

August 12, 2024

Ms. Jeanette Quick
Deputy Assistant Secretary for Financial Institutions Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Uses, Opportunities, and Risks of Artificial Intelligence in the Financial Services Sector
(Comments on 89 Fed. Reg. 50048 (June 12, 2024); Docket No. TREAS-DO-2024-0011)

Dear Ms. Quick:

The Investment Company Institute¹ is writing to share our views on the U.S. Department of the Treasury’s (“Treasury”) “Request for Information on Uses, Opportunities, and Risks of Artificial Intelligence in the Financial Services Sector” (the “RFI”).² ICI welcomes Treasury’s efforts to seek industry feedback in order to better understand the financial services sector’s perspective on artificial intelligence (“AI”)³ and to provide a forum for our members—asset management firms—to share their perspectives, including on the effectiveness of the existing well-established regulatory framework. ICI looks forward to working collaboratively with Treasury and engaging in a comprehensive discussion on how our members use AI now and how practices may evolve in the future.

Executive Summary

ICI believes that technology has tremendous potential to benefit investors and that it is critical for regulators, including Treasury, to proceed incrementally and deliberately with the goal of preserving today’s beneficial practices and facilitating further innovation. Unique to the financial services sector, the

¹ The [Investment Company Institute](https://www.ici.org) (ICI) is the leading association representing the asset management industry in service of individual investors. ICI’s members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage \$35.7 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 100 million investors. Members manage an additional \$9.3 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to certain collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London and carries out its international work through [ICI Global](https://www.ici.org).

² *Request for Information on Uses, Opportunities, and Risks of Artificial Intelligence in the Financial Services Sector*, 89 Fed. Reg. 50048 (Jun. 12, 2024) available at <https://www.govinfo.gov/content/pkg/FR-2024-06-12/pdf/2024-12336.pdf>.

³ We use the terms “AI” and “AI technology” to refer to AI technology or the use of artificial intelligence. Further, we use the terms, “technology” and “AI” interchangeably. As we explain throughout this letter, Treasury and other financial regulators, inhibiting the use of AI would be tantamount to inhibiting innovation and technological advancement.

existing, technology-neutral regulatory framework incorporates well-established legal principles and standards that can adapt to the advent of new technologies and other market developments and can address and mitigate the concerns that policymakers have articulated about AI. ICI member firms emphasize that in considering AI use cases in light of existing regulatory obligations, they have found that these obligations include robust governance frameworks, ethical guidelines, and human oversight mechanisms that are directly applicable. Regulators such as Treasury should seek to promote a regulatory environment that encourages technological innovation that benefits investors and markets, rather than creating a regulatory environment that would have a chilling effect on technological innovation and be harmful to investors and markets.⁴ We urge Treasury and other regulators to evaluate carefully the public input received in response to the RFI. If the feedback suggests that there may be any potential regulatory gaps or novel risks specific to the use of AI, Treasury or other regulators should obtain further public feedback on how to address these issues and, if necessary, propose a tailored solution proportionate to any specific concerns it identifies.

We offer the following comments in this letter regarding certain aspects of the RFI as they apply to (i) registered investment advisers, in their capacity as advisers to regulated investment companies, retail separately managed accounts and collective investment trusts; (ii) regulated investment companies, including mutual funds, exchange-traded funds, closed-end funds, business development companies, UITs (together, “funds”) and their investors; and (iii) registered broker-dealers that sell fund shares.⁵

The RFI includes 19 questions soliciting comments on three broad areas: (1) general use of AI in financial services, including use cases, types of models being employed, and variability in use and access to AI across financial institutions;⁶ (2) actual and potential opportunities and risks related to use of AI in financial services, including opportunities for, and risks to, impacted entities, particularly with respect to bias, discrimination and privacy; and (3) actions to advance responsible innovation and competition within the financial services sector with respect to the use of AI. Our comments below reflect some key observations with these general themes. ICI welcomes the opportunity to begin an ongoing dialogue with Treasury focusing on the interests of investors, as sophisticated technologies in the marketplace continue to evolve.

I. General Use of AI in Financial Services

The RFI uses a broad definition of AI. Treasury seeks feedback with respect to how the financial services sector uses AI, opportunities and risks presented by developments and applications of AI and challenges and barriers to access for smaller financial institutions. The discussion below reflects our views with respect to certain questions posed regarding the general use of AI.

⁴ While we refer to Treasury throughout this letter, our comments also apply to other regulators. This letter refers to Treasury but, of course, in the case of registered investment advisers and funds the primary regulator is the U.S. Securities and Exchange Commission (SEC), and the SEC would evaluate and decide which of the recommendations to implement. In the case of broker-dealers, the primary regulators are the SEC and the Financial Industry Regulatory Authority (FINRA).

⁵ We refer to these entities collectively throughout this letter as “financial services firms.”

⁶ The RFI defines a “financial institution” to include “any company that facilitates or provides financial products or services” including, among others, banks, insurance companies, non-bank financial companies, asset managers, broker-dealers, and investment advisers.

A. The Definition of AI

The RFI adopts the definition of AI utilized in President Biden’s Executive Order on Safe, Secure, and Trustworthy Development and Use of AI.⁷ Given that AI is rapidly evolving, we recommend that Treasury and other regulators not focus on a particular definition of AI but, instead, on how technology (more broadly) is used and whether it raises unique issues that are not addressed adequately under the existing regulatory framework. The challenge with defining AI, particularly with respect to the financial services sector is that the definition may be too broad or too narrow and can easily become outdated if it is not sufficiently flexible to keep pace with the velocity of technological developments. Further, an overly broad definition may include already established technologies (e.g., Excel spreadsheets). There is also the challenge of determining which components of AI technology to regulate and avoiding a “one size fits all” regulatory approach to all uses of a technology, particularly across all industries. For these reasons, ICI recommends that Treasury take a technology agnostic, outcomes and risk-based approach to the regulation of AI and consider the already robust regulatory framework that governs financial services firms. Furthermore, we stress that any proposed regulation should be principles based rather than prescriptive. Doing so removes the necessity of having to define AI at all.

ICI recommends that regulators take a measured approach to AI. It is essential when thinking about regulating AI to balance mitigating its potential risks against ensuring investors are not deprived of its benefits and opportunities. If regulators identify any unique potential harms that may stem from AI technologies, it is critical that, before moving forward with new regulations, they first consider how existing regulation should be applied to a regulated entity to limit or prevent the possibility of those harms.

An example of our concerns can be seen in the case of the SEC’s recent attempt to address certain aspects of AI in its recent Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers Proposal (the “PDA Proposal”).⁸ In the PDA Proposal, the Commission proposes a definition of “covered technology” that is so broad that, if adopted as proposed, would have radically changed the robust, well-established standards of conduct and day-to-day business practices of

⁷ That definition is:

... a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. Artificial intelligence systems use machine and human—based inputs to perceive real and virtual environments; abstract such perceptions into models through analysis in an automated manner; and use model inference to formulate options for information or action.

White House, E.O. 14110, Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (Oct. 30, 2023), <https://www.federalregister.gov/documents/2023/11/01/2023-24283/safe-secure-andtrustworthy-development-and-use-of-artificial-intelligence>.

⁸ *Conflicts of Interest Associated With the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers*, SEC Release No. IA-6353, 88 Fed. Reg. 53960 (Aug. 9, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-08-09/pdf/2023-16377.pdf>. See also Comment Letter to Ms. Vanessa A. Countryman, Secretary, SEC, from Susan Olson and Sarah A. Bessin (Oct. 10, 2023), available at <https://www.sec.gov/comments/s7-12-23/s71223-271119-653822.pdf> (“ICI PDA Comment Letter”). The Commission’s Spring 2024 Reg Flex Agenda indicates that the Commission intends to repropose the PDA Proposal as early as October 2024. The Commission’s Spring 2024 Reg Flex Agenda is available at https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3235.

investment advisers and broker-dealers. In an effort to create an evergreen definition, the Commission's proposed definition of "covered technology" is so expansive that it captures, and imposes new heavy regulatory burdens on, existing technologies (some of which have been used for decades (e.g., an arithmetic calculator) and would not be what most people today consider high-tech) that have benefitted investors. We urge Treasury to take a different path and to ensure that it and other regulators clearly identify the problem they are attempting to solve for alongside the gap in the existing regulatory framework before introducing any new regulations.

B. Types of AI Models and Tools ICI Members are Utilizing

ICI member firms offer a range of products, services and models to investors, including funds, CITs and retail SMAs. ICI members use technology to identify and engage with investors in a variety of ways, including disseminating educational information about products and services, providing analytical tools and research (including tools that facilitate planning and saving for retirement, buying a home, education, and other important financial goals) and offering advisory services, including both full-service advice with a dedicated financial adviser and online robo-advisory platforms. However, ICI member firms have not indicated that AI technology is used on a prevalent basis and have stressed that AI should be viewed as an augmentative technology that can enhance human decision-making processes rather than a replacement for human expertise and oversight. Further, member firms have strong compliance and governance structures around the use or potential use of AI and do not use AI technology without human oversight and responsibility over the final output.

Firms leverage advancements in technology to directly benefit investors. Technological innovation has democratized access to the markets and investing and provided more personalized services. For example, the evolution of technology has enhanced accessibility to the financial markets by allowing investors of varied wealth, income and experience levels to overcome traditional barriers to investing. Products such as robo-advisory services provide low-cost, personalized investment advice, and online investor engagement tools and platforms provide access to financial education, connecting investors instantly to information and enabling them to make financial decisions tailored to their individual financial goals and empowering them to improve their financial well-being. Unquestionably, the use of technology to provide financial services has led to greater efficiencies, which, in turn, have provided more investors with greater access to these services at a lower cost.

Further, advancements in technology have revolutionized how our member firms run their businesses. Firms rely on technology for different aspects of their day-to-day investment operations, including portfolio management, investment analysis and research, trading and trade allocation, back-office functions, regulatory reporting, marketing, customer service, risk management and recordkeeping. Additionally, firms utilize sophisticated technologies (including AI) for business purposes in connection with their internal operations,⁹ to perform a variety of due diligence processes across client, product and employee activities, and importantly to support their compliance operations, including cybersecurity and

⁹ For example, firms may use AI as a research tool (e.g., MS Copilot) or to create an initial draft or starting point for a document, however firms have emphasized that the use of AI in this regard is only an input, and the firm (or firm employee) remains fully responsible for how the technology is used and verification of the final product (e.g., the accuracy of the output, consistency with legal standards and internal policies and procedures). Going forward, AI has the potential to increase internal productivity (e.g., summarizing large volumes of information, pulling information from different internal sources to create a first draft that a person uses as a starting point), and to serve in compliance applications.

anti-fraud operations.¹⁰ It is crucial for financial services firms to have a full slate of technology solutions available to them to combat bad actors as those actors will not hold themselves back in using any available technology. Technological innovation ultimately benefits firms with increased productivity and lower operating costs and these benefits are passed on to the markets and investors.

C. Challenges for Smaller Firms

The RFI requests feedback regarding challenges or barriers to access for smaller financial institutions seeking to use AI.¹¹ ICI believes that overly broad and prescriptive rules regarding the use of AI and other sophisticated technologies may have a detrimental impact for smaller firms. Prescriptive compliance requirements will likely be particularly difficult for smaller firms. For example, smaller investment advisers may be disproportionately impacted by the cost and compliance burdens flowing from overly broad and prescriptive rules. This is because they do not benefit from economies of scale in the same way as larger complexes. While all firms will be challenged on how to allocate their compliance resources and ensure that they are not shifting resources away from areas of potentially greater risk, smaller firms will bear this burden most heavily, hindering their ability to compete or potentially enter the market. Without the ability to compete with larger firms, many smaller firms may be forced out of business, and this will hurt investors who will be limited in their choices. The ultimate overall effect of this dynamic will be higher costs for investors to access the financial markets. We urge Treasury, and other regulators, to consider the regulatory burden any potential rules would have on smaller financial institutions, including smaller asset managers.

II. Actual and Potential Opportunities and Risks Related to the Use of AI in Financial Services

The RFI seeks input on the potential opportunities and risks of financial institutions' use of AI and how AI may affect impacted entities. This section discusses benefits of technology, how burdensome regulation could negatively impact innovation and increase unnecessary risk, and our members' approaches to risk management, governance, and oversight of sophisticated and evolving technologies.

A. Benefits of AI Technology and Harms of Overly Prescriptive Regulation

Undoubtedly, investors and the financial markets benefit from the use of technology. One aspect is the growth and rate of adoption of new technologies by investors, specifically retail investors who are the ones most served by ICI members. The use of new technology has enabled wider access to financial services by allowing everyday investors to gain access to personalized financial information and advice that historically was limited to the very wealthy. Younger investors, rural investors, and investors of varying socioeconomic backgrounds use new technologies to access markets. For example, the popularity of robo-advice and online accounts is a testament to how the use of technology has been key to inclusivity in investing.¹²

¹⁰ See Managing Artificial Intelligence-Specific Cybersecurity Risks in the Financial Services Sector U.S. Department of the Treasury (March 2024) available at <https://home.treasury.gov/system/files/136/Managing-Artificial-Intelligence-Specific-Cybersecurity-Risks-In-The-Financial-Services-Sector.pdf>.

¹¹ See Question 4 in the RFI.

¹² See Footnote 16 of the ICI PDA Comment Letter.

Furthermore, technology allows firms to effectively engage with investors to help them personalize their investments and make better informed decisions regarding their portfolios at an affordable cost. Firms also use machine learning (“ML”) models to generate next best action recommendations—or financial steps investors should consider taking based on their individual characteristics and current circumstances—to help investors achieve their financial goals. Firms also utilize technology to reduce risk and protect investors, including for example by reducing the risk of fraud. In sum, benefits of using technology generally include more efficient and affordable investor access to accurate, automated information, data, and services.

One of the most valuable benefits of technology is its potential to encourage positive investor behavior. An example of this is a beneficial “nudge” or reminder to maximize retirement savings. An electronic nudge can remind an investor that they can take steps to improve their financial outcome and help the investor meet their investment goals. Likewise, online financial tools, such as financial calculators, can help investors improve their financial health and aid them in identifying and meeting their financial goals. Investors who are better educated about the risks and features of prospective products and services are more likely to make responsible investment decisions consistent with their investment goals and risk tolerance to improve their financial outcomes. From a policy perspective, regulators should encourage this behavior.

In addition to tools and technologies made available directly to retail investors, there are a myriad of interactive educational and portfolio analysis tools made available to financial intermediaries and professionals. These tools provide a range of capabilities designed to assist financial professionals in evaluating portfolios and analyzing portfolio holdings in the context of certain pre-defined, objectively described market scenarios. Financial professionals also can use AI to make better decisions and risk assessments by leveraging large data sets, and such tools can help aggregate and summarize data in a manner that is beyond human capacity.

Critically, some firms have begun to deploy AI and machine learning (ML) to detect potential fraud and financial crimes. In the information security space, the bad actors are already employing AI technology, and it is critical that firms be able to harness the same (or more advanced) technology to protect investors and the markets from such bad actors. There are a multitude of ways in which firms can leverage AI to detect potential fraud, including (but not limited to): (i) data analysis; (ii) pattern recognition; (iii) predictive modeling; (iv) anomaly detection (red flags); and (v) biometric recognition. The types of fraud that can potentially be detected may include: (i) phishing; (ii) identity theft; (iii) money laundering; (iv) forgery; (v) account takeover; (vi) deepfake fraud; (vii) impersonations; (viii) vendor business email compromise; and (ix) other advanced cyber-attacks. AI and ML also have the potential to reduce the burden of fraud prevention for investors. AI/ML techniques can be faster, more accurate and less labor intensive. By validating investors’ identity and rights to open accounts more quickly, firms can provide better service to investors at a lower cost. Regulation should not be so burdensome that it would discourage firms from leveraging AI for fraud detection and compliance purposes.

If regulators were to adopt overly burdensome, costly, and prescriptive rules, the anticipated pullback on the use of AI could decrease the flow of information to clients from advisers and brokers and result in financial firms no longer providing investors with access to previously available beneficial technologies. Unnecessary regulation would deter firms from making available financial education to investors. Similarly, if new regulations are not carefully tailored, they may deter firms from engaging with investors in the manner investors prefer and some firms, especially smaller firms, would likely opt to forego the use of newly available, beneficial AI tools altogether. Overly burdensome rules would not only cause firms to reassess the use of existing AI technologies to offer services and products to investors, but they would

also have a severe chilling effect on firms' willingness to engage in technological innovation with respect to investor services and products.

B. Risk Management and Governance

Our members take a responsible and measured approach to the use of AI and sophisticated technologies by leveraging their existing risk management programs. In doing so, members evaluate and monitor the use of AI for compliance with the existing legal and regulatory framework that governs capital markets. The Securities Act of 1933, Securities Exchange Act of 1934, Investment Company Act of 1940, Investment Advisers Act of 1940, and the rules promulgated under each of these laws establish a comprehensive principle-based framework that establishes certain duties and prohibits certain activities. We believe that these existing risk management programs and the underlying principle-based regulatory framework together have the flexibility to address most risks associated with the use of AI.

1. Existing Regulatory Framework

We believe that the well-established regulatory framework for funds, investment advisers and broker-dealers appropriately addresses most concerns regarding risks associated with the use of evolving sophisticated technology, including AI. The federal securities laws and regulations (including the IA Fiduciary Standard and Reg BI¹³ and FINRA rules) are comprehensive and apply regardless of the use of technology. We encourage regulators to thoroughly consider how existing laws and regulations apply to the use of AI by investment advisers and broker-dealers. If regulators, including Treasury, were to consider proposing further regulation to address issues related to the use of AI, they should first demonstrate that AI poses unique risks and the application of existing regulations is insufficient to address such risks or potential harms.¹⁴ Likewise, care should be taken to ensure that any new regulation does not conflict with adherence to existing regulation.

Investment advisers are fiduciaries to their clients with respect to all aspects of the advisory relationship, regardless of whether or what technology is used. Under the IA Fiduciary Standard, it is well established that an adviser is subject to both a duty of care and the duty of loyalty and may not subordinate its clients'

¹³ Regulation Best Interest ("Reg BI") and the fiduciary duty applicable to investment advisers ("IA Fiduciary Standard," collectively, the "Standards of Conduct"). The SEC adopted Reg BI in 2019 and confirmed the IA Fiduciary Standard in a Commission interpretation that same year. *See* Regulation Best Interest: The Broker-Dealer Standard of Conduct, 84 Fed. Reg. 33318 (July 12, 2019) ("Reg BI Adopting Release"); Commission Interpretation Regarding Standard of Conduct for Investment Advisers, SEC Release No. IA-5248 (June 5, 2019), 84 FR 33669 (July 12, 2019) (the "Fiduciary Release"). We summarize our views here and refer to in Appendices A and B in the ICI PDA Comment Letter to provide more detail regarding existing Standards of Conduct, as well as other regulatory obligations applicable to investment advisers and broker-dealers.

¹⁴ We note that on June 27, 2024, FINRA issued Regulatory Notice 24-09 reminding member firms that existing regulatory obligations apply to the use of AI, including large language models (LLMs) and other generative AI (Gen AI) tools. The FINRA notice does not create new legal or regulatory requirements or new interpretations of existing requirements, nor does it relieve member firms of existing obligations under federal securities laws and regulations. Instead, the notice sets forth a reminder to firms that FINRA intends for its rules and guidance to be technologically neutral and to function dynamically with evolutions in technology and member firms' processes. Further, the notice reminds member firms that as they begin to incorporate the use of Gen AI or similar technologies into their businesses, they should be mindful of the potential implications for their regulatory obligations under FINRA's rules and the securities laws. ICI generally agrees with FINRA's measured approach. *See* Regulatory Notice 24-09 <https://www.finra.org/rules-guidance/notices/24-09>.

interests to its own. To satisfy this fiduciary duty, an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship. This well-established principles-based standard is central to an investment adviser's relationship with its clients, and applies to the adviser's interactions with clients, including those conducted through AI technology.¹⁵ Further, under the Advisers Act regulatory framework investment advisers are subject to anti-fraud provisions;¹⁶ compliance program requirements;¹⁷ custody requirements;¹⁸ marketing regulations;¹⁹ disclosure, reporting and recordkeeping requirements;²⁰ supervisory requirements;²¹ code of ethics requirement, including insider trading procedures;²² and privacy and cybersecurity laws.²³

Broker-dealers are subject to comprehensive regulation similar to that applicable to investment advisers. Reg BI, adopted by the SEC in 2019, imposes an enhanced standard of conduct on broker-dealers and their associated persons when they provide recommendations to retail customers regarding a securities transaction or an investment strategy involving securities.²⁴ Under Reg BI, a broker-dealer and its associated persons must act in the retail customer's best interest and cannot place their own interests

¹⁵ Similarly, registered funds are subject to comprehensive regulation under the Investment Company Act of 1940 and are subject to independent oversight by fund boards of directors. Independent directors have a fiduciary duty, comprised of a duty of loyalty and a duty of care, to protect the interests of the fund and its shareholders, and have both specific and general oversight responsibilities for the operations and management of the fund. For example, among other things, fund boards oversee the fund's compliance program pursuant to Rule 38a-1 under the Investment Company Act, which requires that funds have policies and procedures reasonably designed to prevent violations of the federal securities laws.

¹⁶ See Advisers Act Section 206.

¹⁷ See Advisers Act Rule 206(4)-7 (requires advisers to adopt and implement policies and procedures reasonably designed to comply with applicable securities laws and rules). Rule 204-2(a)(17) requires the maintenance of compliance policies and procedures and evidence of annual compliance reviews.

¹⁸ See Advisers Act Rule 206(4)-2 (establishes requirements designed to ensure the safekeeping of customer funds and securities).

¹⁹ See Advisers Act Rule 206(4)-1 (advertisements by investment advisers).

²⁰ See Advisers Act Rule 204-3 (delivery of brochures and brochure supplements); Rule 204-5 (delivery of Form CRS to each retail investor) and Rule 204-1 (updates to Form ADV); Advisers Act Rule 204-2 (books and records to be maintained by investment advisers). Advisers Act Rule 204-2(a)(10) requires advisers to maintain all written agreements relating to the adviser's business.

²¹ See Advisers Act Section 203(e)(6) (requirements relating to an adviser's obligation to supervise its employees).

²² See Rule 204A-1 under the Advisers Act (requiring advisers to adopt codes of ethics to set forth standards of conduct and require compliance with federal securities laws) and Advisers Act Section 204A (under section 204A advisers are required to maintain and enforce written policies and procedures reasonably designed to prevent the firm or its employees from misusing material nonpublic information).

²³ See Amended Regulation S-P and Regulation S-ID (applicable to both investment advisers and broker-dealers).

²⁴ See Reg BI Adopting Release.

ahead of the retail customer's interests.²⁵ Further, broker-dealers are subject to anti-fraud provisions of the federal securities laws and FINRA rules.²⁶

We believe that when a regulated activity is performed using technology, including AI technologies, models, and tools, it is and should continue to be subject to the same robust regulations that apply if technology is not used. Regulators should not seek to regulate or prohibit the use of any particular type of technology, but instead focus on the activity that is being performed, as is true under current regulation. As an additional layer of protection, financial regulators currently have expansive inspection and enforcement authority to address the behavior of bad actors.

2. Risk Management, Oversight and Governance

In describing the different ways our member firms use technology, members uniformly convey the importance of human oversight and strong internal risk management and governance. Firms indicate that they apply a variety of robust governance structures to the use of emerging technology, such as the creation of AI-dedicated governance committees and their incorporation into existing risk management and governance oversight processes. Firms indicate that their AI-focused governance structures include enterprise wide participation at the highest levels of the firm and across key functions. Firms have also stressed testing, policies and procedures, due diligence, review, approval, monitoring and controls as a part of their deployment and oversight of technology.²⁷ Regardless of specific approach, firms state that they manage AI technology responsibly under the existing regulatory framework—taking a risks and outcomes based approach when assessing, testing and implementing technology, and elevating considerations about privacy, transparency, and serving clients.²⁸ Importantly, member firms have emphasized that they do not utilize technology, particularly sophisticated technologies, without human oversight.

Firms must manage the risks associated with all aspects of their business regardless of whether, or how, they use technology. The regulatory requirements relating to a firm's business practices do not change when a firm incorporates technology into its processes. We therefore strongly believe that there should not be two competing regulatory standards, one for when technology is deployed and one for when it is

²⁵ This best interest obligation is satisfied through compliance with four component obligations including, among others, a conflict of interest obligation that requires the broker-dealer to establish, maintain, and enforce written policies and procedures reasonably designed to: (i) identify and, at a minimum, disclose or eliminate conflicts of interest; (ii) identify and mitigate any conflicts of interest associated with recommendations that create an incentive for associated persons of the broker-dealer to place their interest or the interest of the broker-dealer ahead of the customer's interest; (iii) identify and disclose any material limitations placed on the securities or investment strategies recommended to the customer and any conflicts of interest associated with such limitations; and (iv) identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific securities or specific types of securities within a limited period of time.

²⁶ See Securities Exchange Act of 1934 section (10)(b) and FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade). Please see Appendix B in the ICI PDA Comment Letter.

²⁷ For example, some firms have indicated they are adopting an emerging set of practices called "ModelOps" that ensures the ongoing quality/soundness of the models they use.

²⁸ A robust governance process is also available to ensure review and approval of any use case before it moves to the development stage. Besides, competent staff with the relevant technical expertise and experience in AI, data and model risk management perform the oversight and risk management.

not. The regulatory objectives should be the same, regardless of the extent to which firms utilize technology in their internal operations or engagement with investors.

III. Next Steps

For the reasons discussed above, we believe it is premature for regulators to regulate AI at this time. The existing regulatory framework is sufficiently flexible to be tailored to the use of AI and other emerging technologies, as are firms' risk management and governance frameworks. If, in the future, Treasury or other regulators believe there may be potential regulatory gaps specific to the use of AI, they should obtain further public feedback on how to address the issue and, if necessary, propose a narrowly tailored solution proportionate to any specific concerns it identifies.

In considering potential solutions, we urge Treasury and other regulators to avoid a prescriptive and uncoordinated approach. It is also critical in this context to avoid piecemeal regulation by individual states, as happened with respect to the development of consumer privacy laws. A fragmented, state-by-state approach to AI regulation would be overly complex and difficult for firms to navigate, and would negatively impact innovation in the financial industry and markets.²⁹ For example, maintaining compliance programs that are required to adhere to a variety of overlapping and inconsistent state laws would be confusing for compliance professionals and costly, especially for smaller firms.³⁰ It also will place firms doing business in the United States in a more difficult position compared to those firms doing business in non-US jurisdictions that have a single regulatory approach. As AI continues to evolve, we look forward to engaging with Treasury and other policymakers on AI policies that promote innovation and efficiency and protect our capital markets.

IV. Conclusion

Technology has revolutionized financial services firms' ability to offer investors innovative, cost-efficient products and services, as well as critically important investment education and tools. These technological advancements have democratized investing and made the financial markets accessible to ordinary retail investors for the first time in history. The robust and extremely adaptable existing regulatory framework that applies to financial services firms' use of evolving technology has contributed to these developments.

ICI cautions against premature and potentially unnecessary regulation that would strongly disincentivize financial services firms' use of technology, diminishing the many benefits of technology for investors. Effective regulation should identify and balance the extensive benefits technology brings to investors and firms with potential risks and harms. If Treasury or other regulators believe, in the future, that there are regulatory gaps specific to the use of AI, we urge regulators to work together and avoid a prescriptive and piecemeal approach. We look forward to continuing this important dialogue with Treasury and other regulators as we move forward.

²⁹ AI and other similar technologies are often deployed at an enterprise-wide level, resulting in multi-jurisdictional compliance obligations. Allowing firms to adopt a universal and holistic governance framework will eliminate a piecemeal approach to compliance.

³⁰ It is in that vein that Congress enacted the National Securities Markets Improvement Act of 1996 ("NSMIA") to promote efficiency and capital formation in the financial markets and create a uniform and consistent regulatory regime across all fifty states. Congress determined that NSMIA was necessary to eliminate a "patchwork quilt" of conflicting state regulations on firms that was duplicative, inefficient, confusing, and burdensome. National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290, 110 Stat. 3416 (codified as amended in scattered sections of 15 U.S.C. (2006)).

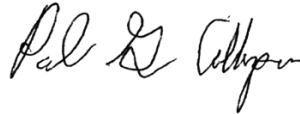
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If you have any questions or require further information regarding our comments, please do not hesitate to contact me at paul.cellupica@ici.org, Dorothy Donohue, Deputy General Counsel, at ddonohue@ici.org, Mitra Surrell, Associate General Counsel, at mitra.surrell@ici.org or Ken Fang, Associate General Counsel, at kenneth.fang@ici.org.

Sincerely,

A handwritten signature in cursive script that reads "Paul G. Cellupica".

Paul G. Cellupica
General Counsel

cc: Hon. Janet Yellen, Secretary of the Treasury, U.S. Department of the Treasury
Mr. Joshua Frost, Assistant Secretary for Financial Markets, U.S. Department of the Treasury
Mr. Michael J. Hsu, Acting Comptroller, Office of the Comptroller of the Currency
Hon. Gary Gensler, Chair, U.S. Securities and Exchange Commission
Hon. Rostin Behnam, Chairman, Commodity Futures Trading Commission