MORNINGSTAR®

22 West Washington Street
Chicago
Illinois 60602

Telephone: +1 312 696-6000
Facsimile: +1 312 696-6001

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Mr. Travis Hall
U.S. Department of Commerce
1401 Constitution Ave.
Washington, D.C. 20549-1090

**RE: Docket No. 230407-0093; RIN 0660-XC05; Document Number 2023-07776 Request for Comment: AI Accountability Policy.**

Ladies and Gentlemen:

Morningstar welcomes the opportunity to respond to the AI Accountability Request for Comment, or RFC, as it relates to investor and consumer protection in the financial sector, recently published by the Department of Commerce, or Department.[1] Morningstar, a leading provider of independent investment research, has a long history of advocating for transparency in financial markets and brings several perspectives to the RFC. Morningstar's mission is to help investors reach their financial goals. We seek to promote the availability of quality data and artificial intelligence, or AI, for use by investors. As such, Morningstar believes that investors need access to low-cost, accurate information to help them make better decisions—whether that information comes via human sources or AI.

To further facilitate the Department's goals regarding information-gathering and considering potential future regulations in the financial space, we submit the following comments and suggestions with respect to the financial regulators and the protection of investors:

1. Morningstar believes that new AI-specific regulation may not be necessary because current financial regulations are generally drafted broadly enough to encompass AI products and their use.
2. Morningstar supports uniform enforcement of regulations across both human and AI-provided financial services to achieve investor and consumer protection.
    a. The application of financial regulation to AI may require agency guidance regarding existing regulations.

## I. Where Regulations Already Apply to Both Human- and AI-Provided Services, New Regulation is Unnecessary.

Financial-services firms are increasingly exploring and deploying generative AI to support retail and institutional clients. The overlap between the services provided by AI products and those of human professionals means that many current regulations should apply to both.

[1] Department of Commerce. 2023. "AI Accountability Policy Request for Comment." 88 FR 22433. https://www.federalregister.gov/documents/2023/04/13/2023-07776/ai-accountability-policy-request-for-comment.

Such an approach would be consistent with the position that the U.S. Securities and Exchange Commission, or SEC, has taken recently on computer-generated "robo" advice. Specifically, the SEC issued guidance in 2017 on robo-advisers and interprets the U.S. Investment Advisers Act of 1940 to impose a fiduciary duty on both human and robo-advisers.[2] This example shows that, where current regulatory schemes are already broadly applied, regulators should consider whether any need for new AI-specific regulations exist. In other words, if AI-related products or services are conceivably governed by existing regulation, further regulation is redundant and unnecessary.

In a financial context, AI products can provide investment information. AI products, however, present potential challenges stemming from how they are created, and, like humans, they can exhibit factual inaccuracies and bias. As with other regulated activities, firms will need to monitor their AI products and processes to ensure they comply with existing regulations.

For example, firms will need to focus on fairness and guard against algorithmic bias. AI is trained on large volumes of materials, so when those materials contain bias, the results generated from them may also contain bias. Algorithmic discrimination occurs when AI systems contribute to unjustified treatment or have a negative impact on people based on characteristics such as race, ethnicity, sex, religion, or age.[3] For example, a University of California Berkeley study showed that an AI mortgage algorithm consistently charged Latino and Black borrowers higher interest rates than their white counterparts.[4] Unequal treatment in a financial setting resulting from an algorithm applied by humans may subject investors and consumers to discrimination and inequitable treatment.

## II. Where The Scope of Existing Regulations Is Unclear, We Suggest that Regulatory Agencies Consider Creative Guidance to Clarify Their Application and Facilitate Their Effectiveness In The AI Space.

The challenge presented by AI in a financial setting is largely one of implementation efficacy and lack of guidance rather than inadequate regulation. To address this challenge, negatively framed guidance regarding what technology is *not* allowed to do, as opposed to what it *can* do, is most helpful. Negative language keeps most avenues for innovation open and confines regulatory energy to areas that are particularly problematic—something that cannot be taken for granted in the AI space.

Regulators may consider consulting independent experts to identify a given AI system's risks/shortcomings and to evaluate if or how those risks/shortcomings compare with those presented by human-based systems. Specifically, AI systems should be audited to determine

[2] SEC Division of Investment Management. 2017. "IM Guidance Update – Robo-Advisers." P. 2. https://www.sec.gov/investment/im-guidance-2017-02.pdf.

[3] White House. 2022. "Blueprint for AI Bill of Rights: Making Automated Systems Work for the American People." P. 2. https://www.whitehouse.gov/ostp/ai-bill-of-rights/.

[4] Marr, B. 2022. "The Problem with Biased AIs (and how to make them better)." https://www.forbes.com/sites/bernardmarr/2022/09/30/the-problem-with-biased-ais-and-how-to-make-ai-better/?sh=30afd62b4770.

whether uniform application of existing regulations produces the same results for both human- and AI-based work or whether a need to implement separate standards/regulations for AI exists. To ensure the efficacy of AI, AI systems must undergo predeployment testing, risk mitigation, and ongoing monitoring. Additionally, regulators should consider what is needed to make their guidance clearly applicable to AI and how to ensure that AI is not discriminating or providing illegal inaccuracies.

Creative testing and standard-setting may be needed to promote compliance by AI-based products/services to existing regulations. For instance, a creative quality assurance measure recommended by the Financial Industry Regulatory Authority, or Finra, is that of testing and checking model risk-management programs during unusual market conditions—as opposed to simply testing them when the market is functioning normally.[5] Requesting companies to run their scheduled tests while simulating unusual conditions may provide insight into an AI-based system's adaptability to varying circumstances.

**Conclusion**

Morningstar appreciates the value of AI and its potentially seismic role in the industry. We believe that AI-based products and services in the financial sector are already subject to substantial regulation under current law. We encourage regulators to consider accountability measures that supplement regulations already in place rather than attempting to initiate an entirely new regulatory scheme. Limited measures focusing on preventing discrimination, bias, and factual inaccuracies paired with a system of disclosure and accountability will keep AI developing and positively contributing to the financial sector.

Morningstar thanks the Department for the opportunity to respond to this RFC. We would be pleased to engage with the Department on an ongoing basis, leveraging our global organization of experts operating in multiple jurisdictions. Should you wish to discuss these and other comments, please do not hesitate to contact either of us as indicated below:

Jasmin Sethi at jasmin.sethi@morningstar.com or (617) 501-5446.
Aron Szapiro at aron.szapiro@morningstar.com or (732) 322-2464.

Sincerely,

*Aron Szapiro*
Head of Government Affairs
Morningstar, Inc.

*Jasmin Sethi*
Associate Director of Policy Research
Morningstar, Inc.

[5] Finra. 2020. "Key Challenges and Regulatory Considerations – AI in the Securities Industry." P. 13. https://www.finra.org/rules-guidance/key-topics/fintech/report/artificial-intelligence-in-the-securities-industry/key-challenges.