

ICI: SEC's Conflicts Proposal Would Roll Back the Clock on Technological Advances That Benefit Main Street Investors

Washington, DC; October 11, 2023—Today, Investment Company Institute (ICI) President and CEO Eric Pan released the following statement regarding the Securities and Exchange Commission's (SEC) proposed predictive data analytics and conflicts of interest rule that would send investing back to the Stone Age. ICI discusses its members' concerns in detail in its comment letter, available [here](#). Pan commented:

"While purportedly focused on emerging technologies, like artificial intelligence, the SEC's new rules would inhibit the application of almost all types of technologies by the financial industry. At the same time, the rules seek to fundamentally change the legal standards governing investment advisers' and broker-dealers' conflicts of interest.

"Regardless of the merits of the intended policy objective, the rules would roll back the clock on the technological advancements that have provided so many benefits to investors— the same Main Street investors the SEC should be seeking to help participate in our capital markets.

"Furthermore, the SEC does not articulate a particular problem that would justify such a heavy-handed change in the regulatory landscape. Instead, the concerns the SEC raises regarding conflicts related to technology are almost entirely theoretical, providing another example of regulation-by-hypothesis. We urge the SEC to go back to the drawing board."

Concerns from ICI's comment letter:

Stifling Innovation

This broad proposal would apply to technology used by firms in providing investors with access to advice, education, and financial products, as well as for portfolio management and trading, likely affecting almost every aspect of an investment adviser's and broker-dealer's day-to-day business.

- The compliance burden is so heavy that firms will be required to spend inordinate amounts of time attempting to comply or stay frozen in the past as they desperately try to avoid using new technology in their business, in case the SEC deemed it a potential conflict.
- This would be especially damaging to smaller firms, which may be forced out of business or find the high costs of these rules to be a barrier to entry.

Unnecessary Changes to Conflict-of-Interest Framework

The SEC gives short shrift to existing ways to address conflicts, such as an advisers' fiduciary duty and Reg BI.

- In adopting Reg BI and a fiduciary duty interpretation less than five years ago, the SEC confirmed the importance of disclosure and informed consent as a means to address conflicts.
- Technology does not present a unique conflict of interest. Investment advisers already have the standards to address any conflicts of interest that may exist, and years of experience doing so.
- As fiduciaries, advisers must put their clients' interests ahead of their own.

Harmful to Investors

The SEC's own research finds that the Proposal fails to demonstrate any potential benefits to outweigh the rules' tremendous costs. Based on the SEC's own cost estimates, the Proposed Rules, if adopted, would impose costs of more than \$10 billion over the first 10 years alone. We believe, however, that this analysis significantly understates costs due to errors and implausible assumptions in the Commission's analysis.

- ICI's analysis instead finds that the potential costs are likely to be several times higher than the Proposal estimates—expected to

reach at least \$30 billion in the first ten years.

- These costs will be passed to investors.

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