V. Conclusion

For the reasons explained above, NASAA supports the Proposal but recommends that the definition of "covered technology" be revised to focus on technologies with a defined level of capability, that the proposed procedures be revised to specifically account for conflicts that stimulate trading, and that significant time be allowed between adoption and implementation.

Should you have any questions about this letter, please contact either the undersigned or NASAA's General Counsel, Vince Martinez, at (202) 737-0900.

Sincerely,

Joseph Brady
Executive Director
North American Securities
Administrators Association, Inc.

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[36] Proposal at 67.