No. 23-60626

IN THE

United States Court of Appeals for the Fifth Circuit

NATIONAL ASSOCIATION OF PRIVATE FUND MANAGERS; MANAGED FUNDS ASSOCIATION; ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION,

Petitioners,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

On Petition for Review of Orders of the Securities and Exchange Commission

BRIEF OF FORMER SEC CHIEF ECONOMISTS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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No. 23-60626, *National Association of Private Fund Managers; Managed Funds Association; Alternative Investment Management Association v. Securities and Exchange Commission*

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of the Court of Appeals for the Fifth Circuit R. 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Petitioners

National Association of Private Fund Managers

Managed Funds Association

Alternative Investment Management Association

Others who are not participants in this matter but may be financially interested in its outcome include members of the National Association of Private Fund Managers, Managed Funds Association, and Alternative Investment Management Association.

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TABLE OF CONTENTS

Page

CERTIFICATE OF INTERESTED PARTIES ii

STATEMENT OF INTEREST 1

INTRODUCTION 1

ARGUMENT 3

I. The Commission failed to follow its usual processes and best practices in its rulemakings.. 3

A. The Commission departed from its practice of addressing comments on interrelated rules 6

B. The Commission did not explain or reconcile apparent contradictions between the interrelated rules. 9

C. The Commission did not follow its practice of conducting an economic analysis of the interrelated rules. 16

II. The Commission's departures from best practices pose a significant problem. 20

CONCLUSION 23

TABLE OF AUTHORITIES

Page(s)

Rules and Regulations

Alternative Net Capital Requirements for Broker-Dealers that are part of Consolidated Supervised Entities, 69 Fed. Reg. 34,428 (June 21, 2004)........ 14

Regulation NMS, 70 Fed. Reg. 37,496 (June 29, 2005)........ 12

Security-Based Swap Data Repository Registration, Duties, and Core Principles, 80 Fed. Reg. 14,438 (Mar. 19, 2015)........ 15-16

Pay Versus Performance, 80 Fed. Reg. 26,330 (May 7, 2015)........ 6

Re-Opening of Comment Period for Investment Company Reporting Modernization Release, 80 Fed. Reg. 62,274 (Oct. 15, 2015)........ 12

Investment Company Reporting Modernization (“Modernization Rule”), 81 Fed. Reg. 81,870 (Nov. 18, 2016)........ 11, 13

Investment Company Liquidity Risk Management Programs Rule (“Liquidity Rule”), 81 Fed. Reg. 82,142 (Nov. 18, 2016)........ 12, 13

Regulation Best Interest: The Broker-Dealer Standard of Conduct, 84 Fed. Reg. 33,318 (July 12, 2019)........ 10-11

Form CRS Relationship Summary; Amendments to Form ADV, 84 Fed. Reg. 33,492 (July 12, 2019)........ 10, 11, 18-19

Reopening of Comment Period for Pay Versus Performance, 87 Fed. Reg. 5,751 (Feb. 2, 2022) 7

Reopening of Comment Period for Reporting of Securities Loans, 87 Fed. Reg. 11,659 (March 2, 2022) 5

Pay Versus Performance, 87 Fed. Reg. 55,134 (Sept. 8, 2022) 7

Reporting of Securities Loans ("Securities Loan Rule"), 88 Fed. Reg. 75,100 (Nov. 1, 2023) 3, 19

Short Position and Short Activity Reporting by Institutional Investment Managers ("Short Sale Rule"), 88 Fed. Reg. 75,644 (Nov. 3, 2023) 3-4, 9, 19

Other Authorities

Alternative Investment Mgm't Ass'n, *Comment on Reopening of Comment Period for Reporting of Securities Loans* (Apr. 1, 2022), https://www.sec.gov/comments/s7-18-21/s71821-20122327-278372.pdf 5, 9

Investment Company Institute, *Comment on Short Sale Reporting Rule* (Aug. 17, 2023), https://www.sec.gov/comments/s7-18-21/s71821-246959-547222.pdf 5

Managed Funds Ass'n, *Comment on Reporting of Securities Loans* (Apr. 1, 2022), https://www.sec.gov/comments/s7-18-21/s71821-20122184-278025.pdf (MFA Comment Apr. 1, 2022) 5, 9

Managed Funds Ass'n, *Comment on Reporting of Securities Loans* (Aug. 4, 2023), https://www.sec.gov/comments/s7-18-21/s71821-247819-543682.pdf ("MFA Comment Aug. 4, 2023") 4-5

SEC, *The Role of the SEC*, https://www.investor.gov/introduction-investing/investing-basics/role-sec 20

Tara Siegel Bernard, et al., *Buy GameStop, Fight Injustice. Just Don't Sell*, NY TIMES (Jan. 29, 2022), https://www.nytimes.com/2022/01/29/ business/gamestop-stock.html 21

U.S. Sec. & Exch. Comm'n, *Remarks at the Economic Club of New York* (July 12, 2017), https://www.sec.gov/news/speech/remarks-economic-club-new-york 17

U.S. Sec. & Exch. Comm'n, *The SEC after the Financial Crisis: Protecting Investors, Preserving Markets* (July 17, 2017), https://www.sec.gov/news/speech/ the-sec-after-the-financial-crisis 17

STATEMENT OF INTEREST

Amici Curiae Jeffrey H. Harris, S.P. Kothari, Craig Lewis, Jim Overdahl, and Chester Spatt ("Former SEC Chief Economists") are former Chief Economists and Directors of the Division of Economic and Risk Analysis for the Securities and Exchange Commission ("SEC" or "Commission"). They served between 2004 and 2020. By virtue of those positions, *Amici* are intimately familiar with the Commission's best practices and usual processes for notice-and-comment rulemaking, including how the Commission responds to comments, reconciles overlapping rules, and performs sound economic analysis. They write to explain the ways in which the rulemakings challenged in this case reflect significant departures from these best practices.[1]

INTRODUCTION

The Securities and Exchange Commission is a critically important agency integral to the American financial system. The Commission works to further fairness and transparency in the capital markets by

[1] This brief is submitted under Federal Rule of Appellate Procedure 29(a) with the consent of all parties. No counsel for either party authored this brief in whole or in part, and no entity or person, aside from *amici curiae*, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

issuing consistent and stable rules that set clear expectations for market participants and allow the markets to operate smoothly. In promulgating rules, the Commission follows a set of best practices that help ensure that the new rules, by themselves and within the larger framework of Commission regulations,, are clear, consistent, and accepted and understood by industry and consumers alike. Those best practices include providing meaningful responses to comments on proposed rulemakings and carefully avoiding conflicting rules. Where the Commission determines that a newly proposed rule has some relation to or overlaps with a previously proposed rule, best practices include reopening the prior rule for comments on any conflicts, considering those comments, and explaining and justifying any overlap or conflict. And best practices also include accounting for interrelations among rules in the Commission's economic analyses of those rules. The Commission did not adhere to these practices in simultaneously issuing the Securities Loan Rule and Short Sales Rule. The Commission's departures from its usual practices pose significant risk to the market and its participants.

ARGUMENT

I. The Commission failed to follow its usual processes and best practices in its rulemakings.

On October 13, 2023, as part of its recent increase in rulemakings, the Commission finalized two rules aimed at increasing transparency in the securities loans and short sale markets. The first, *Reporting of Securities Loans* (the Securities Loan Rule), requires daily reporting of individualized securities loans to the Financial Industry Regulatory Authority, which publishes the data the following day. 88 Fed. Reg. 75,644 (Nov. 3, 2023). The second, the *Short Position and Short Activity Reporting by Institutional Investment Managers* (the Short Sale Rule), was finalized just minutes after the first. This rule requires investment managers to report their short sale positions to the Commission periodically, after which the Commission aggregates and anonymizes the data and publishes it after one month. 88 Fed. Reg. 75,100 (Nov. 1, 2023).

These rules are inherently interrelated. A short sale nearly always begins with a securities loan. A short seller borrows stock—a securities loan—to then sell on the market—a short sale. Disclosing a securities

loan will thus often reveal that a short sale has occurred or will occur.[2] The Commission itself recognized this connection in the final Short Sale Rule.[3]

Recognizing the significant interplay between these two rules,[4] the Commission reopened comments for the Securities Loan Rule when it proposed the Short Sale Rule. The Commission "solicit[ed] comment on any potential effects of the proposed [Short Sale] rule regarding short sale disclosure that the Commission should consider in determining whether to adopt the proposed [Securities Loan] rule regarding the

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[2] *See, e.g.*, Managed Funds Ass'n, *Comment on Reporting of Securities Loans Rule at* 3–4 (Aug. 4, 2023), https://www.sec.gov/comments/s7-18-21/s71821-247819-543682.pdf ("MFA Comment Aug. 4, 2023") ("[We] recommend tailoring the Proposed Securities Lending Rules to mitigate against imitative trading or reporting data so granular that market participants can reverse engineer to determine the proprietary trading strategies of individual managers [of short sales].").

[3] *See* Short Sale R. at 75,155 ("In the equity market, a primary reason for end borrowers to engage in a securities loan is to facilitate a short sale, leading to a close correlation between information about certain loan volumes and short interest.").

[4] *See also id.* at 74,148 ("Securities lending data, bolstered by the recently adopted [Securities Loan Rule], will offer a clearer picture of the relationship between short interest and securities being lent; however, this does not allow the Commission or the public to observe and monitor large short positions of Managers . . . . Thus, the Commission is adding to the existing data sources to further illuminate the short selling market.").

reporting of securities loans." Reopening of Comment Period for Reporting of Securities Loans, 87 Fed. Reg. 11,659, 11,659 (March 2, 2022) (reopening comment period until April 1, 2022).

Commenters, including Petitioners, highlighted the need to harmonize the two rules and specifically their disclosure periods, as next-day, individualized reporting of securities loan information under the Securities Loan Rule undermines the Short Sale Rule's protections of an aggregated, one-month delay on short sale positions reporting.[5] Commenters also noted the contradictions between the rules' economic analyses.[6] But despite these comments, and the fact the Commission

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[5] *See, e.g.*, MFA Comment Aug. 4, 2023, *supra* note 2, at 3–4; Managed Funds Ass'n, *Comment on Reporting of Securities Loans* (Apr. 1, 2022), https://www.sec.gov/comments/s7-18-21/s71821-20122184-278025.pdf ("MFA Comment Apr. 1, 2022"); Alternative Investment Mgm't Ass'n, *Comment on Reopening of Comment Period for Reporting of Securities Loans* (Apr. 1, 2022), https://www.sec.gov/comments/s7-18-21/s71821-20122327-278372.pdf ("AIMA Comment").

[6] *See, e.g.*, MFA Comment Aug. 4, 2023, *supra* note 2, at 8–9 ("The economic analysis of the Proposing Release suggests that public disclosure of loan-by-loan information is an unmitigated benefit to the short selling market, even though the Commission concluded the opposite in the Proposed Short Sale Reporting Release."); *see also* Investment Company Institute, *Comment on Short Sale Reporting Rule*, U.S. Sec. & Exch. Comm'n, at 2 (Aug. 17, 2023), https://www.sec.gov/comments/s7-18-21/s71821-246959-547222.pdf ("ICI Comment") ("Across the Interconnected Rules, the Commission does not consider the effect of

reopened commentary to address the relationship between the two rules, the Commission did not respond, explain, or reconcile the conflict in the disclosure periods—or any other conflict commenters identified—between the two rules. The Commission also departed from its usual practice of considering the rules' economic analyses in connection with each other . This process is out of step with the Commission's historic best practices and does not reflect sound governance of the securities markets.

A. The Commission departed from its practice of addressing comments on interrelated rules.

Most fundamentally, the Commission departed from best practices in these proceedings by failing to adequately address the comments it received after reopening comments for the Securities Loan Rule. It has long been the Commission's policy to address comments on interrelated rules, especially after it reopens a proposed rule's comment period for that very purpose.

Consider the Commission's rulemakings on executive pay under the Dodd-Frank Act. Responding to concerns about the amount of executive

interconnected and interdependent proposals in its cost-benefit analyses.").

compensation during the 2008 financial crisis, the Act requires companies to disclose executive pay information to shareholders. Pay Versus Performance, 87 Fed. Reg. 55,134 (Sept. 8, 2022). In 2015, the Commission sought to implement this mandate with its Pay Versus Performance Rule, which requires companies to disclose certain elements of executive pay information under Item 402 of Regulation S-K. Pay Versus Performance, 80 Fed. Reg. 26,330 (May 7, 2015).

In 2022, the Commission returned to the issue of executive compensation and proposed several new rules to "better implement the [Act]"—including an obligation for companies to consolidate executive pay information in a single place for ease of investor review, among other updates. 87 Fed. Reg. 55,134, 55,135–36. When it did so, the Commission reopened the comment period for the 2015 rule to analyze how its 2022 proposed rules might affect the prior rule. *See* Reopening of Comment Period for Pay Versus Performance, 87 Fed. Reg. 5,751 (Feb. 2, 2022).

And the Commission took those comments into consideration when it issued its final Pay Versus Performance Rule. The Commission stated, "*[a]fter taking into consideration these public comments*, we are adopting

the proposed rules, together with certain of the supplemental disclosure requirements considered in the Reopening Release, *with some modifications to reflect public comment*." 87 Fed. Reg. 55,134, 55,136 (emphasis added).

The Commission also directly addressed comments aimed at its economic analysis. *Id.* at 55,135 n.8 (responding to then-Senators Pat Toomey's and Richard Shelby's comment that the Commission failed to update its cost-benefit analysis after reopening the comment period, stating that the Commission *had* "discussed the potential benefits and costs of the additional disclosures, including their impact on efficiency, competition and capital formation" and considered "comments on the economic effects of the additional disclosure."). This process represents the Commission's usual and best practices. Responding to comments about a new proposed rule's potential effect on related rules, especially after reopening a commentary period for a rule, is a practice the Commission historically has taken very seriously.

By contrast, in its "Overview of Comments Received" for the Short Sale Rule, the Commission discussed only (1) commenters' support for increased transparency and reporting requirements; (2) the scope of the

rule; (3) the threshold for reporting obligations; (3) certain "buy to order" requirements; (4) the necessity of the CAT Amendments; and (5) the lack of sufficient cost/burden to benefit analysis. Short Sale R. at 75,102–03. Importantly, the Commission failed to mention *any* concern commenters expressed about the conflict between the rules' disclosure obligations.[7] And, while the Commission mentioned commenters' concerns with its economic analysis, it failed to actually respond to or address those comments in the final rules.

B. The Commission did not explain or reconcile apparent contradictions between the interrelated rules.

By the failure to address comments on the interplay between the Securities Loan Rule and the Short Sales Rule, the Commission also failed to substantively conform the rules. It is the Commission's longstanding practice to explain and reconcile any substantive

[7] *See, e.g.*, AIMA Comment, *supra* note 5, at 2 (citing the aggregate, one-month delay of information in the Short Sale Rule as in tension with the securities loan disclosure requirements); *see also* MFA Comment Apr. 1, 2022, *supra* note 5, at 3 ("Even more troubling is that the economic analysis of the Proposed Loan Disclosure Rule purports to treat the public disclosure of loan-by-loan information as an unmitigated benefit to the short selling market, even though the Commission concluded the opposite in the Proposed Short Position Disclosure Rule.").

inconsistencies between related rulemakings. As one commenter on the Short Sale and Securities Loan rules noted, "[p]rior Commissions have done holistic rulemakings that rightfully accounted for interconnections and dependencies," and previously proposed "complex, interrelated rules benefited from roundtables, thorough analysis of their interconnected nature, and robust comment periods." ICI Comment, *supra* note 6, at 7–8. Indeed, the need for consistency and continuity across rules is exactly why the Commission reopens commentary on previously proposed rules in the first place.

In other words, the Commission's practice is to not only solicit and respond to the comments, but to actually reconcile any contradictions between rules. For example, in 2019, the Commission finalized two rules, the Regulation Best Interest and Form CRS Rules, on the same day (as happened here). Regulation Best Interest: The Broker-Dealer Standard of Conduct, 84 Fed. Reg. 33,318 (July 12, 2019); Form CRS Relationship Summary; Amendments to Form ADV, 84 Fed. Reg. 33,492 (July 12, 2019). Before finalization, commenters noted a confusing discrepancy between the definitions of "retail customer" and "retail investor" in the two rules. Regulation Best Interest R. at 33,345. In direct response to

these concerns, the Commission revised the definitions, "agree[ing] with commenters that using a similar definition would provide consistency in the protections, and ease the compliance burden, of the package of rulemakings." *Id.* The Commission advised that "the definitions in Form CRS and Regulation Best Interest *have been revised to generally conform to each other*, consistent with our respective goals in each of these rulemakings." *Id.* (emphasis added). The Commission further stated that the two rules "will complement" each other, as well complement the "related rules, interpretations, and guidance that the Commission is concurrently issuing." *Id.* at 33,321. The Commission issued these rules after it solicited comments on and held numerous roundtable discussions about the interrelated nature of the proposals. *See id.* at 33,320 & n.12.

Similarly, in 2015 and 2016, the Commission proposed several interrelated rules related to its disclosure requirements. The first, the Modernization Rule, updated certain financial disclosure forms as part of the Commission's periodic modernization process and introduced a new form, Form N–PORT, on which investment companies would report their monthly portfolio holdings. Investment Company Reporting Modernization ("Modernization Rule"), 81 Fed. Reg. 81,870 (Nov. 18,

2016). The second, the Liquidity Rule, generally required investment companies to identify and report illiquid investments on their books. Investment Company Liquidity Risk Management Programs ("Liquidity Rule"), 81 Fed. Reg. 82,142 (Nov. 18, 2016).

The Commission recognized the overlap between the rules, as investment companies would need to report any illiquid investments under the Liquidity Rule on the new Form N–PORT proposed by the Modernization Rule. *See* Liquidity R. at 82,144 ("[T]he Commission is adopting reporting and disclosure requirements under . . . Form N–PORT . . . regarding liquidity risk and liquidity risk management."); *see also id.* at 82,155 n.120. The Commission thus reopened the comment period for the Modernization Rule when it proposed the Liquidity Rule. Open-End Fund Liquidity Risk Management Programs; Swing Pricing; Re-Opening of Comment Period for Investment Company Reporting Modernization Release, 80 Fed. Reg. 62,274 (Oct. 15, 2015).

And, as it historically has done, the Commission assessed the recommendations to adopt the two rules in tandem with each other. For example, in the Modernization Rule, the Commission repeatedly referred to the Liquidity Rule "that we are adopting concurrently" and its

connection to the new Form N–PORT, proposed by the Modernization Rule. Modernization R. at 81,874 ("Additionally, as we discuss in the Liquidity Adopting Release that we are adopting concurrently Form N–PORT will help the Commission better understand liquidity risks through additional Form N–PORT disclosure requirements discussed in that release."). Similarly, the Liquidity Rule referred to the Modernization Rule as a "companion" rule in relation to Form N–PORT. Liquidity R. at 82,155 n.120. More importantly, the Commission recognized commenters' concerns about the Liquidity Rule that certain information, such as liquidity classification information, would be publicly available on Form N–PORT and adopted amendments to the Form to keep such information non-public. *Id.* at 82,144, 82,196.

In yet another example, in adopting Regulation NMS, the Commission finalized multiple complementary rules together. Specifically, the Commission issued the Order Protection Rule, to ensure investors received the best market prices after the automatization of protected quotations, together with the Access Rule, to encourage fair access to market quotations by, among other regulations, limiting trading centers to charging no more than $0.003 per share for access to

quotations. Regulation NMS, 70 Fed. Reg. 37,496, 37,497, 37,502 (June 29, 2005). In harmonizing the rules, the Commission stated that "*most importantly*, the [$0.003] fee limitation of [the Access Rule] is necessary to *support the integrity* of the price protection requirement established by the adopted Order Protection Rule." *Id.* at 37,503 (emphasis added). The Commission is no stranger to adopting concurrent rules that complement each other.

The Commission also historically reconciles proposed rules both within and across agencies. For example, in 2004 the Commission amended its net capital requirement for broker-dealers. Alternative Net Capital Requirements for Broker-Dealers that are part of Consolidated Supervised Entities, 69 Fed. Reg. 34,428 (June 21, 2004). The rule allowed certain broker-dealers to use mathematical models to compute net capital, so long as certain conditions were met, including supervision by the Commission. *Id.* Commenters pointed out that some holding companies subject to the rule may already have principal regulators supervising them and enforcing other requirements under other rules that could have conflicted with the proposed rule. *Id.* at 34,431. In response, the Commission revised the rule and ultimately exempted

entities with principal regulators from the rule's supervision requirements. *Id.* That is, the Commission explicitly "modified the proposed rule amendments . . . to *avoid duplicative or inconsistent regulation*." *Id.* at 34,428 (emphasis added).

Consider also the Commission's 2015 rulemaking on security-based swap data repositories. Security-Based Swap Data Repository Registration, Duties, and Core Principles, 80 Fed. Reg. 14,438 (Mar. 19, 2015). The Commission undertook significant efforts to vet the numerous proposed rules before the public, including by conducting joint public roundtables with the Commodities Futures Trading Commission (CFTC) and considering dozens of comment letters. *Id.* at 14,441. In keeping with the Commission's best practices, it "*carefully reviewed and considered all of the comments* that it received relating to the proposed rules," ultimately adopting rules that "ha[d] been modified from the proposal, in part to respond to these comments." *Id.* at 14,442 (emphasis added). Indeed, not only did the Commission solicit, receive, and respond to those comments, but it also "considered certain comments submitted with respect *to other proposed Commission rulemakings, related CFTC*

rulemakings, and international initiatives." *Id.* at 14,442 n. 31 (emphasis added).

As these examples reflect, historically, the Commission has carefully considered and reconciled inconsistencies between interrelated and interdependent rules as a matter of best practices and sound governance. It strayed from that procedure when it finalized the Securities Loan and Short Sale Rules. The Commission did not even *mention* the difference between the two disclosure obligations in its final rules despite commenters' concerns about that issue, much less explain or try to reconcile this apparent inconsistency between the related rules.

C. The Commission did not follow its practice of conducting an economic analysis of the interrelated rules.

Finally, the Commission failed to conduct a proper economic analysis of the two rules and how they would specifically interact and impact one another. Economic analysis of proposed and final rules plays a key role in the Commission's rulemaking. The Commission has frequently confirmed that such analysis is one of its usual and best practices. Former Chairman Jay Clayton said in 2017 that the Commission "is committed to performing rigorous economic analyses of

our rules."[8] Chair Mary Jo White likewise stated that the Commission "undertake[s] . . . exhaustive economic analysis."[9]

For example, in the Modernization and Liquidity rulemakings discussed above, the Commission expressly considered the rules' economic impacts on each other in conducting its economic analyses. In the Modernization Rule, the Commission acknowledged commenters' concerns about that rule's proposal to require companies to include individual (or "position-level") securities information on their financial statements. Commenters flagged that this requirement would making audits costly and difficult, especially when the concurrent Liquidity Rule already required individual securities to be disclosed on Form N–PORT. Modernization R. at 81,923.

The Commission responded that it was "persuaded by comments relating to the costs of auditing liquidity disclosures and, as discussed further in the Liquidity Adopting Release we are adopting concurrently,

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[8] *Remarks at the Economic Club of New York*, U.S. Sec. & Exch. Comm'n (July 12, 2017), https://www.sec.gov/news/speech/remarks-economic-club-new-york.

[9] *The SEC after the Financial Crisis: Protecting Investors, Preserving Markets*, U.S. Sec. & Exch. Comm'n (July 17, 2017), https://www.sec.gov/news/speech/the-sec-after-the-financial-crisis.

also believe that such position-level information regarding liquidity is better suited for nonpublic reporting to the Commission in Form N–PORT." *Id.* at 81,985; *see also id.* at 81,987 ("The disclosure of the liquidity of securities on financial statements, however, could increase the costs to audit financial statements . . . . As discussed in the Liquidity Adopting Release, we are adopting portfolio-level liquidity reporting on Form N–PORT which we believe mitigates many of the commenters' concerns and is a more appropriate method of public reporting."). The Commission's finalization of the Modernization and Liquidity Rules reflects how the Commission typically responds to and harmonizes concurrent and interrelated rulemakings.

The Commission did the same in the Regulation Best Interest rulemaking, addressing comments about the "compliance costs associated with *the entire package of rules we proposed*, including Regulation Best Interest and Form CRS" in its economic analysis. Regulation Best Interest R. at 33,436 (emphasis added). The Commission recognized that cost of compliance with the interrelated rules may be more burdensome for some market participants, but it reconciled that concern with a survey of financial professionals finding

that 80% surveyed believed compliance costs were likely to decline over time. *Id.* at 33,436–37.

Nothing of the sort happened here. The Commission abandoned its practice of conducting "rigorous" and "exhaustive" economic analysis, much less one assessing the two regulations together. Though it mentioned commenters' concerns with its cost-benefit analysis in the Short Sale Rule's "Overview of Comments Received," the Commission ultimately failed to consider the costs of both regulations together, examining only the costs in the overlap of "compliance period" for the rules. Short Sale R. at 75,149. The Securities Loan Rule did even less, refusing to consider the Short Sale Rule's economic impact, dismissing this consideration because that rule "remain[ed] at the proposal stage," despite the fact that these rules are clearly interrelated and were considered concurrently. Securities Loan R. at 75,695. Tellingly, the Commission made no such claims in connection with other rules it finalized concurrently. *See* Best Interest and Form CRS Rules, *supra* at 14; *see also* Modernization and Liquidity Rules, *supra* at 15–16. The Commission's excuse itself represents a departure from best practices.

II. The Commission's departures from best practices pose a significant problem.

Amici take no position here on the issues of transparency surrounding short sales or the appropriate regulatory response to those issues. But we agree with petitioners that the Commission's failure to adhere to its longstanding and typical rulemaking procedures puts the securities markets in jeopardy of being subject to inconsistent and incompatible rules that pose unnecessary risks and costs and burdens to market stability and investors.

The Commission's mission is to (1) protect investors; (2) maintain fair, orderly, and efficient markets; and (3) facilitate capital formation. SEC, The Role of the SEC, https://www.investor.gov/introduction-investing/investing-basics/role-sec. Its incomplete and inconsistent process here threatens to undermine these aims. Indeed, the Commission's departures from its best practices suggests that it has acted with undue haste and has not adequately analyzed the rules, including their potential impacts on one another and on market participants, nor has it adequately explained or reconciled apparent inconsistencies and points of interconnection between the rules.

These failings threaten to introduce unnecessary risk and instability to the markets and their investors. Some market participants may struggle to fully understand two interconnected yet un-harmonized rules, the requirements of one negate the benefits of the other. More sophisticated market participants may be able to parse through this disparate information in ways beyond the reach of retail investors towards opportunistic or manipulative purposes. Some may fully misinterpret the data in ways that lead to market disruptions and increased volatility.[10] Either way, as currently construed, the Commission is unlikely to achieve full compliance with or success in implementing its regulatory regime. And, in seeking to comply, these market participants may bear unanticipated costs not accounted for by the Commission's incomplete economic analysis and failure to reconcile the two rules. The rules thus threaten to place unwarranted burdens on investors unjustified by any potential benefits. More broadly, these problems may increase market volatility and lessen the investing public's

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[10] *See, e.g.*, Tara Siegel Bernard, *et al.*, *Buy GameStop, Fight Injustice. Just Don't Sell*, NY TIMES (Jan. 29, 2022), https://www.nytimes.com/2022/01/29/business/gamestop-stock.html (discussing the 2021 movement that began on Reddit to short GameStop and AMC stock in an effort to "teach Wall Street a lesson").

confidence in the market—the very problems the Commission was designed to guard against.

Ultimately, the Commission's incomplete and inconsistent approach to these rulemakings threatens the industry's and public's confidence in the Commission's ability to provide sound guidance for the rules by which everyone must play—and thereby jeopardizes the very market stability and investor protection that should motivate the Commission's regulatory efforts. The Commission's departure from its traditional and robust procedural standards warrants this Court's correction.

CONCLUSION

For these reasons, the Court should vacate and remand.

Dated: March 12, 2024

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,059 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5)(A) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook font size 14.

Dated: March 12, 2024

/s/ Jonathan Y. Ellis
Jonathan Y. Ellis

CERTIFICATE OF SERVICE

The undersigned herby certifies that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system in No. 23-60626 on March 12, 2024. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

Dated: March 12, 2024

/s/ Jonathan Y. Ellis
Jonathan Y. Ellis