

MEMO# 35762

July 3, 2024

Investors and the Markets First: Reforms to Restore Confidence in SEC

[35762]

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TO: ICI Members
Closed-End Investment Company Committee
Equity Markets Advisory Committee
ETF (Exchange-Traded Funds) Committee
SEC Rules Committee
Small Funds Committee SUBJECTS: Closed-End Funds
Trading and Markets RE: Investors and the Markets First: Reforms to Restore Confidence in SEC

ICI, along with a number of other trade associations who represent different participants in the U.S. capital markets, developed a white paper, Investors and the Markets First: Reforms to Restore Confidence in SEC, which (i) identifies areas where the SEC's current rulemaking agenda has deviated from regulatory process protections; and (ii) presents solutions to assure that investors and the markets are always put first when the SEC considers regulatory reforms.[\[1\]](#) The paper is briefly summarized below.

The paper first highlights several issues with the SEC's current rulemaking.

- The SEC Has Ignored Its Obligations Under the Administrative Procedure Act. The SEC has engaged in a pattern of rulemaking that is arbitrary and capricious, eschewing its obligations under the APA. Many rules are unnecessary and fail to identify the market failure or problem they seek to solve.
- The SEC Has Not Considered the Interconnectedness of Its Rules. Many of the final rules fail to consider the cumulative substantive and procedural impacts of existing and other contemporaneously proposed rules. Interconnections are not analyzed or are given little consideration. Many of the SEC's recent rules are vague and ambiguous.
- The SEC Has Adopted Final Rules That Differ Drastically from the Proposals. Many final rules exhibit dramatic shifts from what was proposed. As a result, the final rules lack public input on the ramifications of the changes, rendering the comment process inadequate for purposes of the APA and heightening the risk of policy failure.
- The SEC Has Exceeded Its Statutory Authority. The SEC, in many cases, has exceeded its statutory authority by using rulemaking authority to regulate entities or activities

outside its jurisdiction.

- The SEC Has Not Promoted Capital Formation. No recent SEC rule has promoted capital formation or innovation despite the SEC's explicit mission to promote capital formation and the powerful array of tools Congress provided the Commission to accomplish it.
- Many of the SEC's Rules Will Disrupt Orderly Functioning of the Markets. The SEC has not done the necessary work to understand how markets and participants will be impacted by proposed changes, leading to unnecessary and flawed rules that will in some cases disrupt the orderly functioning of the markets.

The paper then recommends several reforms to ensure that SEC rulemaking promotes its mission and is bound by rigorous economic analysis.

- First, require the SEC to affirmatively conduct an analysis of all interrelated and interconnected rules (existing and contemporaneously proposed) for each proposed rule, and amend or repeal rules as necessary to account for such interconnections.
- Second, require the SEC to provide a minimum of 60-day comment periods for proposals calculated from the date published in the Federal Register unless there is an emergency.
- Third, require a third party to perform and publish for public comment no later than 90 days from the date of enactment a post-adoption cost impact assessment for each major rule the SEC has adopted the past three years.
- Fourth, integrate and expand upon the mission of several offices at the SEC, such as the Office of the Advocate for Small Business Capital Formation, Office of Strategic Hub for Innovation and Financial Technology, Office of Minority and Women Inclusion, and the Office of the Investor Advocate, in order to centralize and appropriately resource mandates that focus on opportunities for U.S. investors and market entrants, as well as the promotion of market innovation and capital formation.
- Fifth, require the SEC to (a) publish an annual report on the number of exemptions granted or exemptive rules adopted to promote capital formation and product innovation, and the actions the SEC has taken to promote financial security, opportunity, choice, and wealth creation for American investors, and in particular retail investors; and (b) review and adjudicate exemptive applications under the Investment Company Act for relief in no more than [180] days.

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[1] Investors and the Markets First: Reforms to Restore Confidence in SEC, available at <https://www.ici.org/24-ppr-reform-restore-confidence-sec>