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Regulation Done Right: Toward A More Productive Industry-Agency Relationship

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Introduction

I would like to begin by acknowledging the tragic situation taking place in Ukraine. I think many of us have some connection to Ukraine. In my case, I spent time in Kyiv in 2018 at the invitation of the Ukrainian National Securities and Stock Market Commission. I was asked to advise on the development of their capital markets. While there, I met hundreds of Ukrainians eager to hear about the US regulatory model and our financial system.

As I reflect upon that experience, I am reminded about how much the people of Ukraine look to the West – Europe and the United States – as their future. To them we are the "shining city upon the hill" that Ronald Reagan spoke of. For this reason, our support for Ukraine should be more than a reflection of our humanity. It also should stem from our conviction in the superiority of our system of markets and democracy.

Keeping in mind what I just said about how Ukrainians and others look to America, the topic of my speech today is about something that concerns me. The crux of the issue is this: there is a rising tendency among policymakers, on *both* sides of the aisle, to view "the industry" and industry expertise with suspicion. This suspicion increasingly affects the development and implementation of regulation and policy, and not for the better.

This worsening development is a symptom of a broader disease, namely the partisan division that dominates modern US politics. As strong voices on the right and the left embrace opposing camps, and as severe partisanship becomes commonplace, we risk a situation where our policymakers view industry through an ideological lens, or worse, as ideological enemies.

On the right, there is broad distrust for so-called "woke" companies. On the left, there is a deep distrust of corporations as a whole. Either way, hostility to industry expertise and knowledge in the policymaking process will undoubtedly lead to less effective regulations that tend to be more costly, more operationally complex and less beneficial to investors and markets. As this trend progresses, it will adversely impact our financial markets, our economy, and ultimately, the millions of American families in both red states and blue states who rely on our services and products.

No one wants that – whether in this room, or in the halls of government. We need a path back toward a strong and productive industry-policymaker relationship. And we need to pursue that path as soon as possible.

Regulators and Industry

Obviously, I'm here today as the new President and CEO of the Investment Company Institute. ICI represents thousands of regulated funds, which in turn serve more than 100 million long-term individual American investors.

Yet as you know from my biography, prior to joining ICI, I worked in the public sector for more than eight years. I served in senior positions at the Securities and Exchange Commission and Commodity Futures Trading Commission under both Democrat and Republican-appointed Chairs. At every stage, I experienced firsthand the importance of industry input in the promulgation of sound rules and regulations.

I cannot stress this enough. Frequent and regular dialogue – the exchange of views – between regulators and industry leads to better regulations. Such regulations meet policy objectives, are fit for purpose, *and* can be efficiently and effectively implemented. There are several recent examples when meaningful engagement between financial regulators and industry led to rules that served the interests of both markets and investors.

In 2018, for example, the ICI worked with SEC staff to modernize the regulatory framework for exchange-traded funds. For the SEC and industry, the final rule brought much needed legal certainty to the operation of the ETF business, including making it more cost effective, and provided greater certainty for all issuers looking to launch new products. But even more importantly, this final rule was incredibly beneficial to investors because it brought market consistency to the ETF market and supports investors seeking to meet their long-term financial goals.

In my own career I spent years at both the SEC and CFTC working on a suitable cross-border approach to the regulation of over-the-counter derivatives. Despite some early hiccups, constant dialogue with industry eventually resulted in a holistic approach that enabled regulation of a $500 trillion global swaps market consistent with the goals of the Dodd-Frank Act, ensuring the risk transfer markets supported cross-border investment and trade for the benefit of American consumers and investors.

There are many other examples which illustrate the clear benefits of regulators engaging with industry in creating more effective regulation. Such collaboration reflects the once widespread understanding that industry expertise is useful, and even necessary, to produce the best rules to achieve desired policy objectives.

Distrust of Industry Input

Even against this backdrop, it is not popular today to speak about a positive working relationship between regulators and industry. Rather, there is a desire to keep industry at arms-length and "on the other side of the table."

Instead of respect for industry expertise, there is distrust.

Instead of meaningful engagement, there is avoidance.

Instead of taking into account the operational and business realities of the marketplace, there is a posture that industry's implementation challenges are unimportant.

Why is this happening?

As I mentioned, this development is less specifically *partisan*, and more broadly *political*. The division on both sides of the aisle will increasingly drive a divisive regulatory approach regardless of which party controls the White House and Congress. It encourages a sort of us-versus-them mentality, with "us" being the regulator and "them" being business and the broader industry.

Yet by taking this path, regulatory agencies are at risk of undermining their own mission and hurting the very people they are meant to help.

There are three main ways this reality plays out.

First and foremost, this approach shifts policy priorities in an unhealthy, unhelpful, and unfortunate direction.

When industry contributions are given less credence, regulators are more tempted to focus on "big ideas" and "grand policy goals." Sweeping regulatory changes become the name of the game, and there is no shortage of possibilities. Law reviews and academic journals are filled with suggestions about how to fundamentally re-order large parts of the economy and society using the power of regulation.

As a former regulator, I get the appeal. Who wouldn't want to make their mark on America, one mandate at a time? Yet grand projects tend to dominate attention at the expense of the technical problems that agencies are better suited to solve.

A regulator's bread-and-butter isn't enacting big change – it's using its expertise to make meaningful, yet incremental, changes to improve economic processes for the benefit of the public. Those tasks may not merit front-page media coverage or the attention of high-profile conferences, but they do make markets work better, which is the point of regulation. Alas, such critical regulatory tasks are being cast aside as unimportant, when in fact, they are among the most important parts of the regulatory process.

Consider a few examples from my industry. Issues like e-delivery and rationalizing processing fees are vitally important right now – they represent hundreds of millions of dollars in savings and will make investing more efficient – yet currently, they are *not* at the top of the to-do list. If the SEC included these issues in its list of high priorities, the benefits would be broadly felt. I imagine most of you have similar examples from your lines of work.

The second consequence of the anti-industry turn is a lack of focus on operational and business challenges.

When industry input is overlooked or undervalued, regulators will lose sight of the details and difficulties of their proposed rules – how they will actually work. The end goal of a new regulation is often seen as more important than the *means* to that end.

Yet that's dangerous and risks doing harm to the very people a regulation is meant to help. Agencies need to identify a rule's real-world effects, not promulgate regulations in a vacuum divorced from reality. When it comes to regulation, the "how" is at least as important as the "what" and the "why."

Once again, the proof is playing out in financial regulation. Recent rule proposals on swing pricing for money market funds, cybersecurity policies, and securities lending, for example, create significant operational and business challenges. There is a lack of understanding and appreciation of important real-world details, relating to markets, investors and the threat environment. The policy objectives of these proposals are praiseworthy, but the operational and business difficulties will frustrate those objectives, harming investors and markets in the name of helping them. It just goes to show the importance of industry input when devising complex regulations.

The final consequence is the most practical. Divisiveness is weakening the core of the rulemaking process itself. As agencies take an adversarial posture toward industry, I worry they have come to see notice and comment requirements as procedural hurdles that must be overcome.

That's a big mistake. Notice and comment aren't obstacles – they're opportunities. They're the primary mechanism by which affected parties provide views on policy, which is an essential part of the administrative process. And industry isn't the only participant in the comment process. From consumer groups to policy think tanks to academics to individual Americans, a wide variety of players and people make their voices heard through the rulemaking process. That's a good thing that needs to be preserved and strengthened.

Comments on proposed regulations are a critical source of productive feedback. They can help agencies identify unintended consequences and find better solutions to real problems. By contrast, when regulators make it more difficult to offer comments, a regulation won't be as strong or sound as it could and should be.

In this respect, shortened comment periods seem to indicate that moving the process along is more important than maximizing thoughtful input. Yet complicated and numerous proposals demand comprehensive and thorough reviews. The result will be better regulations and more benefits for regular people. In my industry, that means long-term individual investors.

The three consequences I've identified all lead to the same outcome. Poor prioritization, overlooking operational and business realities, limiting notice and comment – they all lead to sub-par regulations. *That* is the biggest problem of all.

It's tempting to think that lower quality regulation is an industry compliance problem, but that's far too simple and short-sighted. Yes, when the public sector falls short, private sector companies get hurt. But then so are the customers they serve and the communities they anchor. At ICI, we're wary of regulations that hurt the markets and the tens of millions of individual investors whose financial futures depend on them.

That's not an industry problem. It's an economic problem. And for that matter, it's a *political* problem.

When regulations go wrong and hurt the people they're supposed to help, the result is often an electoral backlash. Seniors don't like it when their retirement funds shrink. Young parents don't like it when they lose money they've saved for a home or their children's education. They often voice their displeasure with their votes.

In that sense, bad regulations are bad news for elected leaders, who will find it harder to enact their political agenda. Yet the converse is also true: when regulations go right, officials get rewarded, and they can push ahead with other policies that strengthen the economy and improve lives.

That's what all of us want, no matter who we are or what we believe. Republicans and Democrats. Agencies and industry. Executives and citizens. We want regulations that *work*. And to make that happen, those of us in this room have a lot of *work* to do.

The Path Forward

Trade associations and industry groups are key to building a more collaborative relationship with regulators. If we're being honest, we haven't always modeled the best behavior. We've played a role in fomenting the turn against industry, sometimes by opposing policies and throwing up obstacles instead of working to improve proposals, from both sides of the aisle.

We can do better. Now is no time for obstructionism or antagonism. That will only deepen the divisiveness. Rather, it's time for us to double our resolve in bridging any divides.

The place to start is on common ground. For example, in the asset management industry, we need to make clear to regulators that we are working for the benefit of long-term individual investors. In this regard, we share a similar goal as the SEC and other regulators. By acknowledging this alignment, early and often, we will be in a better place to engage with regulators in the most productive fashion.

True collaboration requires listening and understanding the policy objectives of our regulators. It means offering real data and evidence to aid in their decision-making. And having a solution-oriented mindset in our engagement with regulators is essential. If all we do is throw up roadblocks, agencies will assume we only seek to frustrate them, which encourages them to keep us at arm’s length. But if we offer solutions and paths forward, they’re much more likely to invite us into the process and listen to our input.

At ICI, we’re taking inspiration from our past. We were founded in 1940, the same year as passage of the Investment Company Act. We spent the following decades supporting the SEC in implementing and updating that landmark legislation. The results were beneficial for everyone, especially long-term individual investors. We’re optimistic we can achieve similar progress today.

And I think that’s true for every industry. Across the private sector, our overall message to the public sector should be this: we want to help you succeed, because your success will ultimately be to our success, and to that of the millions of Americans we serve. The sooner we send that message, and act accordingly, the sooner we’ll rebuild a better relationship between industry and the administrative state.

I’m sure you share my sense of urgency. If the current trend continues to gain speed, on both the right and the left, we are looking at a grim future for federal regulation.

Those of us who *can* help will be cut out of the process. Those in positions of public trust who *want* to help will find it harder to do so. And the millions of Americans who *need* help will not get it. They will become victims of a regulatory system that is divorced from reality, and the harm to our economy and society will grow. So will the division that created this challenge in the first place.

It’s up to us to prevent that future – and pursue a brighter one. And I’m confident we can succeed.

I say that as a former regulator who has seen the helpful influence and positive impact that industry can have.

I say that as a representative of one of the country’s most important industries – one that’s committed to working with regulators for the good of American investors.

And most of all, I say that as an American citizen, who simply wants a good government, a better economy, and the best life for myself and my loved ones.

Each of you can say the same. And all of us can make it happen. It is in our power to build a more productive industry-agency relationship, for the benefit of all who call this country home. They’re counting on us – and we will deliver for them.

Thank you. I look forward to your questions.
