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ICI President’s Address, 2024 Investment Management Conference

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“Another Century of Progress: How ICI Is Advocating for Investors and Against Over-Regulation”

INTRODUCTION: A CENTURY OF PROGRESS

Good morning. I hope you’ve enjoyed the conference so far. On behalf of the Investment Company Institute, thank you for making time in your busy schedules to be here. We’re grateful to you—our members—and everyone else here at this conference that supports the work of our members. By being here, you’re helping us carry out our mission, which is to strengthen the asset management industry for the benefit of the long-term individual investor. We take great pride in this mission. And it’s remarkable to realize how far we’ve come.

It has been one hundred years since the first mutual fund was established in the United States by MFS in March 1924. Since that momentous day, mutual funds, ETFs, and other investment products have given American households the unprecedented opportunity to set and achieve their long-term financial goals. A century later, 100 million Americans rely on funds to save for education, homeownership, and retirement, and even more rely on other investment products. While the American dream is debated by historians and promised by politicians, the fact the United States is the largest economy in the world and the wealthiest of the G7 is possible because of the role of mutual funds and investment products serving as a transmission channel for household savings into the capital markets. Put another way, you are the ones who opened the door to the American Dream.

I can’t overstate the importance of our progress. A hundred years ago, the concept of a nest egg with money to spare for vacation, leisure, and retirement was a privilege enjoyed by only the most wealthy. Now it’s a reality for hundreds of millions of Americans. Mutual funds launched the democratization of finance, and, to this day, that process continues through ongoing innovation by the firms represented in this room.

We’ll continue to remove barriers of entry to financial services, ensuring that anyone who wants to invest, can invest, no matter their background or experience. We’re making this possible through increased education, access, and affordability. Technology has made it possible to open an account and begin investing at any time. And competition has lowered fees, making investments more affordable than ever. As innovation continues, one thing is clear: The asset management industry is prepared to deliver another century of progress for individual investors.

Your leadership is key to making this vision a reality—and so is your partnership with ICI. Since our founding in 1941, we have been the industry’s voice in Washington, DC, and in financial centers around the world. We’ve shaped the policies that brought investors this far, ensuring they’re developed and implemented in the most even-handed and innovation-friendly way. Our difference was clear in the early days of the ‘40 Act and over the 80 years that followed. For the better part of a century, the Investment Company Institute has secured the policies that help you secure the financial futures of the American people.

As markets have become more complex and interconnected, ICI's work has become more important. And as the regulatory state has expanded, we've become investors' most important advocate for sound regulation. This is the situation in which we find ourselves today. Even as we marvel at the progress of the last hundred years, ICI is advocating for the policies that will enable you to achieve even more over the next hundred years.

THE CHALLENGE: AN ERA OF OVER-REGULATION

Unfortunately, the road of progress is not guaranteed. It must be built and pursued with vigor. And it demands a regulatory system that is sound, smart, and grounded in facts and data. But as we've seen, regulators do not always head in this direction. We must be vigilant against regulatory initiatives based on rumor, fear, and misunderstanding.

Consider the following examples. SEC Chair Gary Gensler has repeated the assertion several times that mutual funds begged for a government rescue during the dark days of March 2020. We have no knowledge of any such requests, nor has the SEC provided evidence of such requests. Yet this assertion is being used to justify many sweeping regulations that will drastically change how mutual funds operate in the United States.

Another concerning claim is that America's retirement system is close to failing. The media recently fixated on a third-party report that our retirement system gets a C+ grade and claimed that this poor grade justifies curtailing the tax incentives for retirement plans. That's news to me and millions of Americans. According to actual income data, the typical retiree maintains more than 90% of the average spendable income they enjoyed when they were between 55 and 59 years of age—the working years people enjoy before most enter retirement. Misleading reports are no guide for good policy.

Finally, we've heard claims in the public square that the bank failures of Silicon Valley Bank and Signature Bank, and other problems in the banking system, were the fault of money market funds. Several media reports cited analysts who suggested that money market funds are drawing deposits away from banks, adding to stresses at banks and preventing them from lending more to businesses and consumers. Analysis by ICI's Research team found that the narrative that these funds are preventing increased lending to the real economy is strained at best and incorrect at worst. If we're going to strengthen our financial system, we need to look at the facts.

But that's not what regulators are doing. They're ignoring facts and data from the industry, setting up barriers between you and investors. These barriers are formidable, to say the least, and it's fair to say we are currently in an era of extraordinary regulatory activity.

ICI saw it coming. In 2021, we began warning about a change of posture and priorities in Washington, DC, especially at the SEC. Not long after, the SEC began to propose big new rules at a breakneck pace. We warned that the Commission was doing too much, too fast, with too little concern for how investors would be affected.

We expressed ourselves even more strongly in 2022 as the proposed list of new regulations continued to grow. At the time, I warned in The Wall Street Journal that the SEC had embraced an academic approach—what I called "regulation by hypothesis"—with little regard for real-world effects. At that point, the Commission had proposed 26 rules in less than a year. In comment letter after comment letter, and in research product after research product, ICI pointed out that the cost of this regulatory deluge would be severe, and so would the damage to capital markets and investors, with little actual benefit.

And a couple of months later, we spoke out opposing the views of central banks and prudential regulators that our members were the main source of risk to the global financial system.

We reiterated our concerns about the SEC rulemaking approach at this conference last year, pointing to its still-growing list of costly proposed rules. And now, nearly three years after ICI issued its first warning, it's clear that our concerns were warranted. The SEC is pursuing a range of rulemakings that harm investors and the health of our capital markets.

It's been tough to see this transformation. ICI has a longstanding relationship with the SEC that goes back to the Commission's earliest years. We respect its mission and commitment to protect the same investors that our members serve, which is why we've been so forthright about the costs and consequences of the SEC's current agenda. We've analyzed the effects these rules will have. We've shown how many mandates are built on unrealistic assumptions that make them unworkable. And we've humbly asked the SEC to reconsider its proposals, while providing alternative approaches and actionable ideas for consideration.

Specifically, ICI submitted our analysis to the SEC last year, noting that it has issued a wide range of interconnected rule proposals but has failed to consider and analyze them holistically. We pointed out that, in addition to being substantively flawed, the rules have serious procedural deficiencies. For example, the Commission has failed to consider the effect of interconnected and interdependent proposals in its cost-benefit analyses. Implementing so many complicated rules simultaneously has potentially multiplied costs that the SEC didn't identify.

Our industry supports all forms of new regulation that serves investors. But we do not want massive, one-size-fits-all mandates that hurt investors while exceeding their expected benefits. In many cases, we have found the SEC's efforts to balance costs and benefits to be lacking. The proof has come over the last 12 months, as some of the most concerning proposals have started being finalized.

Consider the SEC's final money market fund reforms. Before the final amendments came down last July, we made clear that the proposal's focus on swing pricing would be disastrous for investors. While the Commission didn't adopt swing pricing, it did elect to impose an expensive and complex mandatory fee on many investors.

There is no precedent for such a mandatory fee framework. It was a major shift at the eleventh hour. And there was little discussion in the original proposal of such a fee and how it would work. The last-minute change deprived the public of key details and the ability to comment on such sweeping changes. The SEC should have re-proposed this fee framework instead of finalizing an alternative that no one saw.

As firms grapple with the challenges of implementing the money market fund amendments, the true costs are becoming clearer. We must ask whether the difference between what a regulator says is going to happen and what actually happens is something we as a society should care about. Trust in the regulatory process depends on transparency and the regulator's good faith effort to understand real world impacts. Otherwise, the rulemaking process becomes performative.

The SEC's final Fund Names rule is another example of where ICI's concerns were merited. Rolled out last September, the rule is supposed to provide more clarity to investors about how a fund is investing so that the fund's name does not mislead investors about its investments and risks. But the final mandate goes much further, sweeping three-quarters of all US funds into its dragnet. There is no justification for such a massive expansion, and there will be enormous costs for investors.

Funds will have to redesign their systems and spend significantly more resources on compliance. The SEC may second-guess portfolio managers' investment decisions after the fact. The Commission itself estimates the final rule could cost up to $5 billion. And the only thing that's more staggering than the sum is the fact that it's a solution to a problem that doesn't exist. The SEC didn't fix anything, and investors are already paying the price.

These final mandates are deeply disappointing, but the situation could get worse. The SEC is moving to finalize more proposed rules, and many of them will be even more costly.

That includes the SEC's liquidity and swing pricing proposal for open-end funds, which ICI strongly opposes. Compulsory changes to liquidity risk management programs, as well as mandatory swing pricing and a daily "hard close" for mutual funds, would fundamentally alter how funds are managed, priced, bought, and sold. If finalized, investors would have less pricing transparency and less ability to meet their financial goals.

All told, more than 100 million American investors could be hurt. Two-thirds would be in the middle class, including tens of millions of retirement savers. The SEC should be helping them prepare for a more secure financial future. Instead, it's hurting their finances by pursuing mandates disconnected from reality. The SEC has no good data to support its proposal and no interest in analyzing its real-world feasibility.

Our message to the SEC couldn't be clearer: the liquidity and swing pricing proposal is unworkable. For the sake of investors, its adoption should never see the light of the day.

There's one more pending SEC policy I want to mention. It's the proposed rule on predictive data analytics, which seeks to address the purportedly unique risks to investors from artificial intelligence and other emerging technologies. We agree with Chair Gensler that AI is worthy of focus and further study, yet these specific rules are not the answer. The SEC hasn't explained why conflicts raised by AI are unique or how existing legal standards are inadequate to address any concerns. As an industry, we want commonsense rules that protect investors while promoting innovation. Unfortunately, this proposal does neither. Like the other policies I've mentioned, it has all the hallmarks of an academic theory that ignores the reality of markets and the needs of investors.

Put simply, the predictive data analytics proposal is an assault on the innovation that investors deserve. It would effectively limit investors' ability to access, through technology, the affordable advice and investment products they've come to rely on for a more secure financial future. If this rule is adopted, firms will avoid new technologies, lest they expose themselves to massive compliance costs and enforcement risk. And the rule is so broadly written, it will cover old technologies, too. Financial planning, allocation formulas, forecasting tools—even spreadsheets and retirement calculators could all be banned or limited.

The ICI estimates this single rule will cost at least $30 billion just in its first ten years. It could be one of the most expensive rules we've ever seen, creating far more problems than it solves. The SEC needs to withdraw this bad idea, go back to the drawing board, and develop a narrow proposal that actually protects investors and addresses the issues that Chair Gensler laid out when the Commission unveiled it.

There is not enough time for me to repeat our concerns with a host of other outstanding SEC proposals affecting funds and advisers, including those related to ESG disclosure, outsourcing, custody, cybersecurity, and market structure. But I do want to point out that the most recent threat to investors has come from the Department of Labor, not the SEC.

As you know, the Department has proposed a sweeping change to the definition of fiduciary for retirement investment advice. I want to make clear that we appreciate the Department of Labor's desire to help Americans get the advice they need when saving for retirement. But the fiduciary rule doesn't do that, and in fact, it would hurt people's ability to get sound advice. Middle-class families would lose access to crucial investment information, while having fewer choices in the marketplace. And of course, the rule would cost billions of dollars, which is money that investors will inevitably pay.

ICI has marshalled this evidence and made our case to the Department of Labor. The best course of action is to withdraw the proposal immediately. Once again, there is no proven problem that needs to be solved, and investors deserve better than heavy-handed mandates that hurt their ability to invest and save.

CONCLUSION: ANOTHER CENTURY OF PROGRESS

The continued deluge of over-regulation vindicates ICI's warnings over the past three years. Yet even now, some people wonder why the Investment Company Institute has decided to speak up and express its concerns more directly. My answer is simple: Our actions are proportionate to the aggressive policies that threaten investors. We're serving our members and the investors they serve in the best way we can.

By the same token, some have asked me why the ICI doesn't stay quiet and do its work behind the scenes. There's an easy answer there, too. The stakes are too high to stay in the shadows—not when investors face such serious threats. We must stand up and speak up. We must make our voice heard because the alternative is to allow investors to lose.

The regulatory system that we have always worked within is becoming less connected to the success of capital markets and investors. Today, we're grappling with dozens of mandates simultaneously. Many have conflicting messages and overlapping effects, leading to spiraling costs while leaving funds in the lurch about how to implement them. The rules we're seeing don't improve the market's mechanics. They bring uncertainty to the market, and every new rule increases the uncertainty—and the harm to investors.

That's the most concerning thing of all. Rules are being constructed without concern for the consequences for the people. Yet a rule's costs and complications shouldn't be an afterthought, let alone ignored altogether. The real-world effects should be at the forefront of the discussion, and in many cases, they should end the discussion. If a single rule is going to cost $30 billion, you don't rush it out the door. You close the door, because that mandate is obviously a bad idea.

Our members are devoted to helping Americans achieve their financial goals, and the past hundred years are proof that you do incredible work. You haven't just empowered investors. You've transformed our economy for the better. We must tell that story, and throughout this year, ICI will commemorate this century of progress in many different fora. We'll paint a picture of the difference you've made and the sound policy framework that made it possible.

Most of all, we'll keep advocating for another hundred years of progress. Now is the time to break barriers, not build them. Now is the time for smart regulation, not stifling mandates that hold us back. America's investors deserve even more access to markets, even more affordable options, and even more opportunities to secure a stronger financial future.

ICI is committed to making this vision a reality. A hundred years ago, nobody knew we'd do so much good for so many people. And with your renewed partnership with ICI, a hundred years from now, people will marvel at how investors have continued to rise and thrive.

Thank you again. I hope you enjoy the rest of the conference.

Now, please welcome our next panel, "The Rise of the Courts and the Regulatory Process," moderated by ICI General Counsel Susan Olson.
