FINANCIAL SERVICES INSTITUTE

VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

October 10, 2023

Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: File Number S7-12-23: Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers

Dear Secretary:

On July 26, 2023, the Securities and Exchange Commission ("SEC" or "Commission") proposed new rules under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Investment Advisers Act of 1940, as amended (the "Advisers Act") requiring registered investment advisers and broker-dealers to eliminate, or neutralize the effect of, certain conflicts of interest associated with their interactions with investors through the use of certain "covered technologies" (the "Proposal" or the "Proposed Rules").[1] The Proposal was published in the Federal Register on August 9, 2023. The Financial Services Institute ("FSI") appreciates the opportunity to comment on the Proposal.

Background on FSI Members

FSI is an advocacy association comprised of members from the independent financial services industry. The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the US, there are more than 160,000 independent financial advisors, which account for approximately 52 percent of all producing registered representatives.[2] These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers ("IBD").[3] FSI's IBD member firms provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions.

[1] Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers, SEC Release Nos. 34-97990; IA 6353 (July 26, 2023), 88 Fed. Reg. 53960 (Aug. 9, 2023) (the "Proposal" or the "Proposed Rules"), available here.

[2] Cerulli Associates, Advisor Headcount 2016, on file with author.

[3] The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a dually registered representative of a broker-dealer and an investment adviser representative of a registered investment adviser firm. The use of the term "investment adviser" or "adviser" in this letter is a reference to a firm or individual registered with the Securities and Exchange Commission (SEC) or state securities division as an investment adviser.

888 373-1840 | 1201 Pennsylvania Ave NW | Suite 700 | Washington, D.C. 20004 | financialservices.org

FSI members make substantial contributions to our nation's economy. According to Oxford Economics, FSI members nationwide generate $35.7 billion in economic activity. This activity, in turn, supports 408,743 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. In addition, FSI members contribute nearly $7.2 billion annually to federal, state, and local government taxes.[4]

Independent financial advisors are small-business owners and job creators with strong ties to their communities. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI members and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the affordable financial advice, products, and services necessary to achieve their investment goals.

The financial advice provided through independent financial advisors is at the core of FSI members' business model. FSI members typically do not provide brokerage services through self-directed brokerage models and therefore our membership does not generally use technologies, such as digital engagement practices, to encourage self-directed trading or online trading.

Discussion

FSI's comments focus squarely on the problematic and impractical aspects of the Proposal, which, if adopted, would significantly alter IBD's and investment advisers' (collectively, "independent financial services firms") existing business models and standards of care without providing any meaningful investor protection benefit. The Proposal relies on conclusory and unsupported statements about the danger of "technology," as a whole, without giving adequate consideration to the benefits that technology and innovation bring to investors through the form of better service and decreased cost. The SEC fails to acknowledge or understand that the Proposal will not just harm the broker-dealer and investment adviser industries, but will have substantial harmful ripple effects for retail customers and clients.

With this in mind, FSI asks the SEC to withdraw the Proposal and engage with broker-dealers and investment advisers to better understand how firms use technology. This letter focuses broadly on the following five points:

- The Proposal would supersede current regulations and established legal standards, including Regulation Best Interest ("Reg BI") and the investment adviser fiduciary duty, and, in many instances, would directly contradict past SEC guidance surrounding how firms address conflicts of interest.

- Compliance with the Proposal would be nearly impossible for independent financial services firms because of the sheer number of technologies, and associated required assessment of any potential conflicts of interest, that would need to be catalogued, analyzed, and categorized.

- The Proposal would drastically alter differential compensation arrangements.

[4] Oxford Economics for the Financial Services Institute, The Economic Impact of FSI's Members (2020).

- The SEC's issuance of the Proposal does not comply with the Administrative Procedures Act ("APA") by failing, among other things, to set forth a well-informed analysis of how markets operate, the likely effect of the Proposal, and why such changes are necessary and appropriate.

- The SEC should withdraw the Proposal and engage with the broker-dealer and investment adviser industries to better understand how the use of technology benefits investors.

I. The Proposal Would Reshape, Override, and Conflict with Existing Standards of Care

The Proposal aims to supersede current regulations and established legal standards, including Reg BI and the investment adviser fiduciary duty. In 2019, the SEC overhauled the broker-dealer standard of conduct through its adoption of Reg BI and issued a detailed interpretation of the investment adviser fiduciary duty (the "Fiduciary Interpretation") (collectively referred to as the "Standards of Conduct").[5] A central aspect of the Standards of Conduct involves conflict of interest identification, and subsequent disclosure, mitigation, or elimination in connection with a securities transaction or investment strategy recommendation, in the broker-dealer context, or investment advice, in the investment adviser context. In both contexts, the SEC has emphasized the importance of "flexibility" for broker-dealers and investment advisers to effectively manage conflicts. For example, in the adopting release for Reg BI (the "Reg BI Adopting Release"), the SEC noted that the Conflict of Interest Obligation "was intended to provide flexibility to broker-dealers regarding how to address conflicts of interest, whether through disclosure . . . or elimination."[6] The SEC, through the Proposed Rules, has abandoned the concept of "flexibility" concerning the resolution of conflicts of interest. This departure is evident in two respects:

(1) the introduction of a novel and broad definition of "conflict of interest" that is not linked to an investment recommendation or advice; and

(2) a prescriptive requirement to "eliminate or neutralize" certain conflicts that, under existing Standards of Conduct, could be addressed through disclosure and/or mitigation.

"Conflict of interest" is defined in the Proposed Rules as "when a broker or dealer uses a covered technology that takes into consideration an interest of the broker or dealer, or a natural person who is an associated person of a broker or dealer."[7] This definition is so broad, and such a departure from current approaches to conflicts of interest under the Standards of Conduct, that the SEC acknowledged it in the Proposing Release as "a distinct, but related, concept."[8]

---

[5] *See* Regulation Best Interest, Securities Exchange Act Release No. 86031 (June 5, 2019), 84 Fed. Reg. 33318 (July 12, 2019); *See also* Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Advisers Act Release No. 5248 (June 5, 2019), 84 Fed. Reg. 33669 (July 12, 2019).

[6] 84 Fed. Reg. at 33388.

[7] Proposed Rules 15l-2(a). The "conflict of interest" definition is substantially similar in the investment adviser context in Proposed Rule 211(h)(2)-4(a).

[8] 84 Fed. Reg. at 53983.

Importantly, the definition takes into account *any use* of a "covered technology"[9] – which has a broad definition – and not just a use that is tied to a securities recommendation or investment advice. If a broker-dealer or investment adviser determines that such a conflict of interest "results in an investor interaction that places the interest of the [broker-dealer or investment adviser] . . . ahead of the interests of investors," the firm must "eliminate, or neutralize the effect of" the conflict.[10]

The Proposed Rules would mandate that firms identify, evaluate, and categorize *every conflict or potential conflict* resulting from the use of "covered technology." This is the case even if the firm has already addressed those same conflicts through the existing Standards of Conduct. The SEC seemingly recognizes the potential overlap between the Proposal and the Standards of Conduct, as it acknowledges in the Proposing Release that "[t]o the extent there is overlap among the existing and proposed requirements, it is incomplete overlap . . . ."[11] The SEC also acknowledges the potential for overlap by attempting to draw a line between when firms would need to address conflicts under the Standards of Conduct (*i.e.,* through disclosure and mitigation) versus under the Proposed Rules (*i.e.,* through elimination or neutralization). The SEC states that "the elimination or neutralization requirement of the Proposed Rules applies only to a narrower, defined subset of the broader universe of conflicts – those conflicts that a firm determines *actually place* the interests of the firm or certain associated persons ahead of the interests of investors. (emphasis added)."[12] This is, according to the SEC, different from existing Standards of Conduct, which require firms to address a broader set of conflicts that *might incline* a broker-dealer or investment adviser to make a recommendation or render advice which is not disinterested.

The line drawn by the SEC – between conflicts that *actually exist* and conflicts that *might exist* – flouts logic in at least two key ways. First, under the Proposal, firms would still need to identify and analyze any potential conflict resulting from the firms' use, or reasonably foreseeable use, of "covered technology," regardless of whether it *actually places* the firm's interest above the investor's interest. Even if a firm determines that the conflict *might exist*, and therefore can be addressed through mitigation and/or disclosure under the existing Standards of Conduct, the identification and evaluation of conflicts subject to the Proposal alone is a burdensome, expensive undertaking on firms, and particularly on independent financial services firms. Further, firms would have to periodically re-evaluate these determinations.

Second, if a firm determines that a conflict resulting from the use or reasonably foreseeable use of a "covered technology" *actually exists*, both conflict of interest regimes will apply. For example, if a broker-dealer identifies an actual conflict related to its use of covered technology in the provision of an investment recommendation, the firm would be subject to *both* the conflict of interest regime in Reg BI and in the Proposed Rules. The firm would have to evaluate the conflict under both standards, and if the firm determines that the conflict places the interests of the firm ahead of the interests of investors, it would be forced to abandon any disclosure/mitigation approach that it developed under Reg BI and, instead, "eliminate or

---

[9] "Covered technology" is defined in the Proposed Rules as "an 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." *See* Proposed Rules 15l-2(a) and 211(h)(2)-4(a).

[10] *See* Proposed Rules 15l-2(b) and 211(h)(2)-4(b). The SEC does not explain in the Proposing Release the difference between "eliminating" and "neutralizing the effect of" a conflict.

[11] 84 Fed. Reg. at 54020.

[12] 88 Fed. Reg. at 53977, n. 142.

neutralize" the conflict. In this scenario, the Proposed Rules would effectively override Reg BI, without providing any opportunity for notice and comment.

II. The Proposed Rules Would Be Impractical and Impossible to Apply for Independent Financial Services Firms

Compliance with the Proposal would be especially difficult, and practically impossible, for independent financial services firms. As noted above, independent financial advisors associated with our members are typically self-employed independent contractors, rather than employees of the broker-dealers through which they are registered. The independent financial services firms' model is successful because the key relationship is the one between a client and his or her financial advisor – not the separate, symbiotic relationship between the financial advisor and his or her affiliated firm. Independent financial services firms do not control the financial advisors, who set their own hours and rates, maintain their own physical premises, and hire and supervise their own staffs. Independent financial advisors make significant investments in their own businesses, including in technology to help them run those businesses. Typically, independent financial services firms do not mandate that independent financial advisors use a specific set of pre-selected technologies. By design, independent financial advisors expect flexibility in the software, hardware, and third-party vendors they can use to best serve their customers.

Even though personal relationships between advisor and client are at the core of independent financial services firms, in this modern age, technology is used in every aspect of the business with the end goal of assisting investors. Technology is used, for example, for financial planning (*i.e.*, tax planning, retirement distribution planning, estate planning, student loan payment planning, etc.), investing (*i.e.*, performance reporting, portfolio management, research, etc.), marketing (*i.e.*, websites, social media, digital marketing, proposal and lead generation, etc.) and administration (*i.e.*, CRM systems, document management systems, scheduling platforms, etc.). The Proposal would require independent financial services firms to catalogue *every technology* that is used by an independent financial advisor in each of these areas (and others). This alone is a tremendous undertaking for an independent financial services firm, which may have thousands of independent financial advisors using different technologies in different ways. In addition, this undertaking would also significantly strain resources for smaller sized firms. Innovation and new technologies that improve the investor experience, assist advisors in analysis, and provide operational and supervisory support are constantly evolving and expanding. The Financial AdvisorTech Solutions Map[13] provides a useful visual of the sheer scope of technologies that are part of the fabric of independent financial services firms.

After an independent financial services firm collects and catalogues *every technology* used by its independent financial advisors, it would then be required to *evaluate every technology* to determine if it is used in an "investor interaction" – broadly defined in the Proposal as "[e]ngaging[14]. If the technology is used in an "investor interaction," the independent financial services firm would be required to evaluate any conflicts resulting from the independent financial advisor's use or reasonably foreseeable use of that technology and determine whether the conflict causes the financial advisor to place his or her interest ahead of the interest of investors. To conduct this evaluation consistent with the Proposal, independent financial services firms would have to first understand the inner workings of potentially hundreds of different technologies,

---

[13] Financial Advisor Technology Map, https://www.kitces.com/fintechmap/ (Oct. 3, 2023).

[14] *See* Proposed Rules 15l-2(a) and 211(h)(2)-4(a).

before analyzing each individual financial advisor's use of that technology. Finally, if a conflict exists that could be deemed to place the financial advisor's interest ahead of investors' interests, the independent financial services firm would be forced to eliminate or neutralize the conflict – which, in practice, means preventing an independent financial advisor from using technology that he or she determined best served their customers' interests.

In the independent financial services firm model, where each financial advisor has the freedom to select the technology that best fits their business, collecting and evaluating information about every technology used in an "investor interaction" is an unworkable burden. While the precise impacts of the Proposal are impossible to predict, FSI members, who make up a large segment of the independent financial services firm and independent financial advisor community, anticipate that it would radically change this business model. Independent financial services firms would effectively be forced to implement certain firm-wide controls over the types of technology that are available to independent financial advisors. Independent financial advisors would no longer be permitted to select the technologies that best serve their customers' interests, resulting in those customers likely receiving reduced, less efficient service at a potentially higher cost. Further, independent financial services firms would likely coalesce around certain popular technology solutions, restricting the use of lesser known, but potentially innovative, technologies and, therefore, stifling innovation.

Finally, broker-dealers and investment advisers in general, and independent financial services firms in particular (because of the potential number of technologies they would be required to evaluate), would be subject to a greatly increased risk of inadvertent rule violations. If a firm uses a covered technology, and there is an unexpected technical flaw or an outcome that is unexpected through the use of the technology, the Proposed Rules may deem there to have been a conflict that was not neutralized or eliminated, thus exposing a firm to a rule violation. As the SEC must understand, technological processes can be tested extensively, and they still may contain underlying flaws or actions that are not expected. These situations can be remediated by firms when they are discovered, but the operation of the rule may lead to a violation before any remediation is even considered. The prospect that latent problems could lead to rule violations would cause firms to spend intensive time and effort in examining, testing and remediating (including the possibility of hiring outside consultants) covered technology in advance of launch. While this may be a laudable goal for firms, it would also lead to an inordinate amount of time and cost especially considering the practical realities of frequent, needed software updates that may require fresh review and evaluation. Financial planning technologies, for example, also include near-continuous updates to ensure the most recent and relevant information is included for advisors to consider in assisting clients. These costs are not sufficiently captured in the SEC's discussion of the costs and benefits of the proposal and will necessarily be passed on to investors.

III. The Proposed Rules Would Upend Long-Standing Compensation Models.

Beyond the impacts on independent financial services firms specifically, the Proposal would more broadly jeopardize the viability of differential or variable compensation payments. The SEC has acknowledged that the payment of differential or variable compensation to a financial advisor related to the sale of particular products may be a conflict of interest. In fact, the SEC effectively states in the Proposing Release that unless a firm "adequately address[es]"

such a conflict, it could cause the firm to place its interest ahead of the interests of investors.[15] The issue is that according to the Proposal, a broker-dealer or investment adviser can only "adequately address" this conflict by either completely removing or neutralizing it.

Because technology proliferates in every aspect of a broker-dealer's business, the Proposal is likely to apply to nearly every recommendation made by a financial advisor, and subsequent sale by a broker-dealer. Due to the broad and novel definition of a "conflict of interest," if the Proposal is adopted, broker-dealers may no longer be permitted to pay differential or variable compensation for the sale of any product available on their platform. The end-result is that broker-dealers may be required to "levelize" compensation across all product types – a scenario that fails to take into account the plurality and diversity of compensation arrangements across product types (*i.e.*, brokerage commission on traded securities paid by the customer, markups/markdowns in the case of principal transactions, spreads in certain public offerings, selling compensation paid by issuers in private and public offerings, ongoing servicing and administrative relationships, and account fees and charges). It also fails to consider that the sale of certain product types takes the financial advisor, and the associated broker-dealer, more time and effort.

This is yet another place where the SEC diverges from guidance it provided under Reg BI. In the Reg BI Adopting Release, the SEC discussed "mitigation methods" that firms could implement to comply with the Conflict of Interest Obligation in the context of differential compensation arrangements.[16] The SEC suggested that firms could "minimiz[e] compensation incentives for employees to favor one type of account over another; or to favor one type of product over another, proprietary or preferred products, or comparable products sold on a principal basis, for example, by establishing differential compensation based on neutral factors."[17] The SEC further notes that it is "not requiring firms to establish differential compensation based on neutral factors . . . ."[18] If this Proposal moves forward, this guidance would be rendered meaningless, and broker-dealers would be forced to abandon Reg BI-compliant approaches to differential compensation.

One aspect of differential compensation that would be impacted by the Proposal is the distribution of proprietary products. Broker-dealers that distribute proprietary products employ compensation models that could be seen as a "conflict of interest" (as that term is defined in the Proposal) in favor of proprietary product sales. This compensation model is an inherent attribute of proprietary product distribution – when a proprietary product is sold, revenue flows both to the distributing broker-dealer and to the affiliated issuer. Therefore, under the Proposal, a broker-dealer that uses "covered technology" may have a "conflict of interest" that needs to be "eliminated or neutralized." Given the fundamental compensation structure tied to proprietary product sales, this approach may dismantle the current model of distributing proprietary products. Again, the SEC fails to adequately explain why investors are not already protected by Reg BI,

---

[15] 88 Fed. Reg. at 53961.

[16] 84 Fed. Reg. at 33392.

[17] *Id.*

[18] *Id.* at FN 757.

under which firms can address many conflicts resulting from proprietary product sales through disclosure and/or mitigation.[19]

The Proposal would essentially supersede the SEC's guidance on conflict disclosure and mitigation outlined in Reg BI concerning proprietary product sales. Instead of assessing how to disclose and mitigate conflicts tied to proprietary product sales, broker-dealers would be compelled to "eliminate or neutralize" these conflicts. In practice, this may only be possible if the firm completely ceases to sell proprietary products.

IV. The SEC Failed to Comply With Its Obligations Under the APA.

The Proposal does not comply with the APA's rulemaking requirements.[20] The APA requires that federal agencies give interested persons an opportunity to participate in rulemakings through the submission of written data, views, or arguments to be considered in the agency's deliberative process.[21] Further, rulemakings must provide sufficient factual detail on the legal basis, rationale, and supporting evidence for regulatory provisions such that interested parties are "fairly apprised" of content, the reasoning of the agency implementing them, and the manner in which such regulations foreseeably may affect their interests.[22] In any rule proposal, the SEC has an obligation to come forward with a well-informed analysis of how markets operate, the likely effect of the changes it is proposing, and why such changes are necessary and appropriate.

The SEC justifies the Proposal, in part, by pointing to comments received in response to the SEC's 2021 Request for Information and Comment on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches (the "2021 DEP Request").[23] One problem, of many, is that the Proposed Rules do not logically follow from the 2021 DEP Request, which was primarily focused on broker-dealers' and investments advisers' use of digital engagement practices ("DEPs") and other design elements or features designed to engage with retail customers on digital platforms. The Proposal eschews this direct focus on digital platform engagement and, instead, launches an attack on the general use of nearly any technology by broker-dealers and investment advisers.

Despite noting that it received over 2,100 comments in response to the 2021 DEP Request, the SEC seems to give inordinate attention and consideration to certain commenters (*i.e.*, investor rights clinics) that make unsupported assertions about the purported danger of technology in financial services. The SEC downplays comments focused on how firms use technology to deliver better outcomes and innovative, cost-efficient products and services to investors. The SEC's use of certain "cherry-picked" comments to form the basis for the Proposed Rules – which touch almost

---

[19] 84 Fed. Reg. at 33326-27 (In the Reg BI Adopting Release, the SEC notes that, to mitigate a conflict of interest resulting from a broker-dealer's sale of a limited set of products (including proprietary products), a broker-dealer could establish "product review processes or establish procedure addressing which retail customers would qualify for the product menu.").

[20] 5 U.S.C. § 553.

[21] *Id.* at § 553(c).

[22] *See*, *e.g.*, *Mid Continent Nail Corporation v. United States*, 846 F.3d 1364, 1373-74 (Jan. 27, 2017).

[23] *See* 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, SEC Release Nos. 34-92766; IA 5833 (Aug. 27, 2021), 86 FR 49067 (Sept. 1, 2021).

every aspect of a broker-dealers' and investment advisers' use of technology in running their business – is flawed and purports to allow the SEC to justify that the benefits of the Proposed Rules outweigh the costs.

Moreover, in their haste to push forward an ambitious agenda, including the Proposal, the SEC overlooked the intricate connections and interdependencies with other pending proposals. Instead of addressing the complexity of a comprehensive and carefully considered rulemaking, the SEC opted to artificially segregate several related proposals, potentially undermining the overall effectiveness and coherence of the regulatory framework. Even worse, the SEC has shifted the burden of conducting this analysis onto commenters by, for example, "encouraging commenters to review the [SEC's Outsourcing by Investment Advisers proposal] to determine whether it might affect this proposal."[24] This represents an explicit acknowledgment by the SEC of its failure to conduct the analysis required by the APA.

The SEC has tacitly recognized its shortcomings in conducting the necessary analysis required by the APA through its pattern of releasing proposed rule and subsequently reopening comment periods for previously proposed rules. This pattern suggests a realization of the need for additional input, scrutiny, and assessment, indicating a recognition of the inadequacies in the SEC's current rulemaking process.[25] Instead of engaging in thoughtful rulemaking, the SEC's issuance of isolated and piecemeal proposals without adequate analysis or explanation reflects the agency's approach of hastily pushing through an uninformed agenda.

V. Considerations for Subsequent SEC Rule Proposals

The SEC should withdraw the Proposal and proactively collaborate with broker-dealers and investment advisers to enhance their understanding of the technology used by firms in their interactions with investors. An initial step should involve a comprehensive review of comments received in response to the 2021 DEP Request, with the subsequent issuance of additional requests for comment as needed to gather the requisite information and analyses for future proposals, in line with the APA's requirements. During this process, it is imperative for the SEC to carefully evaluate how technological advancements in auditing, reporting, recordkeeping, trading, and surveillance have contributed to heightened investor protection and increased retail investor engagement in the market. Acknowledging instances where these advancements have led to reduced costs for investors is crucial for informed and balanced rulemaking.

With regard to the concerns raised by FSI in this letter, the SEC should more appropriately analyze and consider the impact of any future proposal on broker-dealers and investment advisers generally, and, more particularly on independent financial services firms. The SEC should recognize the substantial and important protections that are already in place through the existing Standards of Conduct with regard to securities recommendations and/or investment advice. The focus of any future proposal *should not* be on securities recommendations or investment advice

---

[24] 88 Fed. Reg. at 53972 n. 124.

[25] See, e.g., Reopening of Comment Period for "Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies," 88 Fed. Reg. 16,921, 16,922 (Mar. 15, 2023) (Commission reopening comment period for specific purpose of how the proposal interrelates with the Regulation SCI Release, the Regulation S-P Release, and Cybersecurity Release) ("The Commission is reopening the comment period for the proposed rules so that commenters may consider whether there would be any effects of the Related Proposals that the Commission should consider in connection with the proposed rules.").

that are already covered under existing Standards of Conduct. Instead, the SEC should focus on the use of technology to directly interact and influence retail investor behavior (i.e., digital engagement practices). This tailored approach to rulemaking would avoid conflicts with existing law, rules, and regulations and provide the SEC an avenue to fulfill its core mission of protecting investors.

Conclusion

FSI is committed to constructive engagement in the regulatory process and welcomes the opportunity to work with the SEC on this and other regulatory efforts. Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

David T. Bellaire
Executive Vice President & General Counsel