

SEC's Anti-Tech Proposal Threatens Innovation for Investors

Summary

A new Securities and Exchange Commission (SEC) proposal, applicable to investment advisers and broker-dealers, could ban technology as simple as a spreadsheet—stifling innovation and investments in technology. This would hurt ordinary investors who have obtained affordable access to investment advice and financial markets in recent years through technology, such as robo-advice and other online investing tools.

Background

The SEC could cut off or limit the use of technology through its proposed rule, *Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers*.

- » **SEC's Take:** The proposal seeks to eliminate possible conflicts of interest of broker-dealers and investment advisers that could be caused by technologies used in investor interactions, ranging from artificial intelligence to functions, algorithms, and models that don't even use technology.
- » **But:** The extremely broad scope of the proposal threatens to roll back the clock on technological innovations and harm Main Street investors that the SEC seeks to protect. The proposal also would extend to basic industry tools that brokers and advisers use for portfolio management and trading.

ICI's View: The SEC's proposal will likely stifle innovation, poses excessive compliance burdens, and is unnecessary because it is duplicative of existing regulations.

Why it matters

Technological advancements have powered innovation in the asset management industry that has significantly benefited individual investors, generating more product offerings, lower fees, and greater access to financial information. They have also placed America's capital markets at the forefront of the global economy.

TECHNOLOGY THAT COULD BE BANNED OR LIMITED

The proposal's incredibly broad definition of covered technology could result in bans or limitations on basic tools used by the industry to serve investors, including:



Retirement
calculators



Spreadsheets



Formulas
that guide
allocation
decisions



Financial
planning
tools



Internal
forecasting
and other
analytical
programs



Securities
watch
lists

Proposal's deficiencies

Stifling Innovation

The proposal poses such a limitless definition of *covered technology* that it would likely hamper basic industry tools. The proposal:

- » Takes away the strategic advantage that firms get by utilizing the latest technology to stay competitive in the marketplace.
- » Would apply to proprietary technology that firms have invested millions of dollars to develop in addition to covering third-party technology.
- » Could halt industry development of future technologies that could further improve Americans' investment experience.

Unnecessary Based on Existing Rules

The proposal would fundamentally change well-established legal principles that govern firms' and their representatives' conflicts of interest and how they interact with investors. The proposal:

- » Does not account for the fact that existing legal standards governing brokers' and advisers' conflicts—Regulation Best Interest and fiduciary duty, respectively—are more than capable of addressing conflicts related to emerging technologies and other new situations that arise.
- » Would override a marketing rule adopted by the SEC less than three years ago that comprehensively addresses conflicts in marketing.
- » Denies investors the opportunity to judge for themselves whether a potential conflict is problematic. Namely, it eliminates the option of allowing firms to provide clear and timely disclosure of conflicts of interest.

Excessive Compliance Burdens

The proposal is operationally unfeasible, requiring firms to assess whether every technology they use is allowed based on the SEC's onerous criteria of whether it is "a covered technology that takes into consideration an interest" of the firm. The proposal:

- » Covers any use or *reasonably foreseeable future use* of a covered technology with existing or prospective investors. How would a firm know whether a conflict of interest would exist in future use or with a prospective investor?
- » Would be especially onerous and costly for smaller firms.
- » Impacts almost every technology since firms likely consider all its technology in the interests of the firm—it is, after all, a business enterprise.