



SIFMA & SIFMA Asset Management Group

Promoting Investor Success, Industry Innovation, and Efficiency with AI

September 2024



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Executive Summary

The development and adoption of artificial intelligence (“AI”) in the financial services industry has garnered significant attention in recent years. As federal and state policymakers and regulators continue to assess the potential impact of AI in the financial services industry, the Securities Industry and Financial Markets Association and its Asset Management Group (collectively, “SIFMA”) have developed this white paper to highlight key points that it believes will be useful to consider as part of the ongoing discussions related to the use of AI in the industry.

These key points can be summarized as follows:

- Laws and regulations governing the financial services industry should remain focused on addressing activities and outcomes. This technology-neutral approach encourages innovation within the industry without sacrificing the safety of financial markets.
- Existing laws and regulations governing the financial services industry have proven effective in addressing the use of emerging technologies in the industry, including AI.
- There is no need to adopt a precise definition of AI at this time because AI is an evolving technology, and adopting a technology-neutral approach to the use of AI will likely render a definition unnecessary.
- Policymakers and regulators should collaborate with firms in the financial services industry to understand the uses of AI and its related benefits and risks. Additional regulatory action should only be considered if the existing laws and regulations do not address novel risks that are identified.
- Any regulatory action should be flexible enough to continuously adapt to evolving technology. Prescriptive rules can lead to inconsistent regulations across jurisdictions and will also deter innovation that could benefit all market participants, including investors.
- Existing laws and regulations recognize that management at financial services firms are best positioned to identify emerging risks and the impact they could pose to their businesses. Firms should continue to retain this flexibility when determining how to address the use of AI and other emerging technologies.
- Policymakers should assess how other existing areas of law and regulation apply to the use of AI in the financial services industry and consider strategies for mitigating potential risks, including in the areas of federal data privacy legislation and copyright ownership.

Background

The use of AI in the financial services industry is not new—AI and related technologies have been used by market participants for many years to improve efficiency and accuracy in a variety of tasks. But advancements in AI, particularly in generative AI, have heightened interest and concerns about the use of such technology in the financial services industry. Although these developments warrant consideration, the existing legal and regulatory frameworks that govern the financial services industry are designed to be risk-based, technology neutral, and flexible enough to address the use of AI and other emerging technologies. These existing laws and regulations are intended to apply to activities and outcomes regardless of the specific technology used. In turn, financial services firms have established risk-management frameworks to ensure compliance with these laws and regulations that are continuously reviewed and updated to address emerging technologies, including AI.

Although there has been an increased focus on AI by policymakers and regulators globally, it is critical to avoid hasty reactions that will needlessly deter innovation. Future action should only be considered if novel risks are identified that these frameworks do not address. Accordingly, a risk-based and technology-neutral approach is warranted for any regulation in the financial services industry.

Encouraging AI Innovation Benefits Market Participants

AI and related technologies are already used by firms in the financial services industry across a variety of applications, including fraud detection, data analytics, risk management, investment analysis, compliance, and cybersecurity. This has resulted in significant benefits to both financial services firms and investors. For example, financial services firms are using AI to more efficiently and accurately analyze large volumes of data, predict market trends, identify risks, and devise optimal investment strategies. These uses of AI can benefit investors by providing, among other things, expanded access to certain financial services and products, lower costs, and enhanced customer service and risk management capabilities.¹

Based on the capabilities it currently offers—and those that have yet to be recognized—AI has the potential to further transform the financial services industry and yield widespread benefits to investors. To maximize this potential, any legal or regulatory response to AI should be aimed at facilitating the responsible use of AI. As described in more detail below, while technological advancements can be accompanied by potential risks, those risks can be appropriately addressed without stifling innovation.

¹ See Written Statement of Daniel S. Gorfine to the U.S. Senate Committee on Banking, Housing, and Urban Affairs, *Artificial Intelligence in Financial Services*, at 2-4 (Sept. 20, 2023), <https://www.banking.senate.gov/download/gorfine-testimony-9-20-23> (“Gorfine Testimony”); see also FINRA, *Artificial Intelligence (AI) in the Securities Industry: Key Challenges and Regulatory Considerations* (June 2020), <https://www.finra.org/rules-guidance/key-topics/fintech/report/artificial-intelligence-in-the-securities-industry/key-challenges> (highlighting potential benefits AI-based applications offer to both investors and firms).

Existing Laws and Regulations Address the Use of AI in the Financial Services Industry

Existing legal and regulatory frameworks apply to the use of AI in the financial services industry. Accordingly, any additional regulatory action should only be considered if gaps are identified that these existing frameworks cannot address.²

While policymakers and regulators have developed laws and regulations in response to technological developments in the financial services industry, these frameworks generally apply to conduct and activities, rather than the technology itself. Such technology-neutral frameworks have been effective in ensuring the responsible adoption and use of emerging technologies. Although all emerging technologies must be evaluated for novel risks, there does not appear to be anything inherently different about the use of AI that would make these frameworks inadequate. Policymakers should, therefore, closely examine how existing laws and regulations apply to and can continue to evolve to address unique risks that may arise from the use of AI in the financial services industry before considering further legislation or regulation.

As seen in attached Appendix 1, a wide range of existing legal and regulatory frameworks that already apply to financial services firms would also apply to their use of AI. These frameworks apply to areas such as market and investor protection, governance structures, risk monitoring and management, cybersecurity, model risk management, third-party risk management, data privacy, and operational resilience and business continuity.³ These existing frameworks are generally designed with the flexibility to evolve to apply to the use of emerging technologies like AI and to mitigate associated risks that may apply in the financial services industry, regardless of the technology used.⁴ In addition to laws

² See, e.g., National Institute of Standards and Technology, *Artificial Intelligence Risk Management Framework (AI RMF 1.0)* (Jan. 2023), <https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.100-1.pdf> (providing an AI risk management framework to “to offer a resource to the organizations designing, developing, deploying, or using AI systems to help manage the many risks of AI and promote trustworthy and responsible development and use of AI systems”) (“NIST AI RMF 1.0”).

³ See, e.g., Gorfine Testimony, *supra* note 1, at 6-8 (citing the applicability to AI of the Equal Credit Opportunity Act, the Truth in Lending Act, the Fair Housing Act, the Fair Credit Reporting Act, Regulation Best Interest, SEC and FINRA marketing rules, and more); Remarks by Under Secretary for Domestic Finance Nellie Liang, *Artificial Intelligence in Finance* (May 22, 2024), <https://home.treasury.gov/news/press-releases/jy2383> (citing the applicability to AI of model risk management and third-party risk management frameworks, as well as consumer protection and securities laws) (“Liang Remarks”); see also FINRA, *Frequently Asked Questions About Advertising Regulation*, FAQ D.8.1 (posted May 10, 2024), <https://www.finra.org/rules-guidance/guidance/faqs/advertising-regulation#d8> (“Firms are responsible for their communications, regardless of whether they are generated by a human or AI technology. Accordingly, firms must ensure that AI-generated communications they distribute or make available comply with applicable federal securities laws and regulations and FINRA rules.”).

⁴ See, e.g., U.S. Department of Treasury, *Managing Artificial Intelligence-Specific Cybersecurity Risks in the Financial Services Sector*, at 21 (2024), <https://home.treasury.gov/system/files/136/Managing-Artificial-Intelligence-Specific-Cybersecurity-Risks-In-The-Financial-Services-Sector.pdf> (“Financial regulatory agencies generally do not issue regulations or guidance on specific technologies, but instead address the importance of effective risk management, governance, and controls regarding the use of technology, including AI, and the business activities that those technologies support.”) (“Treasury AI Remarks”); CFTC, *Statement of Commissioner Kristin N. Johnson: Articulating an Agenda for Regulating AI* (May 2024), <https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement050224>

and regulations, financial regulators issue guidance designed to ensure the responsible adoption of new technology, which would also be applicable to AI use.⁵

Existing enforcement mechanisms have also proven capable of addressing conduct related to the use of AI. For example, the SEC has charged investment advisers in so-called “AI-washing” cases for making false and misleading statements about their alleged use of AI in connection with providing investment advice.⁶ Such cases make clear that existing laws and regulations provide regulators with the necessary tools to address AI-related risks and enforce against violations. Criminal laws also allow law enforcement and regulators to pursue wrongdoers regardless of the technology that they use to carry out scams, frauds, and thefts.

It Is Unnecessary to Develop a Specific Definition of “AI”

SIFMA does not believe that any regulatory approach requires the adoption of a precise definition of AI. As an initial matter, any definition would likely become outdated in the near term due to the evolving nature of technology. If a definition of AI is considered, SIFMA encourages the adoption of a broadly accepted definition developed by a standard-setting body.⁷ Ultimately, however, any definition of AI that policymakers or regulators choose to adopt should not make a difference, because existing laws and regulations apply to any technology that is used to engage in regulated conduct in the financial services industry.

(stating that the CFTC’s “approach to mitigating the risks associated with the use of AI in our markets should be principles-based, retaining adaptability and remaining technology neutral”); FINRA Reg. Notice 24-09, *FINRA Reminds Members of Regulatory Obligations When Using Generative Artificial Intelligence and Large Language Models*, (June 27, 2024), <https://www.finra.org/rules-guidance/notices/24-09> (“FINRA intends for its rules and guidance to be technologically neutral and to function dynamically with evolutions in technology and member firms’ processes. The rules apply when member firms use AI, including Gen AI or similar technologies, in the course of their business, just as they apply when member firms use any other technology or tool.”) (“FINRA AI Reg Notice”).

⁵ See, e.g., *Supervisory Guidance on Model Risk Management*, Federal Reserve SR Letter 11-7, OCC Bulletin 2011-12, and FDIC FIL-22-2017 (“MRM Guidance”); see also OCC, *Comptroller’s Handbook: Model Risk Management Version 1.0* (Aug. 2021), <https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/model-risk-management/pub-ch-model-risk.pdf> (adopting updated MRM Guidance and specifically addressing AI); FINRA AI Reg Notice, *supra* note 4.

⁶ See SEC, *SEC Charges Two Investment Advisers with Making False and Misleading Statements About Their Use of Artificial Intelligence* (Mar. 18, 2024), <https://www.sec.gov/newsroom/press-releases/2024-36>.

⁷ See NIST AI RMF 1.0, *supra* note 2 (defining an “AI system” as “an engineered or machine-based system that can, for a given set of objectives, generate outputs such as predictions, recommendations, or decisions influencing real or virtual environments”); Executive Office of the President, *Executive Order 14110: Safe, Secure, And Trustworthy Development And Use Of Artificial Intelligence*, 88 FR 75191 (Oct. 30, 2023), <https://www.federalregister.gov/documents/2023/11/01/2023-24283/safe-secure-andtrustworthy-development-and-use-of-artificial-intelligence> (adopting a similar definition of AI).

Firms' Internal Risk-Management Frameworks Appropriately Address the Use of AI

To ensure that the use of emerging technologies complies with existing regulatory frameworks described above, firms in the financial services industry have developed internal risk-management frameworks.⁸ Firms continuously review and update these frameworks to address the use of emerging technologies, including AI. As a result, the frameworks effectively address many of the risks often associated with the use of AI.⁹

Firms' internal risk-management frameworks provide strong accountability measures to reduce unnecessary risk, while also providing room for innovation, by requiring firms to: (1) identify specific risks a company should consider when assessing level of risk posed by the activity; (2) consider risk-mitigation controls and processes; and (3) identify activities that carry unacceptable risks and should not be pursued.

The effectiveness of this type of tailored-yet-flexible approach has been illustrated by how financial services firms have approached the adoption of AI. As regulators themselves have recognized, financial services firms have generally been proceeding cautiously in pursuing the use of AI, especially for higher-risk use cases.¹⁰ By establishing governance structures around the use of AI (including testing and controls), financial services firms have shown that they are approaching the use of AI in accordance with their existing risk-management frameworks.

A continued reliance on this risk-based approach provides the necessary flexibility to balance the potential benefits of using AI with the relevant risks.

Policymakers and Regulators Should Assess Whether AI Poses Novel Risks Not Addressed by Existing Governance Frameworks

Laws and regulations should not be based on speculative or hypothetical future risks. Instead, policymakers and regulators should carefully evaluate how financial services firms are using AI and if those uses pose any novel risks that are not addressed by the existing legal and regulatory frameworks.

To do this, policymakers and financial regulators should work collaboratively with financial services firms—and amongst themselves—to understand the uses, benefits, and potential risks posed by the use of AI in the financial services industry. This approach would allow firms and regulators to identify new fact patterns that may present novel risks to the industry. Only if such novel risks are identified should potential regulatory action be considered, which could include financial

⁸ See MRM Guidance, *supra* note 5.

⁹ See Appendix 1.

¹⁰ See, e.g., Treasury AI Remarks, *supra* note 4, at 2 (“[F]inancial institutions appear to be moving slowly in adopting expansive use of emerging AI technologies.”); see also Liang Remarks, *supra* note 3 (“[F]irms are pursuing a wide range of strategies for how to use new AI tools. They appear to be proceeding cautiously, especially when experimenting with GenAI, and at the same time making changes to internal governance.”).

regulators providing further guidance on regulatory expectations.¹¹ Otherwise, policymakers and regulators risk stifling innovation and deterring the adoption of new technologies in the industry.

By engaging in ongoing collaboration with the financial services industry, policymakers and regulators can balance the need for safeguards with the importance of creating an environment where financial services firms are confident in their development and adoption of AI or other emerging technologies.¹²

Fragmented AI Regulation Risks Creating Compliance Challenges and Stifling Innovation in the Financial Services Industry

The above discussion focuses on the potential for AI-specific laws and regulations to stifle innovation in the financial services industry to the detriment of market participants, including investors. This risk is amplified if different jurisdictions take conflicting or inconsistent approaches to regulating AI.

A fragmented AI regulatory landscape will present significant compliance challenges for firms subject to numerous regulatory regimes. Numerous jurisdictions (domestically and globally), along with regulators with overlapping jurisdictional reach, have adopted, or are seeking to adopt, their own AI-specific laws, regulations, and frameworks, yet the content and scope of those requirements can vary broadly. There is also an increasing risk of a patchwork of state laws regulating AI, not unlike what has happened with privacy legislation. A fragmented approach to AI regulation should therefore be discouraged, as it could deter financial services firms from leveraging AI and ultimately prevent market participants from receiving its many benefits.

These difficulties will only be further exacerbated if policymakers or regulators introduce AI-specific regulations for the financial services industry. Such an overly restrictive approach poses a risk that firms will be dissuaded from innovating or creating new technologies like AI for U.S. markets, leading to other countries or jurisdictions—which are adopting a more flexible approach—becoming the preferred destinations for companies that are developing new technologies.

These concerns highlight the importance of applying existing principles-based and technology-neutral legal and regulatory frameworks to manage the risks presented by the use of AI in the financial services industry. Relying on existing frameworks that have proven effective in addressing emerging technologies will ensure a consistent approach to managing AI risks that promotes innovation and maximizes its potential benefits to market participants.

¹¹ See MRM Guidance, *supra* note 5 (noting that further guidance will continue to be issued as necessary to identify novel areas of risk).

¹² See Gorfine Testimony, *supra* note 1, at 9-10.

Policymakers and Regulators Should Consider Strategies for Addressing Potential Gaps in Existing Laws and Regulations Related to AI

SIFMA believes there are a few key areas where policymakers and regulators should assess how existing laws and regulations apply to the use of AI in the financial services industry and consider strategies for mitigating potential risks, which are summarized below:

- **Establish Federal Data Privacy Legislation that Considers the Use of AI in the Financial Services Industry.** If Congress determines a legislative response to AI is appropriate, it should establish federal privacy legislation that addresses data privacy, cybersecurity, and establishes safeguards regarding financial services firms' use of personal data. Concerns have been raised regarding the data used by AI models, and appropriate legislation would ensure that consumers have adequate privacy and personal data protections, both in connection with use in AI models and more broadly in the financial services industry. The United States Senate's Bipartisan AI Working Group has likewise called for federal privacy laws that offer such protections.¹³

Moreover, any such legislation should include strong state preemptions. Consumers should be entitled to the same level of privacy protections regardless of the jurisdiction in which they live, and in an increasingly digital world, state-based protections are often inefficient, costly, and potentially unworkable.¹⁴ Federal privacy legislation is critical to avoiding a patchwork approach to data regulation, which will only lead to conflicts of law and undue costs and burdens related to AI use.

- **Clarify Copyright Ownership for AI-Produced Works.** Congress should consider amending existing copyright laws to address issues related to artificial intelligence, including ownership of AI-produced works. In 2023, the U.S. Copyright Office announced that works created with the assistance of AI "may be copyrightable," provided the work involves sufficient "human authorship."¹⁵ However, the human authorship requirement has been the source of numerous challenges in recent years, as there are generally no copyright protections for AI-generated works created without human involvement.¹⁶ This has resulted in AI ownership rights remaining ambiguous under existing copyright laws, which demonstrates the need for existing copyright laws to be revised to reflect the modern realities of creative works generated in a manner that falls outside the established legal definitions in this space. Moreover, the U.S.

¹³ The Bipartisan Senate AI Working Group, *Driving U.S. Innovation in Artificial Intelligence: A Roadmap for Artificial Intelligence Policy in the United States Senate*, at 14 (May 2024), https://www.schumer.senate.gov/imo/media/doc/Roadmap_Electronic1.32pm.pdf.

¹⁴ See Gorfine Testimony, *supra* note 1, at 13.

¹⁵ See U.S. Copyright Office, *Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence*, 88 Fed. Reg. 16,190 (Mar. 16, 2023) (to be codified at 37 C.F.R. § 202).

¹⁶ Evan Gourvitz & S. Lara Ameri, *Can Works Created with AI Be Copyrighted? Copyright Office Issues Formal Guidance*, Ropes & Gray (Mar. 17, 2023), <https://www.ropesgray.com/en/insights/alerts/2023/03/can-works-created-with-ai-be-copyrighted-copyright-office-issues-formal-guidance>.

Copyright Office is examining copyright issues raised by AI and the sufficiency of existing legal protections which should be considered in any legislative approach to this issue.¹⁷

Conclusion

The adoption and use of AI in the financial services industry can offer significant benefits to market participants. It also can ensure that U.S. firms remain globally competitive and that our markets remain at the forefront of technological development. Given existing laws and regulations that apply to firms, along with internal risk-management frameworks, a principles-based and technology-neutral approach will appropriately ensure accountability and trust in connection with AI and other emerging technologies. Such an approach will also avoid stifling innovation or wasting resources on low-risk AI applications at the expense of work that needs to be done to ensure that high-risk applications are meaningfully reviewed and effectively mitigated.

While AI and other new technologies may present certain risks, financial services firms are subject to well-established legal and regulatory governance frameworks designed to address these risks, which apply regardless of the technology used. Accordingly, policymakers and regulators should seek to apply existing risk-based rules and guidance to the deployment of AI and other new technologies in the markets, rather than engaging in any technology-specific rulemakings that will likely be outdated before they are finalized.

¹⁷ See U.S. Copyright Office, *Copyright and Artificial Intelligence, Part 1: Digital Replicas* (July 2024), <https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-1-Digital-Replicas-Report.pdf> (calling for new federal protection for unauthorized digital replicas).

Appendix 1: Existing Technology-Neutral Functional Policy Areas Applicable to AI

This appendix serves as an illustrative snapshot of the wide range of existing functional policy areas, sorted on a thematic basis, that already apply to financial services firms. This appendix is not exhaustive; all technology-neutral functional policy areas in any jurisdiction already apply to the use of AI. However, it provides the existing policy areas that may be used to assess and address potential impacts from AI to overall financial stability.

Please note that the policy areas listed in this appendix do not apply universally across financial services firms, and that firms' requirements will differ depending on the nature of their businesses and the regulatory regimes to which they are subject.

No.	Functional Policy Area	Application to AI
1.	Market & Investor Protection	<p>Financial services firms that use AI systems in connection with providing services to investors may find that their use of AI is subject to the requirements of various market and investor protection laws, rules, and regulations that apply to various areas, for example:</p> <ul style="list-style-type: none"> • Manipulation and fraud in trading activity • Pre-trade controls and post-trade analysis mechanisms • Mitigation of the trading volatility and market disruptions • Investor advertising and engagement <p>Conflicts of interest, including ensuring investment advice and recommendations are in the "best interest" of the investor.</p>
2.	Governance Structures	<p>Financial services firms should have effective risk-management governance structures in place to identify, understand and manage risks associated with applications of AI systems. This includes having oversight of the full model development cycle, from proposal to deployment and ongoing monitoring. While the risks stemming from AI can be novel, the need for effective governance structures is not a new concept.</p>
3.	Risk Monitoring & Management	<p>There are a wide range of risks that can arise from an application of AI; it is important to have an effective risk monitoring and management framework in place to help ensure that such risks are identified and addressed accordingly. However, while there are potentially some novel risks to consider from the use of AI, identifying, addressing, and monitoring AI-related risks need not be fundamentally different to firm's existing risk management frameworks.</p>
4.	Cybersecurity	<p>As financial services firms consider integrating AI systems into their business practices, they must consider the cybersecurity of their valuable data and operational significance. In particular, data poisoning, data leakage, and data integrity attacks are particularly important risks to be mindful of given AI systems' dependency on the data used to train and test it. In addition to the cybersecurity risks presented from the use of AI, financial services firms also need to be aware of how threat actors may use AI to increase the propensity and sophistication of existing cybersecurity threats. For example, AI-generated spearfishing messages, social engineering attacks that are executed through AI-generated deep-fakes and using GenAI to conduct parallel disinformation campaigns alongside a targeted cybersecurity attack.</p>

No.	Functional Policy Area	Application to AI
5.	Model Risk Management	Traditional model-risk management frameworks are applicable to the development, validation, implementation, and use and governance of models, including AI systems, and which consider model explainability and data integrity as key considerations.
6.	Third Party Risk Management	<p>Third-party risk management is of high importance for AI as financial services firms may elect to purchase AI systems (either in part or in whole) from third-party vendors versus building the AI system in-house.</p> <p>There are broadly three categories of AI-related third parties: (1) vendors providing AI software; (2) vendors of software that includes AI features; and (3) other traditional vendors who may use AI in connection with their provision of services to the client. The risks and requirements are slightly different for each category.</p>
7.	Data Privacy	<p>Due to the broad definition of “personal data” under many jurisdictions’ data privacy laws, the data entered into or associated with AI systems (as training, prompt or reference data) may involve personal data that is subject to, and protected by, such laws.</p> <p>Additionally, AI systems may be used to collect and use the personal data of individuals or monitor their behavior for customer service or fraud detection purposes, for example. This could involve monitoring websites or app usage, geolocation, or voice data. Again, such activities would likely be subject to the requirements of applicable data privacy laws.</p>
8.	Operational Resilience & Business Continuity	Operational resilience requirements help improve the stability and reliability of services, including those that are completed by, or in connection with, AI systems so financial services firms can continue to operate in the event the AI system is disrupted, becomes un-operational, or otherwise stops operating as intended. As firms consider deploying AI systems, firms’ operational resilience posture in connection with those AI systems is a key consideration.

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