

ICI VIEWPOINTS

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## SEC Commissioner Michael Piowar: A Commitment to Markets, Shareholders...and Facts

By Rachel McTague

SEC Commissioner Michael Piowar responded with great candor and gusto to questions posed by ICI President and CEO Paul Schott Stevens during a lively discussion at the final day of ICI's General Membership Meeting in Washington, DC, on May 24. Piowar's announced July 7 departure from the agency offered the outspoken commissioner the opportunity to reflect on fund regulation during his five-year tenure on the Commission, which crossed from the Obama presidency to the Trump era and included several months as acting chairman of the SEC.

In his introduction of Piowar, Stevens praised the commissioner for bringing welcome perspective and economic analysis to regulation, being only the third PhD economist ever to serve on "one of the most lawyerly of agencies." Stevens expressed particular appreciation for Piowar's insistence on this approach to the SEC's liquidity risk management rule, as well as the still-pending proposed rule on funds' use of derivatives.

Piowar and Stevens discussed a range of other regulatory topics, including exchange-traded funds (ETFs), electronic delivery of fund shareholder reports, and the Department of Labor's fiduciary rule, as well as the trio of new SEC proposals relating to standards for broker-dealers and investment advisers providing retail investment advice.

### Deliberating Disclosure

Stevens began the Q&A session by asking Piowar if Rule 30e(3), which would allow funds to offer online delivery of disclosure materials as the default method, would be done before the commissioner's

departure on July 7. Piowar affirmed that the rulemaking is a priority for him—as well as for SEC Chairman Jay Clayton and Director of Investment Management Dalia Blass—and said that he hopes it will be completed despite opposition by the paper lobby and other interested parties. “We’re not getting rid of paper disclosure; people can opt in to it,” he emphasized.

As disclosure reform goes forward, he said, the SEC is aiming also to improve the shareholder experience. Piowar and Stevens agreed that the summary prospectus model has been a good approach for mutual funds, annuities, and corporate disclosure. Piowar further noted that the Commission’s Office of the Investor Advocate is setting up a program that will gather investor feedback and conduct testing, in an effort to discover which elements of disclosure they are most useful to them.

Expanding his discussion with Stevens about the Commission’s approach to disclosure, Piowar mentioned its recent re-proposal of the disclosure provisions of the liquidity risk management rule as a “missed opportunity to reconsider bucketing”—that is, the SEC should have taken the chance to step back and reevaluate the usefulness of the rule’s requirement to segregate assets in different “buckets” according to their liquidity. He said that though the proposal did “pull back on the original requirements about how granular the information disclosure should be,” unfortunately it didn’t go far enough in this area, which funds have found “more difficult to comply with than originally thought.” As Piowar talked about the burdens of the rule, he placed special emphasis on smaller funds, which he said are disproportionately hurt by these requirements.

## **Looking Forward to Input on Retail Advice**

Turning to the SEC’s three recent rule proposals on investment-advice standards, Piowar said that the Commission’s proposed Regulation Best Interest is meant to enhance the suitability standard for broker-dealers and other intermediaries giving retail investment advice. Other proposals that are part of the package focus on updating the current standard for investment advisers, and on developing a disclosure document that will provide a “relationship summary” to retail investors. The public comment process is going to be very important on this set of rules, Piowar emphasized. “We think we’ve explained things clearly, but are looking forward to input,” he said.

The proposal is a top priority for Clayton, Piowar explained. As an independent agency, the SEC is looking to stay above the political fray—which, he complained, the DOL did not do during the creation of its fiduciary rule. It was based on “biased and incorrect” economic analysis from the Council of Economic Advisers, and likely would have led to waves of litigation.

## **Looking for Consistency in Regulatory Approach**

Responding to a question about ETFs, the outgoing commissioner “absolutely” agreed with Stevens that the current process for SEC approval of new ETFs—involving ad hoc exemptive orders for each fund—needs to be replaced with a rule that provides consistency. The more than 300 exemptive orders in place now are “ad hoc, and they’re arbitrary,” Piowar noted. “There is no good reason that these things shouldn’t be more uniform across” the industry, he said, explicitly affirming the value of

“consistency in this space.”

Now, he said, “the key discussion point for us is [the rule’s] scope.” There are many different types of ETFs out there, with more types on the horizon, so it will be challenging to create a rule that will consistently cover the review and approval of all. “But we can’t let the perfect be the enemy of the good; we need to move forward, then adjust it as necessary,” he concluded.

In looking back on the post–financial crisis debate around financial stability, which banking regulators had begun to dominate, Stevens credited Piwowar with helping to ensure that capital-markets regulators played a proper role, and had a strong voice. Piwowar said that the FSOC and FSB now are “taking a step back,” and “things are moving in the right direction.”

Looking back, he expressed views similar to those of [many critics](#), including ICI, about the 2013 report from the Office of Financial Research (OFR) that catalyzed the debate. OFR failed to distinguish between the assets of investment advisers and the assets of shareholders, Piwowar explained, and he recalled having to remind banking regulators that the SEC has been strongly regulating the fund industry since 1940. He quipped that the “phrase going around was that [FSOC] was using a ‘Noah’s Ark’ strategy: picking two firms from every industry” to designate as systemically important. “We have to keep reminding banking regulators that the fund sector is not involved in “shadow banking” and funds are engaged in capital markets–based financing,” he concluded.

## **Avoiding a Prescriptive Approach and Junk Science**

The commissioner also shared insights on the SEC’s pending rule proposal on funds’ use of derivatives, noting that he had dissented in the vote to issue the proposal because he thought it was too prescriptive. Since then, the SEC has been contemplating moving forward with a more principles-based proposal, Piwowar said.

He added that he would like to see a few changes in a re-proposal, including tightening the asset-segregation requirements of the original proposal. Movement on this proposal should be thoughtful, he emphasized. But he is encouraged by what he’s seen so far: input from ICI and its members has been helpful, and he believes that a re-proposal would benefit from the knowledge that the Commission has gained from data it is gathering under other new fund rules.

Characteristic of the interview, Piwowar responded with candor when Stevens asked him to address the concept of common ownership, which “some people claim is reducing competition.” The commissioner smiled and replied, “I can give you a two-word assessment and a one-word assessment: ‘junk science’ or ‘bullsh\*t.’” He added that these studies are flawed on a number of levels, and don’t really deserve to be taken seriously.

## **“In the Right Place at the Right Time”**

Asked to reflect on his life in public service—which, in addition to his time spent at the SEC, included serving on the White House Council of Economic Advisers under presidents George W. Bush and Barack Obama—Piwowar replied with great modesty. He'd been building out his résumé, he said, and had shown it to this mother, hoping she'd be proud. Instead, she asked, "Why can't you keep a job?"

Looking forward with a smile, he said, "I've been lucky in that I've had opportunities to be the middle of some really important events—I've been in the right place at the right time. As for the future, it's hard for me to say. We'll see what it holds."

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