Ms. Natalia Li
Director
Office of Consumer Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20551

Re: Request for Information on the Treasury Department's work to develop a national strategy for financial inclusion; Docket No. TREAS-DO-2023-0014

Dear Ms. Li,

The American Consumer & Investor Institute (ACII) submits this letter in response to the U.S. Treasury Department's request for comment on its work to develop a national strategy for financial inclusion.

ACII's mission is to advocate on behalf of American consumers and investors for more choice and access to U.S. financial markets, products and services, including in the areas of consumer banking, securities and cryptocurrencies – all accompanied by robust financial education.

I. Introduction

Financial inclusion starts with pro-growth, pro-innovation policies that allow all consumers and investors, particularly those from non-traditional or underserved demographics, to engage in U.S. financial markets. Innovation and new technology have opened our financial system to tens of millions of Americans who previously did not or could not participate due to persistent economic and noneconomic barriers to entry. For example, in the capital markets space, firms have brought innovations such as commission-free investing and trading, no minimum account balances, free educational resources and market news, and easy to use mobile technology that have opened the door to a new generation of investors who are younger and more diverse than ever before.[1]

Unfortunately, the progress that has been made toward expanding financial opportunities to more Americans is under threat due to a regulatory landscape that is increasingly hostile toward innovation, modernization, and free enterprise. As the Treasury Department works to develop a national strategy for financial inclusion, it is imperative that you recognize and address

[1] See, e.g., FINRA Report, "Investing 2020: New Accounts and the People Who Opened Them", (Feb. 2021), https://www.finrafoundation.org/sites/finrafoundation/files/investing-2020-new-accounts-and-the-people-who-opened-them_1_0.pdf; Aaron Brown, "Stock Investors are Younger and More Racially Diverse", Bloomberg (Sept. 21, 2020), https://www.bloomberg.com/opinion/articles/2020-09-21/stock-investors-are-younger-and-more-racially-diverse

misguided regulations in the finance and banking sectors that are anti-innovation and will harm everyday consumers and investors.

II. The SEC Has Proposed Regulations That Are Anti-Innovation And Will Undermine Financial Inclusion

ACII is particularly concerned about several regulations that have been proposed by the U.S. Securities and Exchange Commission ("SEC" or "Commission), including a proposed rule addressing Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisors,[2] and four separate rulemakings related to equity market structure for retail investors.[3]

I have filed comment letters on all these rulemakings with the SEC, which I am including as appendices to this letter.[4]

According to the Federal Reserve's most recent Survey of Consumer Finances, in 2022, around 58 percent of American households owned stock, the highest level on record.[5] Advances in technology have broken down barriers to entry that, for decades, prevented wide swaths of the American public from accessing the U.S. stock market. The predictive data analytics rule takes direct aim at innovative technologies under the guise of guarding against potential, yet-to-be-seen threats from Artificial Intelligence (AI).

In reality, the sweeping proposal would harm investors by making it impossible for broker-dealers and investment advisors to interact with customers without incurring substantial, economically unfeasible regulatory burdens.[6] As a result, consumers will lose access to tools and resources they rely on today to develop and implement an investment strategy that best suits their needs. As the SEC recognizes in the economic analysis to the proposal:

"The overall costs, including recordkeeping costs, of the proposed conflicts rules and proposed recordkeeping amendments could also cause some firms to avoid using certain covered technologies in investor interactions, even if the technologies did not create any conflicts of interest. This might happen if the costs of complying with the proposed rules and amendments exceed the revenue that can be gained and/or costs that can be saved by using the technology. For

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[2] Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers, 88 Fed. Reg. 53960 (Aug. 9, 2023)

[3] Regulation Best Execution, 88 Fed. Reg. 5440 (Dec. 14, 2022); Order Competition Rule, 88 Fed. Reg. 128 (Dec. 14, 2022); Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders, 87 Fed. Reg. 80266 (Dec. 14, 2022); Disclosure of Order Execution Information, 88 Fed. Reg. 3786 (Dec. 14, 2022)

[4] ACII Comment Letter (Oct. 10, 2023) https://www.sec.gov/comments/s7-12-23/s71223-270259-652842.pdf; ACII Comment Letter (Jun. 1, 2023) https://www.sec.gov/comments/s7-31-22/s73122-197801-395582.pdf

[5] See Board of Governors of the Federal Reserve System, "Survey of Consumer Finances" (October 2023), https://www.federalreserve.gov/econres/scfindex.htm

[6] See William P. Barr and Barbara Comstock, "Gary Gensler's Plan to Control Information" (September 10, 2023), https://www.wsj.com/articles/gary-genslers-plan-to-control-information-sec-financial-regulation-firms-investors-technology-market-927579dc

example, a firm might opt not to use an automated investment advice technology because of the costs associated with complying with the proposed rules and amendments. In these types of situations, firms would lose the potential revenues that these technologies could have generated, and investors would lose the potential benefits of the use of these technologies. In addition, in the absence of these technologies, firms might raise the costs of their services, thus increasing the costs to investors."[7]

ACII is concerned that the SEC's proposal will disproportionately harm investors from historically underserved demographics who increasingly rely on technology and low-cost platforms to access the capital markets. ACII's concern is shared by several other commenters.[8]

In the same vein, the market structure rules purport to enhance competition and protect investors when they will, to the contrary, upend the business model many broker-dealers have successfully used for decades to provide customers with high-quality, low-cost investment opportunities. Even the SEC admits it "does not have…data that may inform the Commission on certain economic effects"[9] of the proposals, and the Department of Justice has cautioned of unintended consequences.[10]

The National Association of Securities Professionals has warned that, "the SEC's proposals could result in a lack of access to the stock market for underserved demographics which could negatively impact the ability of these individuals and communities to build wealth and, in turn, further widen the existing diversity gap in investing."[11]

Together, these burdensome SEC rules would have a dramatic, negative impact on retail investors and, in turn, financial inclusion. They will diminish access, raise costs, stifle innovation, and constitute a solution in search of a problem. SEC Commissioner Gary Gensler has failed to demonstrate sufficient risk to justify the overly broad scope of his proposals.[12] His efforts to regulate where it is Congress's role to legislate mark a significant overreach borne out of the notion that retail investors lack either the knowledge or judgment to make their own sound financial decisions. ACII rejects that view and believes a national strategy for financial inclusion

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[7] See supra n.2.
[8] See NASP Comment Letter (Oct. 10, 2023), https://www.sec.gov/comments/s7-12-23/s71223-270799-653562.pdf; NBA Comment Letter (Oct. 4, 2023), https://www.sec.gov/comments/s7-12-23/s71223-268199-645062.pdf; Martin Luther King Jr. Memorial Foundation Comment Letter (Oct. 24, 2023), https://www.sec.gov/comments/s7-12-23/s71223-289640-706602.pdf; NAIFA Comment Letter (Oct. 5, 2023), https://www.sec.gov/comments/s7-12-23/s71223-268639-646362.pdf; Congressman Ritchie Torres Comment Letter (Nov. 30, 2023), https://www.sec.gov/comments/s7-12-23/s71223-305319-785202.pdf; Finseca; Institute for Portfolio Alternatives; American Securities Association; Insured Retirement Institute; National Association of Insurance and Financial Advisors; and American Benefits Council Joint Comment Letter (Sept. 19, 2023), https://www.sec.gov/comments/s7-12-23/s71223-261319-615782.pdf
[9] See Order Competition Rule, https://www.sec.gov/rules/proposed/2022/34-96495.pdf.
[10] See Comment of the Antitrust Division of the U.S. Department of Justice (Apr. 11, 2023), s72922-20164065334011.pdf (sec.gov).
[11] NASP Comment Letter (Feb. 28, 2023), https://www.sec.gov/comments/s7-31-22/s73122-20158251-326339.pdf.
[12] See supra n.6.

should empower, rather than patronize, Americans who participate in our financial markets.

III. The Federal Banking Regulators' Proposed Capital Rule Will Harm Financial Inclusion

The SEC is not the only agency standing in the way of greater financial inclusion. The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation have proposed a rulemaking to raise capital requirements for U.S. banks, which would have harmful ripple effects throughout our economy.[13] The proposal, put forth in the wake of the Silicon Valley Bank and Signature Bank collapses, not only fails to address the root cause of the banks' failures, but will further diminish access to affordable credit, particularly for low-income Americans and minority-owned businesses, as banks are forced to scale back lending.

At a hearing of the U.S. Senate Banking Committee, Ranking Member Tim Scott (S.C.) spoke to the impact of the rules, stating, "Let me be clear, this proposal could limit, and frankly I think will limit, the following: availability of credit for housing for those who need it most, severely restrict lending for small businesses that are still rebounding from the pandemic, and cut into the retirement savings for hardworking Americans, like teachers, police officers, firefighters…."[14]

Given racial disparities in bank lending, small businesses owned by people of color will be particularly hard hit if capital becomes even more difficult and costly to access. According to the 2022 Report on Firms Owned by People of Color: Based on the 2021 Small Business Credit Survey, "Applicant firms owned by people of color were half as likely as white-owned applicant firms to report that they received all the traditional financing they sought in the 12 months prior to the survey. Specifically, 35% of white-owned applicant firms were fully funded, compared to 19% of Hispanic-owned firms, 16% of Black-owned firms, and 15% of Asian-owned firms. Even among firms with good credit scores, firms owned by people of color were less likely than white-owned firms to have received all of the financing for which they applied."[15]

In addition to the small business impact, a joint letter signed by the National Housing Conference, Mortgage Bankers Association, NAACP, National Association of REALTORS®, and the National Urban League warned that, "If these standards are adopted, they will have a devastating impact on our efforts to increase Black homeownership and disadvantage all first-time, and, in particular, first-generation homebuyers who do not have the benefit of multi-

[13] Regulatory Capital Rule: Large Banking Organizations and Banking Organizations with Significant Trading Activity, 88 Fed. Reg. 64028 (Sept. 18, 2023)
[14] Annual Oversight of Wall Street Firms: Hearing Before the Senate Committee on Banking, Housing, and Urban Affairs, 118th Congress (Dec. 6, 2023)
[15] 2022 Report on Firms Owned by People of Color: Based on the 2021 Small Business Credit Survey." 2022. Small Business Credit Survey. Federal Reserve Banks. https://doi.org/10.55350/sbcs-20220629

generational wealth or higher than average incomes."[16]

As is the case with the proposed SEC regulations, there is a glaring risk of unintended consequences with the bank capital requirements that require further review and revision to ensure investors, small business owners, and families are protected.

IV. Conclusion

A robust, sustainable plan for financial inclusion must be grounded in pro-growth, pro-innovation policies. The raft of proposed regulations on the securities and banking sectors stands in the way of continued progress toward broadening wealth-building opportunities for all Americans, especially those who have been traditionally shut out of the stock market, home ownership, and entrepreneurship. We are on the cusp of groundbreaking technological advancements that have the potential to drive tremendous economic growth over the long term. We need the right policies in place to capitalize on this moment and ensure the American Dream is well within reach for current and future generations.

Sincerely,

Barbara Comstock
Executive Director, American Consumer & Investor Institute

[16] Letter to from the National Housing Conference, Mortgage Bankers Association, NAACP, National Association of REALTORS®, and the National Urban League (Jul. 24, 2023) https://nhc.org/wp-content/uploads/2023/07/Housing-Groups-Letter-re-Bank-Capital-7.25.23.pdf

Appendix 1

October 10, 2023

Vanessa A. Countryman
Secretary Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Request for Comment on Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers; File No. S7-12-23

Dear Ms. Countryman,

The American Consumer and Investor Institute (ACII) submits this letter in response to the U.S. Securities and Exchange Commission's ("Commission" or "SEC") request for comment on new rules addressing Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers (the "Proposal" or "proposed rules").[1]

ACII's mission is to advocate on behalf of American consumers and investors for more choice and access to U.S. financial markets, products and services, including in the areas of consumer banking, securities and cryptocurrencies – all accompanied by robust financial education. ACII believes that every American should enjoy broad, affordable access to U.S. financial markets so that they can build a better future for themselves and their families.

The SEC's Luddite Proposal risks reversing years of progress for retail investors, particularly as it related to broker-dealers and investment advisers' use of technology to reduce costs and barriers to participation in the financial markets. ACII is opposed to the proposed rules, which will stifle innovation and harm retail investors.

As laid out below, we believe that technology has been a critical component in educating investors and making markets more accessible, allowing for a much broader population to invest for the long term. The SEC's Proposal is simply bad policy. The vague and overly broad language of the proposed rules reaches far beyond advanced predictive data analytics and artificial intelligence, impacting just about every tool used by any broker-dealer or investment

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[1] Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers, 88 Fed. Reg. 53960 (Aug. 9, 2023).

advisor to provide information that may be relevant to an investor's investment decisions. It would stifle innovation that has brought down barriers to investing and would deprive the public of access to the tools and information they need to learn about markets and make educated investment decisions. The Proposal is operationally so cumbersome as to be unworkable. It is a drastic and unwarranted departure from the existing regulatory framework, which has long relied on full and fair disclosure to address potential conflicts of interest and has served investors well for decades. It also sets a dangerous precedent for applying this new paternalistic standard to other parts of the financial services sector (e.g., banks and insurance companies) and other industries that rely on technology to communicate with customers. Unsurprisingly, this unreasonable, onerous, and intrusive Proposal also exceeds the Commission's statutory authority. Indeed, it unconstitutionally interferes with communications to investors.[2]

I. Technology has Educated and Empowered Retail Investors

According to Pew Research, 97% of Americans today own a cellphone (85% own smartphones), 77% own a desktop or a laptop and 53% own tablets.[3] Consumers leverage connected devices and digital tools to consult their physicians, buy a car, find job opportunities, learn about and track their physical well-being, manage their finances and find solutions to all sorts of needs that pop up in life. Instead of waiting three months for a doctor's appointment, they can schedule a video consultation. Instead of walking into the bank branch, they can manage their banking online. Americans expect and want to access and engage their service providers through their phones, laptops and other devices.

Broker-dealers and investment advisers understand that a diverse group of Americans today demands and expects the ability to bank and invest, as well as conduct other forms of personal finance and commerce, via full-service websites and apps on their mobile phones.[4] With the support of the SEC (at least until now), financial services companies have started to meet this demand through intuitive, modern apps that promote financial engagement and education, and eliminate traditional frictions – such as lengthy, paper-based account sign-up processes and slow, cumbersome websites – that have kept many individuals from participating in the financial markets.

This collaboration has worked. Customers have flocked to online and app-based banking, for ease of use and to be able to customize their interactions to fit their goals and needs. Americans are happier when their banks understand their financial goals, simplify the management of finances, and help them make better financial decisions.[5] Banking that provides

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[2] *See* William P. Barr and Barbara Comstock, "Gary Gensler's Plan to Control Information" (September 10, 2023), https://www.wsj.com/articles/gary-genslers-plan-to-control-information-sec-financial-regulation-firms-investors-technology-market-927579dc.

[3] *See* Pew Research Mobile Fact Sheet (April 7, 2021), https://www.pewresearch.org/internet/fact-sheet/mobile/.

[4] *See* Digital Banking Attitudes Study by Chase (July 11, 2023), https://www.cnbc.com/select/why-millennials-gen-z-use-mobile-banking-apps/.

[5] *See* Bank Customers Need Personalized Financial Wellbeing Support by Gallup (November 29, 2019), https://www.gallup.com/workplace/268157/bank-customers-need-personalized-financial-wellbeing-support.aspx.

advanced, customized advice remains the optimal method for meeting many individuals' needs, and delivery through online and mobile systems increases the accessibility of these services.

Similarly, innovative technologies have expanded access to capital markets for the average consumer, by enabling offerings such as commission-free investing, fractional shares and delivery of model portfolios through robot advice. Innovations in the way financial products and services are being delivered to investors are helping record numbers of Americans engage in our markets and take greater control of their finances. According to Gallup's April Economy and Personal Finance survey, 61% of Americans report that they own stock, either in an individual stock, a stock mutual fund or in a self-directed 401(k) or IRA. [6] This is up from 56% in 2021 and 55% in 2020, and the highest it has been since 2008. It is estimated that retail investors accounted for 52% of global assets under management in 2021 and that share is expected to grow to over 61% by 2030.[7]

ACII believes that these trends are unequivocally positive, enabling millions of new investors of all backgrounds and socio-economic status to participate in the markets today.[8] Investors at all levels can now independently participate in markets by researching investments and leveraging technology to manage personal portfolios in a simple, efficient online format, finally reversing decades-long trends of stock ownership being highly correlated with race and age[9] and low financial literacy correlated to worsening inequality[10].

The long-term impact of stock ownership on wealth building is compelling and well-documented. The Schwab Center for Financial Research calculated that over the period 1970 – 2020, the annual returns on stocks (S&P 500 Index), bonds (Ibbotson Intermediate U.S. Government Bond Index) and cash (Ibbotson 30-day Treasury bills), after taxes and inflation, were 4.7%, 0.1% and -1.4%. This means that $100 invested in stocks for this 51-year period compounded to an amount 10 times the amount that $100 invested in bonds did.[11]

The SEC's proposal would severely disrupt or eliminate the tools and information that have created opportunities for retail investors to access the markets, placing those opportunities at risk and directly contradicting the SEC's statutory mandate under the Securities Exchange Act

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[6] *See* Jeffrey M. Jones, "What Percentage of Americans Own Stock?" Gallup (May 24, 2023), https://news.gallup.com/poll/266807/percentage-americans-owns-stock.aspx.

[7] *See* Imedi Group, "The Future is Now: Five Waves Reconfiguring Asset Management" (March 10, 2022), https://www.prnewswire.com/news-releases/deglobalization-to-dominate-asset-management-by-2030-with-cross-border-strategies-taking-less-than-a-fifth-of-investment-flows-indefi-report-301499684.html.

[8] *See* Financial Industry Regulatory Authority ("FINRA") Foundation, "New Investors 2022: Entering the Market in Novel and Traditional Ways" (April 2023), https://www.finrafoundation.org/sites/finrafoundation/files/New-Investors-2022-Entering-The-Market-In-Novel-and-Traditional-Ways.pdf.

[9] *See supra* n.6.

[10] *See* FINRA, "New Research: Financial Literacy Is Significant Indicator of Positive Future Financial Outcomes and Behaviors" (October 29, 2020), https://www.finra.org/media-center/newsreleases/2020/new-research-financial-literacy-significant-indicator-positive.

[11] *See* Charles Schwab Moneywise, "Stocks, Bonds and Cash", https://www.schwabmoneywise.com/essentials/stocks-bonds-cash.

of 1934 to "promote fair competition, and consistent with the promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and the maintenance of fair and orderly markets."

Rather than welcoming and supporting these new investors, who are seeking stock ownership as a path to building long-term wealth, the SEC's Proposal is so far-reaching and prescriptive as to effectively ban many technologies, returning retail investors to an era when markets were less accessible and less understandable. The SEC fails to provide the data, analysis, and justification for such a drastic reversal.

II. The Proposed Rules are Anti-Technology

Three factors – the terms "covered technology" and "investor interaction", along with the proposed rules' redefinition of conflict of interest – together make the Proposal so sweeping as to directly affect every technological tool today's retail investors want and rely on, perhaps to the point where firms will no longer provide such tools at all.

"Covered Technology"

The SEC's attempt to frame the Proposal as addressing predictive data analytics, machine learning, and artificial intelligence is misleading. As a disclosure agency with a statutory mission to protect investors, the SEC should know better than to use this marketing ploy. As written, the Proposal's definition of "covered technology" is not limited to more complex technologies, as the SEC suggests. Instead, the definition is so broad that it includes simple technologies such as any "analytical function", "computational function", or "algorithm," which would apply to many of the basic investor- and institutional-facing tools currently in use by every broker-dealer and investment adviser, including Microsoft Excel and other widely available tools. As Commissioner Hester Peirce observed, the proposed definition could include harmless technologies long used by retail investors such as "spreadsheets, commonly used software, math formulas, [and] statistical tools."[12] In addition, the SEC's definition of "covered technology" includes technology that could be deemed to "guide" an investor's investment-related behaviors or outcomes. Such broad, vague, and subjective language would apply to almost any aspect of the design or user experience of a website or mobile application.

"Investor Interaction"

The proposed rules define "investor interaction" as engaging or communicating with an investor, including by exercising discretion with respect to an investor's account; *providing information* to an investor; or soliciting an investor. This means that the proposed rules would cover basically any form of technology used by any retail broker or adviser to interact directly or indirectly in almost any way with a retail customer. And this is true when the broker or adviser is

[12] *See* Statement of SEC Commissioner Hester M. Peirce, "Through the Looking Glass : Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers Proposal" (July 26, 2023), https://www.sec.gov/news/statement/peirce-statement-predictive-data-analytics-072623.

using technology not only to make investment recommendations or to provide investment advice, but also to offer simple financial education or to share research or other relevant information with a customer so that she can make her own informed investment decisions.

"Conflict of Interest"

The SEC's proposed rules are also a stark departure from the existing Regulation Best Interest requirements for broker-dealers and the Commission's interpretation of investment advisers' fiduciary duty, which both permit firms to address conflicts through full and fair disclosure to investors. To start, the Proposal defines a conflict as the firm simply considering "an interest" associated with the use of any given technology. Therefore, even if the investors' interest and the firms' interests are aligned, the proposed rules apply. The Proposal then requires the broker-dealer or investment adviser to "eliminate or neutralize" that supposed conflict. It is impossible for any business to eliminate or neutralize any interest in what it does – a business has to get paid, or it ceases to be a business. A requirement to "eliminate or neutralize" "an interest" would effectively result in the barring of many, if not most, technologies used by broker-dealers and advisers now and in the future.

These three terms interact in such a way as to threaten the availability of even the most basic and beneficial information firms provide to customers. For example, the proposed rules could impact firms' ability to display financial news to investors on websites and mobile apps. Customers who previously struggled to educate themselves on markets and investing are now able to access often free, digestible market news and other educational tools offered by online and app-based brokerage and advisory platforms. These offerings are key to maintaining a knowledgeable and independent investor base. But under the Proposal, financial news provided to customers in electronic format would be a covered technology used in an investor interaction. A customer receiving a news alert about a stock they own may decide on his or her own accord to trade based on that news. Under the proposed rules, this poses a conflict of interest that may need to be neutralized or eliminated. In the face of burdensome compliance requirements and liability from regulators second-guessing firms' decisions, many online broker-dealers and investment advisors may simply decide not to provide customers with market news. And the same analysis will apply to other "investor interactions" that give customers the information they want and need to become more informed investors.

Even a cursory review of the SEC's Proposal shows that it is not a set of "technology neutral," "principles-based" rules, as the SEC alleges. "Requiring firms to subject certain types of technologies to a uniquely onerous review and conflict remediation process is not technology neutral," Commissioner Pierce correctly noted in her dissenting statement regarding the proposed rules. "Let us be honest about what we are doing here: banning technologies we do not like."

U.S. Senator Tim Scott, Ranking Member of the Senate Committee on Banking, Housing, and Urban Affairs, also warned that the SEC appears to be targeting technology about which it has preconceived views: "I am concerned that the SEC has entered this process with a predetermined view on the use of DEPs and a fully formed plan for how these tools and practices

should be regulated. I strongly urge the Commission against pursuing any changes to the existing ecosystem – which the average retail investor benefits from more than at any other point in history – without a thorough data collection process and careful consideration of retail investor input."[13] The Proposal is not based on any thorough data collection effort or careful consideration of retail investor input.

In fact, the Proposal's overly broad definitions reflect serious misconceptions about the technology being used – or not used – by brokers and asset managers, as well as baseless assumptions, uninformed by data, about how and why this technology is being used, how retail investors actually interact with the technology, and how different types of technology impact their behaviors or outcomes.

By imposing such broad definitions of "covered technology", "investor interaction" and "conflict of interest", the Proposal is likely to cause firms to pass along higher compliance costs to investors or simply decline to offer the very tools that retail investors want and rely on to learn about markets and make more informed investment choices, thereby depriving investors of the benefits of decision-useful information and technological advancement. This means either less-informed investors, or less participation in markets, both of which are bad for the future financial security of all Americans. In the absence of these technologies, firms may raise prices and reimpose cost as a barrier to market participation.

The proposal's broad definition of covered technology, as outlined in the proposed rules, risks hindering future market innovation and accessibility, to the detriment of investors. Chair Gensler highlighted in a 2022 speech before the Exchequer Club of Washington, D.C.: "I believe that innovation can bring greater access, efficiency, and innovation to our capital markets, as well as economic growth."[14] We agree. Unfortunately, Chair Gensler's words are not consistent with the language of the Proposal. Aggressively limiting the use of new technologies will only stifle innovation and take us back to the old days when the wealthy interacted with their broker or adviser by phone or by visiting a brick-and-mortar office, while retail investors without sufficient means were left out of the markets entirely.

III. The Proposal Threatens Financial Education

American investors have traditionally been challenged by low levels of financial literacy while facing daunting amounts of quickly changing information about increasingly complex and volatile markets. As recognized by FINRA, financial literacy is highly correlated with positive future financial outcomes and behaviors.[15] Furthermore, as mentioned above, differing levels of

[13] Letter from Chairman Tim Scott to SEC (October 1, 2021), https://www.sec.gov/comments/s7-10-21/s71021-9316493-260088.pdf.
[14] SEC Chairman Gary Gensler, Prepared Remarks: "Dynamic Regulation for a Dynamic Society" Before the Exchequer Club of Washington, D.C." (January 19, 2022), https://www.sec.gov/news/speech/gensler-dynamic-regulation-20220119.
[15] *See* FINRA, "New Research: Financial Literacy Is Significant Indicator of Positive Future Financial Outcomes and Behaviors" (October 29, 2020), https://www.finra.org/media-center/newsreleases/2020/new-research-financial-literacy-significant-indicator-positive.

financial literacy may contribute to inequality. Given what we know, access to easy-to-understand financial education and investing tools is fundamental to enabling new investors to engage with markets and build wealth.

A 2021 Charles Schwab survey found that new investors are hungry for access to investing education and advice. Ninety percent of respondents want access to educational information to help improve their investing/trading skills, while 82% are interested in access to an investment professional to provide ongoing help and guidance. Ninety-one percent of respondents also highlighted wanting access to a platform to execute trades that is easy to use.[16] The SEC itself recognized the importance of investor education efforts in the Regulation Best Interest ("Reg BI") Adopting Release, agreeing that "Regulation Best Interest should not stifle investment education as a means to encourage financial wellness."[17]

Technology makes financial education accessible to investors at their convenience, at any time and at any place. Requiring every firm to conduct and document an onerous "conflict review" of investor education tools will simply reduce the availability of these tools and the important information they convey to investors, including interactive messages that can encourage retail investors to educate themselves about particular products and services, make investors aware of important corporate actions, encourage them to consider their cash positions when making financial decisions, incentivize them to invest in their retirement and save more effectively across their financial goals, and provide them with easy access to financial professionals for additional guidance when needed. By limiting now ubiquitous and helpful technological tools, the SEC is severely damaging the entire financial services infrastructure that facilitates the IRA and 401K savings and financial planning of millions of Americans, not just their ability to invest in and trade stocks.

IV. The Proposal's Compliance Requirements are Unworkable

The SEC's proposed rules raise serious questions about the feasibility and costs of compliance given how broadly the proposal defines "covered technology," "investor interaction," and "conflict of interest."

Firms will need to set up extensive internal processes to review each and every one of their "covered technologies" – which could number in the hundreds or thousands – to determine whether their use poses a "conflict," as that term is broadly defined in the Proposal. If a conflict of interest is found that places the firm's interest ahead of the customer's interest, the firm must "eliminate or neutralize" the conflict – under the Proposal, disclosure is not an option for addressing a potential conflict of interest. Each firm will have to adopt policies and procedures designed to prevent violations of the proposed rules while also conducting annual compliance

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[16] *See* Charles Schwab, "The Rise of the Investor Generation", https://www.aboutschwab.com/generation-investor-study-2021.

[17] Regulation Best Interest: The Broker-Dealer Standard of Conduct (July 12, 2019), https://www.federalregister.gov/documents/2019/07/12/2019-12164/regulation-best-interest-the-broker-dealer-standard-of-conduct.

reviews. Moreover, these processes and assessments must be rigorously documented in a firm's books and records. Uncertainty about the reach and enforcement of the proposed rules will likely lead to firms pulling back on technology and innovation, including in the areas of investor education and basic low-cost investing tools.

Perhaps most troubling from a compliance perspective, regulators seeking to examine firms for compliance with the proposal may in some cases need to review a broker-dealer or investment adviser's software code to determine whether the firm adequately eliminated or neutralized conflicts of interest. Not only is this a frightening and potentially illegal extension of government oversight into the proprietary technology of financial services firms, the SEC is not a technology regulator and lacks the expertise to make such assessments.

Furthermore, the SEC's proposed definition of "covered technologies" would include those "developed or maintained at a firm or licensed from third parties," meaning that a firm's compliance and review obligations would extend to third-party vendors and partners. This would force compliance officers to have the skills of a software engineer and have full transparency of third-party software to be able to analyze a technology, including understanding its code.

While ACII strongly believes that robust compliance benefits investors and the integrity of our markets, the proposed rules impose unreasonable and expensive operational and compliance challenges on broker-dealers and investment advisers, which can only lead firms to abandon their use of certain technologies or push the costs of compliance onto customers. Higher costs and less technology translate into increased barriers to market access, particularly for those historically underserved retail investors who need it most. It will make it nearly impossible for there to be any new entrants in the sector, stifle innovation, and create perverse incentives for existing players to consolidate. The SEC has proposed these onerous rules without citing compelling authority or significant evidence of abuse or malfeasance associated with broker-dealers' or investment advisers' use of technology.

V. Robust Existing Regulatory Frameworks

Broker-dealer and investment adviser communications and customer engagement practices are already subject to extensive regulations under SEC rules. Broker-dealers' public communications and customer interactions are also heavily regulated by FINRA rules. As Commissioner Mark Uyeda noted following the release of the proposed rules, "This proposed rulemaking is also wholly unnecessary. The Commission has spent considerable time recently to strengthen the regulatory framework to address broker-dealers' and investment advisers' conflicts of interests."[18]

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[18] SEC Commissioner Mark T. Uyeda, "Statement on the Proposals re: Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers" (July 26, 2023), https://www.sec.gov/news/statement/uyeda-statement-predictive-data-analytics-072623.

For example, under the SEC's recently established Reg BI, as well as the long-standing fiduciary duty under the Investment Advisers Act, broker-dealers and investment advisors are already prohibited from placing their interests ahead of their clients' when providing personalized investment advice and are required to disclose conflicts of interest (such as commissions earned through the sale of financial products) and, if necessary, eliminate or mitigate those conflicts.[19] By requiring firms to "eliminate or neutralize" potential conflicts untethered to the provision of personalized investment advice, the proposal will effectively prevent broker-dealers and investment advisers from interacting with investors using business models that are expressly permitted, with appropriate investor protections, under Reg BI and the Advisers Act.

In addition, broker-dealers and investment advisers are subject to an extensive set of specific SEC rules governing communications with the public, including advertising and marketing communications. All communications must be based on principles of fair dealing and good faith, be fair and balanced, and comply with other FINRA regulations.[20] And the SEC already has strong rules against fraud and manipulation.

The SEC has provided no compelling rationale as to why this existing regime cannot be effectively applied to technology, and no evidence that technology inherently poses a conflict that cannot be managed through this existing regime. The proposed rules simply assume that technological tools serve the interests of the firm over the interests of the customer, with no proof. The SEC must first identify and prove real conflicts that cannot be managed by the existing regime before implementing vast regulatory changes impacting the entire securities industry.

In fact, the Proposal states that the existing regulatory frameworks already "play a fundamental role in protecting retail investors of broker-dealers, clients of investment advisers, and investors in pooled investment vehicle clients of investment advisers from the negative effects of firms placing their own interests ahead of investors' interests." In moving away from this long established regime, the SEC would set a precedent for similar changes to conflict management in all parts of the financial services sector.

Given the vast implications of this proposal, the SEC should have conducted extensive outreach and engagement to understand the use of technology in the industry today. The SEC failed to conduct this outreach and analysis necessary to formulate a proper understanding of what technologies investors use and how and why they use them. The SEC's current economic analysis fails to meaningfully assess and quantify the current benefits of technology for investors

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[19] *See* SEC Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Conflicts of Interest (August 3, 2022), https://www.sec.gov/tm/iabd-staff-bulletin-conflicts-interest.

[20] *See* FINRA 2021 Report on FINRA's Examination and Risk Monitoring Program, Communications with the Public, https://www.finra.org/rules-guidance/guidance/reports/2021-finras-examination-and-risk-monitoring-program/communications-with-public.

and fails to quantify any potential, speculative benefits of the rule, while vastly underestimating potential costs to the industry.

VI. Legal Authority

The proposed rules also lack legal authority. In the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), Congress authorized the SEC to restrict "certain … conflicts of interest."[21] But the proposed rules adopt an expansive conception of "conflict" that departs radically from decades of settled law and existing conflict rules. A conflict of interest exists only when a firm with an interest contrary to a customer recommends a transaction or provides investment advice to that customer. The proposed rules apply any time a firm has "an interest." Thus, the rules apply even if the investors' interests and the firm's interests are aligned. In no world is that a "conflict of interest."

The proposed rules also stretch Dodd-Frank beyond its breaking point. Just last Term, the Supreme Court reiterated, once again, that Congress does not hide sweeping authority in vague language or ancillary provisions. When Congress wants to assign to an agency a matter of vast "economic and political significance," it makes "a clear statement to that effect."[22] Nothing like that exists here. In a paragraph of Dodd-Frank titled "Other Matters," Congress authorized the SEC to restrict "certain … conflicts of interest,"[23] not to regulate new and transformative technologies like AI, much less to oversee a firm's use of virtually anything technological, such as a simple spreadsheet. If Congress really intended to give the SEC the authority to second-guess a firm's use of Microsoft Excel, Congress would have said something along those lines in clear terms, not vaguely referenced "conflicts of interest."

Congress not only never authorized the proposed rules; they raise glaring constitutional issues. The rules would restrict, in advance, the communication (via technology) of virtually any information to an investor, unless a firm first jumps through a number of onerous SEC-constructed hoops. But as courts have recognized, there is no securities-law exception to the First Amendment.[24] Under the U.S. Constitution, unless a communication is deceptive, the mere fact that it imparts to a customer information consistent with a speaker's own interests cannot possibly justify the sweeping restraints the SEC proposes here.

VII. Conclusion

In its proposed rules the SEC fails to provide any evidence that there is anything inherently problematic about investor interactions conducted through web- or app-based technologies that would require more stringent regulation than is already applied to in-person, written, or oral engagement. In fact, the SEC doesn't demonstrate any fraud or harm to retail

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[21] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 913(g)(1), 124 Stat. 1376, 1828 (2010) (codified at 15 U.S.C. § 78o(*l*)(2)).
[22] *Biden v. Nebraska*, 143 S. Ct. 2355, 2375 (2023).
[23] Dodd-Frank § 913(g)(1).
[24] *See Nat'l Ass'n of Mfrs. v. SEC*, 800 F.3d 518, 521 (D.C. Cir. 2015).

investors stemming from the use of technology – particularly the many simple forms of technologies being used today. The proposal doesn't answer the most basic question – what real, concrete problem is the SEC trying to solve?

In spite of the lack of evidence, data or analysis, the SEC has taken a heavy-handed regulatory approach that is inconsistent with the agency's statutory mandate, in conflict with its existing rules, and harmful to investors. This approach reflects a lack of understanding of human behavior and the technology it seeks to regulate (assuming the SEC has the authority to do so in the first place, which it does not). People turn first to technology to accomplish all kinds of everyday needs and pursuits. The existing regulatory framework enables the SEC to protect investors from fraud, manipulation and conflicts of interest, no matter what tools a broker-dealer or investment advisor uses to communicate with customers.

We urge the SEC to withdraw this uninformed, unnecessary, and harmful proposal, which would reverse much of the progress that has been made towards bolstering market access and financial literacy to the benefit of everyday investors' long-term financial health.

Sincerely,

Barbara Comstock
Executive Director, American Consumer & Investor Institute

Appendix 2

June 1, 2023

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549–1090

Dear Ms. Countryman:

U.S. equity markets are the most transparent, resilient and competitive in the world today. In addition to serving as a vibrant resource in supporting business and economic growth, these markets provide a range of vital investment opportunities for both retail and institutional investors.

With the support of the Securities and Exchange Commission ("SEC" or "Commission"), investors today enjoy narrower spreads, lower transaction costs, and faster execution speeds than ever in history. As a result, retail investors have more access to equity investments, at lower cost and with fewer constraints than ever before.

The American Consumer and Investor Institute (ACII) is a voice for today's retail investor. We advocate on their behalf for more choice and access to U.S. financial markets, products and services. ACII believes that every American has the right to participate in our financial system to build a better future for themselves and their families.

ACII is concerned that Chair Gensler's SEC is out of touch with the priorities and needs of today's retail investor. The tens of millions of retail investors who have started to participate in our capital markets over the last several years no longer value the stodgy trappings of old Wall Street, which came at a high price for those who could afford it. Today's retail investor values innovations such as commission-free investing and trading, no minimum account balances, the ability to invest using fractional shares, free educational resources and market news, and innovative, easy to use mobile technology, all of which have opened up the system to a broader group of younger Americans, customers with lower account balances, and more racially and gender diverse investors.

Unfortunately, drastic rule changes hastily proposed by the SEC would disrupt and place at risk many of the structures and consumer friendly innovations that have created opportunities for retail investors to access investment products at low or no cost. Retail investors themselves have raised the alarm about the harms they anticipate and risks these proposals pose to consumer

choice, price and quality,[1] and we join them in raising these concerns.

The process that led to the adoption of Regulation NMS nearly two decades ago and helped facilitate today's highly competitive markets included rigorous academic studies, roundtables, consultation and input from a wide array of market participants. In sharp contrast, the SEC's process around the current market structure proposals lacks the comparable level of rigor and commitment to listening to a diverse group of constituencies, including retail investors, institutional investors, retail broker-dealers, market makers, and exchanges.[2] Rather than promoting change that will benefit today's retail investor, these changes will instead add complexity and cost, not to mention potentially significant unanticipated consequences.

Numerous academic research studies, as well as research conducted by market experts like SIFMA, demonstrate that given the cumulative effects of the SEC's proposals the purported benefits are likely overstated while the costs are understated. We urge the SEC to immediately halt the pursuit of these new proposals, particularly the Order Competition and Best Execution Proposals, and re-evaluate the costs and benefits of these proposed changes and whether they are required at all.

Retail Investors Risk Losing the Broad and Efficient Market Access They Enjoy Today

Today's retail investor enjoys access to a wide variety of products and platforms so that they can build a better financial future for themselves and their families. Beyond access, many of those platforms provide helpful educational programs to enable individuals to make informed decisions about their wealth.

As of late 2021, retail investors' share of total equities trading volume approached 25%, up from 20% in 2020 and 10-15% the preceding decade.[3] Much of this growth has been facilitated through the rise of low or no-cost broker-dealers that provide both broad market access and high-quality execution.

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[1] See, e.g., Kent Haeffner Comment Letter, https://www.sec.gov/comments/s7-31-22/s73122-20160452-329064.pdf.

[2] In fact, when asked at a recent conference whether industry opposition to the equity market structure proposals concerned him, Chair Gensler replied, "No." See https://twitter.com/i/broadcasts/1mrGmkgOgoVxy?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1631409976898928640%7Ctwgr%5Ed7558385a27e424a1c28a0ce3f82d3fb9e34beb7%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.latestly.com%2Fsocially%2Fbusiness%2Fwatch-sec-chair-gary-gensler-talks-with-katleighdoherty-in-an-exclusive-interview-about-latest-tweet-by-bloomberg-4904410.html. Chair Gensler went on to apparently discount the concerns of market participants based on the misleading and irresponsible characterization that such companies are motivated solely by profit maximization, thus suggesting that these firms are not acting in their customers' interests. See id. See also Lydia Beyoud and Katherine Doherty, "SEC's Gensler Open to Trading-Revamp Tweaks After Criticism" (Mar. 2, 2023), https://www.bloomberg.com/news/articles/2023-03-02/sec-chief-says-he-s-open-to-trading-revamp-tweaks-amid-criticism. Chair Gensler appears to ignore the fact that, among other benefits, retail broker-dealers have saved their customers billions of dollars in trading commissions over the last several years, and that the current system of handling and executing customer stock trades has saved customers billions more in the form of price improvement.

[3] See The Rise of Retail Traders | BNY Mellon Wealth Management.

Those retail broker-dealers often route client orders to wholesale broker-dealers for execution—not only filling retail investor orders at better prices than those quoted on-exchange, but also executing at those better prices for more size than is publicly displayed. As evidence, a December 2022 study of trades executed on exchanges and "equivalent" trades executed through wholesalers found that wholesalers provided better execution more than 90% of the time.[4] Another study shows that retail investors receive between $20 and $30 million per month in aggregate price improvement through wholesale broker dealer execution.[5] Finally, a review of public filings shows that, on average, four of the top retail brokerage platforms – Robinhood, TD Ameritrade, E-Trade and Charles Schwab – delivered execution at or better than the NBBO more than 97% of the time in the first quarter of 2023 alone.

These are just a few important studies and data points, but the bottom line is that retail investors today have broad, low-cost access to the stock market. Under the current market structure, the benefits to retail investors are only expected to grow. Charles Schwab estimates that over the next 10 years, through price and size improvement opportunities afforded under the current market structure, the industry is positioned to provide over $120 billion of direct benefit exclusively to retail investors.[6]

The Proposed Rules Create Risks That Will Harm Retail Investors

SEC Chairman Gensler has said that the changes the Commission is pursuing will "promote competition for the orders of individual investors." We disagree. The new rules proposed by the SEC related to Order Competition and Best Execution in particular are a threat to the environment that has benefitted the retail investor for two primary reasons: (1) the rules would subject many retail orders to order-by-order auctions, introducing an experimental model that market participants handling these retail orders will be obliged to follow and (2) the changes would most likely increase the cost to retail investors.

There is no evidence that market quality is currently problematic for retail investors or that the SEC's new, unproven government trading mandates – which would require significant additional infrastructure and costs to implement – will improve pricing or execution quality.

Members of Congress on both sides of the aisle have cast doubt on the SEC proposals. At an April 2023 House Financial Services Committee hearing with Chair Gensler, Capital Markets Subcommittee Chair Ann Wagner (R-Mo.) stated that the "dramatic changes" the SEC is proposing "will cause death by 1,000 cuts to U.S. capital formation." U.S. Representative Ritchie Torres (D-N.Y.) also criticized the proposals, saying, "It strikes me as perverse to tell a broker you cannot send retail order flow to the wholesaler who's offering a better price and therefore a better execution. … If the wholesaler were offering a worse price, then I would consider that a

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[4] See Robert Battalio & Robert Jennings, "Why Do Brokers Who Do Not Charge Payment for Order Flow Route Marketable Orders to Wholesalers?" https://ssrn.com/abstract=4304124.

[5] See Thomas Ernst and Chester Spatt, "Payment for Order Flow and Asset Choice", 4a-Ernst_Spatt-Payment-for-Order-Flow.pdf (uw.edu). See also Schwarz & Jorion Comment Letter, https://www.sec.gov/comments/s7-31-22/s73122-20161902-330726.pdf.

[6] See Schwab 2022 U.S. Equity Market Structure: Order Routing Practices, Considerations, and Opportunities ("Schwab 2022 Whitepaper") at 15-16, https://content.schwab.com/web/retail/public/aboutschwab/Schwab-2022-order-routing-whitepaper.pdf.

failure of competition, and I would see the reason for your rule. But if it's offering a better price, are we fixing what ain't broken?"[7]

Importantly, by its own admission, the Commission acknowledges in its proposal that it "does not have…data that may inform the Commission on certain economic effects" and it "is unable to quantify certain economic effects."[8] Even this administration's own Department of Justice has cautioned of unintended consequences.[9]

Instead, the SEC has made sweeping assumptions about the potential impacts, including on items that are critical to retail investors like the charging of commissions. Given the rigorous analysis that went into the adoption of Regulation NMS, for example, it is both puzzling and deeply concerning that the SEC is now willing to leave the fate of the retail investor to ivory tower imagination.

In its comment letter on the proposals, Charles Schwab indicates that the Best Execution Proposal is a "solution in search of a problem." We agree. Current FINRA and MSRB rules already require retail brokers to seek best execution on behalf of their customers. As noted earlier, there is ample evidence that these rules are providing exactly that. While the SEC has authority to direct SROs to amend existing best execution rules to the extent it believes such rules are lacking, it is entirely unnecessary and a waste of taxpayer resources for the SEC to adopt a duplicative best execution rule.

The broker-dealer industry that has grown to serve so many retail investors is highly competitive. That competition benefits the retail investor in terms of product innovation, cost and execution. In addition, the competition compels a level of customer service that an exchange-driven execution model simply is not equipped to achieve. As an example, in the event of market disruptions where trading is halted or otherwise curtailed, broker dealers have incentives to resolve those issues with their customers and have protocols in place to do so. Exchanges do not share similar, customer-driven incentives.

Another concern for retail investors is that the Order Competition Proposal may inject an unwanted stream of risk and uncertainty into a well working system. Customers could see increased costs because the built-in delay in the auction process could allow prices to move *against* a customer. Increased competition itself is a dubious assumption as most of the major institutional investors have indicated that the proposed auctions are unworkable, calling into question whether they will even participate at all.[10] And perhaps spurring the greatest uncertainty

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[7] *Oversight of the Securities and Exchange Commission: Hearing Before the H. Comm. on Fin. Servs.,* 118th Cong. (2023) https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=408690

[8] See Order Competition Rule, https://www.sec.gov/rules/proposed/2022/34-96495.pdf.

[9] See Comment of the Antitrust Division of the U.S. Department of Justice (Apr. 11, 2023), s72922-20164065-334011.pdf (sec.gov).

[10] See, e.g., Vanguard Comment Letter (Mar. 31, 2023), https://www.sec.gov/comments/s7-30-22/s73022-20162952-332905.pdf, at 7 ("We question . . . whether a requirement to submit retail orders to auctions before they could be executed internally would improve outcomes for retail investors[.]"); Blackrock Comment Letter (Mar. 31, 2023), https://www.sec.gov/comments/s7-32-22/s73222-20163995-333998.pdf, at 12-13 ("The complexity and highly prescriptive nature of qualified auctions, where every element from execution priority to auction duration has been rigorously stipulated is of primary concern to us. A regulatory framework which is too rigid stifles innovation

of all, market makers who are currently incentivized to execute all customer trades from retail broker-dealers will have no requirement to take on unprofitable orders in the new auctions, potentially leaving customers with worse prices or unfilled orders on many trades.

Even the major exchanges, who would presumably run and potentially profit from the SEC's proposed auctions, have rightly questioned this dangerous experiment.[11] Trading today's fast, accurate and certain system for an unproven experiment that could result in slower trades with higher prices and uncertain participation is no one's idea of a better deal. It is especially not in the interest of the retail investor who just wants to complete their trade, quickly and easily, and at the advertised price or better – something they can consistently do today.

The Proposed Rules Risk Rolling Back Progress Made in Correcting Historical Inequities in Finance and Investing

Finally, one of the greatest benefits of market modernization has been the unprecedented inclusion of a broader group of younger, lower income and more racially and gender diverse investors in investing and wealth building. These changes have been a revolution in economic opportunity and equity, and are a full throated private sector alignment with the administration's attempt to address historical inequities across our economy.[12]

Instead, these proposed rules create the dangerous risk of rolling back the clock and crushing the very innovations that have opened up today's markets to millions of new and diverse investors. In fact, ACII fears that the SEC's experimental rule proposals will have a disproportionate impact on historically underserved communities. We share the concern voiced succinctly by the

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and inhibits the ability of trading venues to create market solutions for retail orders. It also presumes that qualified auctions are the ideal mechanism for fostering competition and trading opportunities with a greater number of market participants. *Many investment firms are likely to find it difficult to interact with qualified auctions which expire in fractions of a second or overlap in duration when multiple retail orders for the same security are received concurrently.*") (emphasis added); T Rowe Price Comment Letter (Mar. 31, 2023), https://www.sec.gov/comments/s7-32-22/s73222-20163106-333125.pdf , at 1 ("Given institutional vehicles' significantly greater share of individuals' 'wallets' and the high likelihood the Proposals would hurt institutional trading, the Proposals' unproven ideas for making markets better for self-directed individuals are likely to produce more harm than good for the same individual investor base."), 3 ("Additionally, if tick sizes are addressed appropriately and access fees are significantly lower, why would there be need for an auction requirement?"); State Street Comment Letter (Mar. 30, 2023), https://www.sec.gov/comments/s7-31-22/s73122-20162728-332114.pdf, at 5 ("For retail investors, the execution quality they receive could deteriorate in less actively traded securities in the event that liquidity providers opt not to support all securities in the auctions. This could result in more liquidity gaps, volatility halts, and poor execution outcomes.").

[11] See, .e.g, NYSE, Schwab, and Citadel Comment Letter (Mar. 6, 2023), https://www.sec.gov/comments/s7-31-22/s73122-20158677-326603.pdf, at 2 ("We recommend withdrawing [the Order Competition] proposal for a number of reasons, including the unprecedented nature of requiring certain market participants to utilize a specific trading protocol."); NASDAQ Comment Letter (Mar. 30, 2023), https://www.sec.gov/comments/s7-31-22/s73122-20162299-331153.pdf, at 3 ("[T]he SEC risks too much by solely focusing on qualified auctions, as there is no silver bullet solution to the problem it identifies.").

[12] See, e.g., FINRA Report, "Investing 2020: New Accounts and the People Who Opened Them", (Feb. 2021), https://www.finrafoundation.org/sites/finrafoundation/files/investing-2020-new-accounts-and-the-people-who-opened-them_1_0.pdf; Aaron Brown, "Stock Investors are Younger and More Racially Diverse", Bloomberg (Sept. 21, 2020), https://www.bloomberg.com/opinion/articles/2020-09-21/stock-investors-are-younger-and-more-racially-diverse.

National Association of Securities Professionals that "the SEC's proposals could result in a lack of access to the stock market for underserved demographics which could negatively impact the ability of these individuals and communities to build wealth and, in turn, further widen the existing diversity gap in investing."[13]

Ultimately, the SEC's Best Execution and Order Competition proposals represent a thinly veiled attempt to achieve Chair Gensler's primary policy (or political) goal in this rulemaking effort: to replace the business model many broker-dealers have successfully used for decades to provide customers increasingly high-quality, low-cost investment opportunities with a nostalgic, centralized exchange model similar to the one that for generations kept millions of Americans out of the market altogether.

Over the past several decades, retail investors have benefited tremendously from increased market access, at lower costs and with enhanced service levels. As structured today, we believe competitive forces will drive continuing market evolution for the benefit of individuals who are seeking to build their financial future. We urge the SEC to halt its pursuit of fundamental changes to market structure that would reverse much of the progress that has been made.

Sincerely,

Barbara Comstock
Executive Director, American Consumer & Investor Institute

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[13] NASP Comment Letter (Feb. 28, 2023), https://www.sec.gov/comments/s7-31-22/s73122-20158251-326339.pdf.