May 10, 2017

The Honorable Walter J. Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Regulation of Registered Investment Advisers

Dear Chairman Clayton:

Congratulations on your appointment as Chairman of the Securities and Exchange Commission. The Commission's work is of vital importance to the 12,000 registered investment advisers under its supervision and the more than 36 million investors they serve. I am writing on behalf of the Investment Adviser Association (IAA)[1] to introduce our organization and to highlight policy issues of concern to our membership. We look forward to working with you, the Commission, and its staff to address these issues as you assess the agency's priorities.

The IAA is the leading organization dedicated to advancing the interests of SEC-registered investment advisers. The IAA's more than 640 member firms reflect the broader investment advisory industry and range from many of the world's largest asset managers to the small and medium-sized firms that reflect the core of the investment management industry. Collectively, our members manage more than $20 trillion in assets for a wide variety of individual and institutional clients, including pension plans, trusts, mutual funds, private funds, endowments, foundations, and corporations. Our members play an important role in helping individuals meet their financial goals, including investing for retirement, home ownership, or education. Our members' investments on behalf of clients in businesses large and small help those companies grow and create jobs. The asset management industry itself is a strong contributor to our economy, steadily adding firms, jobs, and investors.[2] And as the "buy-side," our members are critical to the vibrancy of our leading capital markets.

The IAA has been at the forefront of promoting high standards of fiduciary and ethical responsibility for the investment advisory profession. We share the Commission's goals in protecting investors, promoting capital formation, and enhancing transparency and efficiency in our nation's securities markets. We also recognize and strongly support the Commission's role

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[1] For more information about the IAA, please visit www.investmentadviser.org.

[2] Investment advisers manage more than $70 trillion in assets as fiduciaries for their clients. Despite dynamic markets and ever-increasing regulatory burdens, our industry added 30,540 jobs in 2016, with the industry in the aggregate employing 781,335 non-clerical personnel. *See 2016 Evolution Revolution, A Profile of the Investment Adviser Profession*, available at https://www.investmentadviser.org/eweb/Dynamicpage.aspx?webcode=evrev.

as our industry's primary regulator, and support ways to make the Commission's regulatory oversight of registered investment advisers more efficient and effective.

Overview

As you begin to develop your regulatory priorities for the Commission, we offer a brief introduction to some of the many challenges affecting investment advisers. We welcome the opportunity to engage with the Commission and its staff to discuss each of these and other important issues in greater detail and to provide specific recommendations.

This letter is organized in three main sections:

- First, we discuss our recommendation to initiate retrospective reviews of certain existing rules, which in our view could be made significantly more efficient and effective in achieving the Commission's investor protection and capital formation goals. Specifically, we recommend improvements to rules addressing: (1) the economic impact of regulations on small advisory firms; (2) advertising; (3) custody; (4) political contributions; (5) electronic delivery of required disclosures; and (6) opportunities for sophisticated investors to participate in private offerings.

- Second, we discuss our views on rules that have been proposed but not yet acted upon by the Commission, including rules that would address business continuity and transition planning, the use of derivatives by registered investment companies, and incentive-based compensation practices by very large advisers.

- Third, we discuss several ongoing regulatory debates involving investment advisers. Most notable among these is the multifaceted issue of investment adviser oversight, which implicates SEC funding and appropriations, agency staffing for adviser examinations, and the recurring discussion of a self-regulatory organization (SRO) for our industry. This debate has also included the feasibility of externalizing some portion of the SEC's oversight function through mandated third-party compliance assessments. We also briefly discuss the complex issue of a potential SEC rulemaking to require broker-dealers to be subject to a fiduciary duty when providing investment advice about securities to retail clients.

In addressing these and other regulatory issues, we support adhering to the overarching principle of making regulations efficient, effective, and appropriately tailored to the stated objective. This includes applying more robust and comprehensive cost-benefit analyses to regulations, both new and old. This approach also includes consideration of alternative approaches to regulation, factoring in the complexity and cumulative effect of all regulations,[3] and accurately assessing the economic impact of SEC regulations.

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[3] In addition to being subject to the aggregate impact of SEC regulations, most of our members are also subject to an ever-increasing array of regulations from other domestic and international regulators. *See*

We also believe that the "notice-and-comment" aspect of rulemakings is critical to informing the Commission as it considers these overarching principles. We urge the Commission and its staff to similarly seek industry feedback prior to issuing interpretive guidance to ensure that such guidance is helpful and operationally feasible for the industry, that it does not effectively impose substantive new requirements, and that the Commission staff is allocating its limited resources in the most effective manner.[4]

Section 1: Retrospective Review of Existing SEC Regulations

The principles-based regime established under the Investment Advisers Act of 1940 (Advisers Act) has proven to be robust in protecting investors while allowing the profession to grow to the benefit of clients and the capital markets. However, the investment management landscape has evolved significantly over the last 77 years, led by dramatic changes in technology and communications. In our view, this is an opportune time for the SEC to initiate retrospective reviews of certain core regulations governing investment advisers to ensure that they are effective, efficient, tailored, and appropriately targeted to protecting investors and fostering capital formation.[5] The Commission should also carefully consider the "holistic" application of its regulations by clearly articulating objectives, identify the potential risk of harm inherent in the range of covered activities, and consider whether the Commission's goals can be met more appropriately through a combination of existing rules and fiduciary concepts under the Advisers Act viewed as a whole.

As outlined below, we recommend a more realistic assessment of the impact of regulations on smaller advisers, reconsideration of the Advertising Rule's prohibitions on testimonials and past specific recommendations and other improvements, clarification of the needlessly complex strict liability provisions of the Custody and Pay-to-Play Rules, and facilitating electronic delivery of required disclosures. We also recommend that the Commission more effectively promote capital formation by reassessing certain rules relating to private offerings.

Statement on the Aggregate Impact of Financial Services Regulations, Commissioner Daniel M. Gallagher, available at https://www.sec.gov/news/statement/aggregate-impact-of-financial-services-regulation.html.

[4] *See infra* note 11. Similarly, SEC enforcement actions should not impose new requirements or interpretations that instead should be established through the formal rulemaking process. *See, e.g., In the Matter of Blackstreet Capital Management, LLC,* SEC Release No 34-77959 (June 1, 2016).

[5] *See, e.g., February 24, 2017 Presidential Executive Order on Enforcing the Regulatory Reform Agenda; February 3, 2017 Presidential Executive Order on Core Principles for Regulating the United States Financial System; January 30, 2017 Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs.* In addition, the Commission has largely completed its Dodd-Frank rulemaking mandates, which may permit it to re-focus on these and other core issues (*e.g.*, electronic recordkeeping; undue constraints on the ability to use an umbrella registration statement).

Impact of SEC Regulations on Small Businesses

In conducting these retrospective reviews, and indeed in all of its rulemaking, we believe that the Commission can and should conduct a more realistic assessment of the impact of regulations on smaller advisers and better tailor both regulations and the inspection and enforcement of such regulations on these advisers. Small advisers have been significantly affected by "one-size-fits-all" regulations that effectively require fixed investments in infrastructure, technology, and systems relating to documentation, monitoring, operations, custody, business continuity planning, cybersecurity, and more. The Commission should use the ever-increasing data at its disposal to better target its rules.[6]

In fact, federal agencies are required by the Regulatory Flexibility Act to analyze the economic impact of proposed regulations when there is likely to be a significant impact on a substantial number of small entities, and to consider regulatory alternatives that will achieve the agency's goal while minimizing the burden on small entities. For this purpose, the SEC currently defines "small business" to include only investment advisory firms with less than $25 million in assets under management (AUM).[7] Given that the basic threshold for SEC registration is $100 million, virtually no SEC-registered advisers are deemed to be "small" for cost-benefit purposes – even though more than 6,000 registered advisory firms employ 10 or fewer non-clerical employees.[8] We recommend that the Commission amend the definitions of "small business" and "small organization" to utilize a more meaningful metric beyond merely AUM. For example, the number of employees would be a useful measure given that the data is readily available in Form ADV and often used in other contexts to define the relative size of companies.[9]

Advertising Rule

We urge the Commission to review and revise the current regulatory framework governing advertising by investment advisers, which is unnecessarily complex, overly broad in

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[6] For example, we noted in our comment letter on the recent amendments to Form ADV that if the regulatory threshold for collecting certain SMA data increased from $150 million (as proposed) to $500 million (as adopted) of SMA RAUM, the Commission would still obtain data on more than 95% of the SMA assets, while alleviating the reporting burden and related costs on approximately 3,000 investment advisers. *See* IAA Letter to SEC on Proposed Amendments to Form ADV and Advisers Act Rules (Aug. 11, 2015), available at https://www.investmentadviser.org/eweb/docs/Publications_News/Comments_and_Statements/Current_Comments_Statements/150811cmnt.pdf.

[7] Rule 0-7(a) under the Advisers Act.

[8] *See 2016 Evolution Revolution, supra* n. 2.

[9] *See Independent Regulatory Agency Compliance with the Regulatory Flexibility Act for the Small Business Administration* (noting, among other things, that the SBA's definition of small business incorporates number of employees), available at https://www.sba.gov/sites/default/files/rs410tot.pdf.

reach, unduly prescriptive, and no longer functions effectively in the real world. Advertisements by registered investment advisers are subject to Rule 206(4)-1 under the Advisers Act, which provides both a general anti-fraud prohibition as well as specific prohibitions against certain sales practices or advertising by investment advisers that are considered to be *per se* misleading or fraudulent regardless of intent. The SEC staff interprets the definition of "advertisement" extremely broadly to include virtually anything provided to more than one client or prospective client, including material on a website, social media, electronic communications, news article reprints, slideshow presentations at seminars, or information provided to consultants. The Advertising Rule has not been materially amended since its adoption in 1961.

In the nearly 56 intervening years, the regulatory scheme that has been formulated under the Advertising Rule has become a complex maze of enforcement actions and SEC staff no-action letters that are difficult to decipher and apply to evolving circumstances.[10] At the same time, both the investment advisory profession and the clients served by it have changed significantly with respect to how they communicate. For example, the Internet, the use of social media, and other modern advancements in communications have led to the proliferation of the availability of information whereby investors are now able to access and assimilate a vast trove of information into their decision making process. In addition, mobile devices have changed the way investors read and absorb information, including marketing and accompanying disclosures. In light of these and other significant developments, we believe the time is ripe for a re-examination of the Advertising Rule.

In particular, we believe that the Advertising Rule's *per se* prohibitions on advertisements that refer to either testimonials or to past specific recommendations no longer make sense in today's investing environment. As noted above, many advisory clients and prospective clients are more informed and sophisticated than ever before. They seek detailed information about the performance of their accounts and their peers' experience with their adviser or prospective adviser. Consumers today are accustomed to conducting research on the Internet, creating and evaluating user reviews, and sharing views publicly. The ban on testimonials is particularly dated in this regard, in effect, thwarting common uses of social media. For example, based on staff interpretations, it is questionable whether members of the public can "like" an adviser's online posts or endorse a skill on LinkedIn without running afoul of the Rule. This stance materially impedes investment advisers' marketing activities and does not reflect investor expectations.

In addition, the past specific recommendation ban highlights another unfortunate consequence of the Advertising Rule — it restricts the ability of an investment adviser to provide complete and accurate information to investors that may be useful in making decisions. Investors would like more current and relevant information than their advisers are currently permitted to provide. For example, investors could benefit greatly from specific examples demonstrating how an adviser's investment process or philosophy has been put to work by the adviser's personnel in managing actual accounts. This is particularly acute in the private equity

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[10] In addition to SEC requirements, firms may also have to consider and reconcile other advertising regulations that may be inconsistent or need clarification in certain respects. *See, e.g.,* FINRA Rule 2210.

context, where case studies are extremely useful in explaining the adviser's services and approach and do not necessarily include performance information. However, providing concrete examples by referring to past specific investments (also referred to as "stock stories" or "case studies") could be viewed as not being permitted under the existing Rule.

The Advertising Rule should be amended to make it more effective and flexible. We suggest, at a minimum, that the specific prohibitions in the Rule not be considered *per se* fraudulent—something that the SEC staff implicitly has recognized through their many no-action letters. The general anti-fraud section of the Advisers Act and "catch-all" provision included in the Rule itself, which clearly apply to all disclosures and statements made by investment advisers in advertisements, effectively prohibit misleading advertising practices and protect investors.

We also recommend that the Commission review and re-assess the effectiveness of the voluminous SEC staff no-action letters, interpretations, and guidance issued in this area since 1961. The review should include an assessment of how the disclosure requirements in the letters could be made more effective and investor-friendly in light of the proliferation of mobile device and app usage and other developments. We suggest that this initiative culminate in an interpretive release that streamlines and modernizes the Commission's advertising guidance in a holistic manner.

Custody Rule

We support the important investor protection goals of the Custody Rule (Rule 206(4)-2 under the Advisers Act). However, we believe that the regulatory framework under the Custody Rule is overly complex, unduly burdensome, and has caused unnecessary confusion for advisers. We believe that a comprehensive review and re-write of the Custody Rule is needed to determine whether it is effective and in order to make it workable.

The Custody Rule is intended to protect clients from theft or misuse of their assets by advisers that hold or have authority to obtain possession of them in connection with advisory services. Among other things, such assets must be maintained with a qualified custodian and the adviser must undergo an annual surprise examination by an independent auditor. Counter to a plain English understanding of the Rule's "custody" title, the Rule extends far beyond actual physical custody of client assets to include constructive or technical custody, including authority to withdraw client funds or securities, or acting in a capacity that gives the adviser legal ownership of or access to client funds or securities (*e.g.*, acting as general partner of a partnership or trustee of a trust). By using the single term "custody" to cover direct and imputed physical possession, access and legal ownership, the Rule has created enormous confusion in the investment adviser industry, and has made it difficult to articulate requirements for compliance with the Rule in a clear fashion. The confusion is exacerbated by the Rule's use of the term "qualified custodian" – though most advisers have "custody" under the SEC's far-reaching definition, they are not "custodians."

The SEC staff's issuance of various FAQs, no-action letters, and other guidance under the Rule has resulted in a patchwork of requirements that are difficult to decipher, subject to inconsistent and conflicting interpretations, and not always readily apparent from the Rule text itself. For example, the SEC staff recently issued guidance suggesting that advisers may have custody, albeit inadvertent, of client assets by virtue of client agreements with custodians authorizing the custodian to act upon the adviser's instruction – even where advisers have no involvement in, no privity with, no ability to change, and indeed often no knowledge of, these agreements.[11] Thus, an adviser could technically have "custody" of client assets even if its own contract with the client gives it no authority to instruct the custodian to transfer assets.

We submit that the Custody Rule and the term "custody" should cover only arrangements where the adviser (or related person) has actual physical custody of client assets. The Commission should then catalogue situations where the adviser's authority, access, or legal status presents genuine risks to the safety of client assets and assess whether these risks are appropriately addressed by amending existing rules or drafting new rules that are reasonably designed to achieve their goals and more narrowly tailored to the catalogued situation. For example, the constructive custody concepts deployed by the SEC staff through interpretative guidance in part to deter identify theft[12] may be addressed by existing regulations requiring investment advisers to implement policies and procedures reasonably designed to prevent identify theft causing client harm. Similarly, the Commission has shoe-horned advisers that act as trustees into this Rule, when a simple requirement for an independent co-trustee, for example, could suffice to address any risks. The Commission should consider the full panoply of rules available to it and avoid using the Custody Rule as a means to address policy concerns that are not truly custody in nature.

Beyond grappling with the constructive custody concept, we suggest that the Commission specifically reconsider the provisions of the Custody Rule regarding: (1) the treatment of private securities under the Rule; (2) whether exceptions for investment advisers managing specific types of assets (such as the firm's own retirement plans) are appropriate; and (3) whether a surprise independent verification is needed in all cases. Each of these is explained below.

Privately Offered Securities. The Custody Rule's provision requiring that a qualified custodian hold privately offered securities is overbroad. Through interpretative guidance, the SEC staff has implicitly recognized that there is little risk that an adviser could misappropriate privately offered securities that are not generally transferrable. For example, in 2013 the SEC staff provided partial relief from the Custody Rule to advisers to pooled investment vehicles.[13]

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[11] Many in the industry have serious concerns about the practical implications of this guidance. *See* IM Guidance Update, *Inadvertent Custody: Advisory Contract Versus Custodial Contract Authority* (Feb. 2017), available at https://www.sec.gov/investment/im-guidance-2017-01.pdf.

[12] *See, e.g.*, Investment Adviser Association, SEC No-Action Letter (Feb. 21, 2017), available at https://www.sec.gov/divisions/investment/noaction/2017/investment-adviser-association-022117-206-4.htm.

[13] *See* IM Guidance Update, *Privately Offered Securities under the Investment Advisers Act Custody Rule* (Aug. 2013), available at https://www.sec.gov/divisions/investment/guidance/im-guidance-2013-04.pdf.

According to that guidance, advisers to audited pooled investment vehicles need not maintain with a qualified custodian certain instruments evidencing the pool's ownership of certain privately issued securities such as non-transferable stock certificates or "certificated" LLC interests that were obtained in a private placement. The SEC should consider whether to broaden this relief to take into account how various instruments are held by a qualified custodian. For example, we believe an exception from the audit requirement should be considered where an audit may result in unnecessary costs for the client without being useful. An audit is not practical when a client's account, such as a co-investment or a fund of one, holds a privately issued security that is also owned by a private fund that is in fact audited under the Custody Rule. Indeed, the SEC should simply eliminate the requirement that privately offered securities in an unaudited pooled vehicle must be held by a qualified custodian. Given the nature of these securities, the qualified custodian requirement adds no benefit, while the client is protected by the requirement that the privately offered securities would remain transferrable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

Exceptions for Certain Assets/Services. Through published FAQs, the SEC staff has provided limited relief from some of the Custody Rule's provisions. We suggest that the Commission consider whether any further exceptions are warranted. For example, the Commission should consider whether managing specific types of assets or providing trustee services to the adviser's own defined contribution plans should be excepted from the costly provisions of the Custody Rule.

Surprise Exams. We also urge the SEC to consider whether there are circumstances that do not warrant an annual surprise exam. In the adopting release for the 2009 amendments to the Custody Rule, the SEC acknowledged concerns regarding the effect of the surprise exam requirement on smaller advisers whose assets are maintained by a qualified custodian and directed the staff to assess the impact on smaller advisers. We urge the Commission to include that assessment as part of its comprehensive review.[14]

Pay-to-Play Rule

We recommend that the Commission review the efficiency and effectiveness of Rule 206(4)-5 under the Advisers Act governing political contributions by investment advisers. The IAA strongly agrees with the SEC's goals in preventing investment professionals from "buying business" through campaign contributions. However, the Pay-to-Play Rule is unnecessarily complex, costly, and burdensome and should be more narrowly tailored to its intended purpose.

The Pay-to-Play Rule imposes a two-year compensation ban if an investment adviser or its "covered associate" makes certain political contributions to an "official" of a government entity client. Each aspect of the Rule is complicated, requiring compliance officers to parse technical terms such as "covered associate," "contribution," "government entity," "official," and "regulated person," identify these individuals and entities, conduct diligence into contributions made by employees before they were hired or promoted to "covered associate" positions,

[14] IA Rel. No. 2968 (Dec. 30, 2009) at 13-14.

monitor reports of contributions by employees, analyze the Rule's impact on employees of affiliates and parent companies, implement policies and procedures to ensure compliance with the third-party solicitor provisions of the Rule, create procedures to prevent "indirect" violations, and much more. The costs and compliance burdens imposed by the Rule are substantial.

The penalties of the Pay-to-Play Rule strictly apply without regard for the intent underlying such contributions and on a presumption that even a relatively modest and routine campaign contribution is *per se* problematic. And because of the extremely harsh penalty and strict liability nature of the Rule, many investment advisers adopt procedures that go beyond the Rule's technical requirements, in some instances prohibiting all political contributions by firm employees. Indeed, the Pay-to-Play Rule may be negatively affecting participation in the political process while at the same time imposing unnecessary and costly burdens on investment advisers. Given the constitutional issues involved in the regulation of political contributions, the Rule should be substantially more narrowly tailored to impose fewer restrictions on free speech.

We urge the Commission to consider alternative approaches that are more tailored to its underlying objectives, materially narrowing the reach of the Pay-to-Play Rule to areas where abuse may be more likely to exist or has in fact occurred. In particular, we encourage the SEC to rethink the way the Pay-to-Play Rule currently imposes draconian penalties for even the most minor violations or "foot faults." To do otherwise conflates serious misconduct with ordinary administrative matters where no scienter, recklessness, or harm is involved. To the extent the Commission maintains the Rule's current approach, we specifically suggest that the Commission consider: (1) reducing the lengthy two-year "time out" period for providing compensated advisory services following certain triggering contributions; (2) consider ways to reduce the due diligence burdens associated with the look back provisions, particularly with respect to employee contributions prior to their hiring; (3) materially increase the *de minimis* contribution exceptions – currently $350 per election to a candidate for whom the employee is entitled to vote and $150 per election to a candidate for whom the employee is not entitled to vote;[15] (4) streamline the process for granting exemptive orders relating to the two-year time-out; and (5) provide certain self-executing exemptions for inadvertent or minor violations.

In addition, the Commission should eliminate logistical aspects of the Rule that generate cost without accomplishing any regulatory objective or policy. The requirement that a sub-adviser obtain and maintain a list of government entity investors in mutual funds it sub-advises is a prime example. Typically, there is little or no direct relationship between a sub-adviser and mutual fund investors, so the requirement to maintain records of government entity investors is not appropriately targeted to any material risk of misconduct. Accordingly, the SEC should review and revise the recordkeeping aspect of the Rule.

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[15] The adopting release for the Rule suggested that the SEC "may consider increasing the $350 amount in the future if, for example, the value of it decreases materially as a result of further inflation." *See Political Contributions by Certain Investment Advisers*, SEC Rel. No. IA-3043 (July 1, 2010), available at http://www.sec.gov/rules/final/2010/ia-3043.pdf.

Electronic Delivery of Required Disclosures

We recommend that the Commission further promote the use of electronic delivery (e-delivery) as a reliable and cost-efficient means for advisers to deliver required disclosures to clients. Current guidance relating to e-delivery of required disclosures dates back to a series of SEC interpretative releases between 1995 and 2000.[16] Under that guidance, an investment adviser may satisfy its ongoing disclosure delivery obligations by providing notice that the information is available electronically, ensuring effective access to such information, and by either evidencing actual delivery or obtaining informed consent from clients. In practice, many advisers have been reluctant to use e-delivery due to the costs involved, implementation issues, and lack of clarity associated with the current consent requirements, even though it would be much more efficient and cost-effective for those advisers to do so.

The Commission should make e-delivery of required disclosures the default option for investment advisers. We further recommend that the Commission shift its approach from the current "delivery with consent" model to a notice and access approach. As noted above, advancements in technology, specifically the Internet and social media, have significantly changed the way individuals and organizations communicate. An overwhelming majority of investors now have access to the Internet, and for many of them, going online or using social media is the primary way they access and share information, in many cases through their smartphones. In fact, the Commission recently cited its investor testing efforts and other empirical research concerning investors' preferences for the use of the Internet as the primary medium for receiving required disclosures.[17] Encouraging the use of the Internet as the default option for delivery would improve disclosures for investors, significantly reduce costs, and provide environmental benefits.

Under a notice and access approach, an adviser should satisfy its delivery obligation by posting required disclosures on its website and providing clients either a paper or electronic notice that includes a link to the location of the disclosures on the adviser's website page. This notice would inform the client that the information is available and explain how to access it. Thus, clients would not have to affirmatively choose this approach to receiving such information. However, clients would still have the option of opting out to receive paper copies of the disclosure at anytime.

The Commission has already allowed the use of the Internet as a platform for providing required disclosures to investors. For example, the Commission successfully adopted a notice and access approach with respect to the delivery of proxy materials and a variation of the

[16] Release No. 33-7233 (Oct. 6, 1995) [60 FR 53458]; Release No. 33-7288 (May 9, 1996); Release No. 33-7856 (Apr. 28, 2000) [65 FR 25843].

[17] The SEC has cited studies showing that only 15% of American adults ages 18 and older do not use the Internet or email and that 94% of U.S. households owning mutual funds have Internet access. *See Investment Company Reporting Modernization*, 80 Fed. Reg. 33590 (June 12, 2015), available at http://www.gpo.gov/fdsys/pkg/FR-2015-06-12/pdf/2015-12779.pdf.

approach with respect to the delivery of mutual fund prospectuses.[18] In doing so, the Commission has already recognized the "vital role of the Internet and electronic communications in modernizing the disclosure system under the federal securities laws…."[19] Notice and access is user-friendly for investment advisory clients, as well as being cost-effective and efficient.

Regulation D Offerings

As you know, the underlying policy goal of Regulation D is to facilitate capital formation, consistent with investor protection, by simplifying and clarifying existing rules, and eliminating unnecessary restrictions on issuers, particularly small businesses. The exemptions from registration in Regulation D are the most widely used transactional exemptions for securities offerings by issuers. In fact, according to statistics cited by the SEC staff, issuers using these exemptions raised more than $1.3 trillion in 2014 alone, an amount comparable to that raised in registered offerings.[20] We offer suggestions below that are consistent with this important Commission mandate.

Definition of "Accredited Investor"

The Dodd-Frank Act requires the Commission to conduct a comprehensive review of the "accredited investor" definition as applied to natural persons at least once every four years and permits the Commission to consider whether the definition should be modified or adjusted. As a result, the SEC staff published a report on the review of the definition[21] and was subsequently directed to develop rulemaking recommendations for the Commission's consideration.

The Commission's further deliberations regarding the "accredited investor" definition will have significant implications for many investment advisers, including those that manage hedge funds, private equity funds, and venture capital funds or recommend private offerings to their clients. In fact, as noted in the staff's report, the definition has even broader implications in that an overly narrow definition could risk restricting businesses' access to capital and be inconsistent with the Commission's capital formation mandate.

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[18] More recently, the Commission considered a new rule that would permit mutual funds to transmit shareholder reports to their shareholders by making the reports accessible on a website and satisfying certain other conditions, including providing a notice with a specified location. We support that proposal. *See supra* note 17.

[19] *See Commission Guidance on the Use of Company Websites*, Release No. 34-58288 (Aug. 1, 2008), available at https://www.sec.gov/rules/interp/2008/34-58288.pdf.

[20] *See Report on the Review of the Definition of "Accredited Investor"* (Dec. 18, 2015), available at https://www.sec.gov/corpfin/reportspubs/special-studies/review-definition-of-accredited-investor-12-18-2015.pdf.

[21] *Id.*

The accredited investor definition is intended to identify investors who do not need the protections afforded by the full panoply of federal securities laws. As explained in our prior comment letter,[22] we believe that investment advisers retained by clients to manage their assets on a discretionary basis, and pursuant to a fiduciary duty, provide precisely the type of protections intended by the definition. The current standards unduly restrict investment opportunities for the many investors who engage investment advisers to determine whether opportunities are in their best interest. We believe that expanding the definition to include investors represented by a fiduciary is consistent with the Commission's objectives and goals and would continue to protect investors, while also providing clarity for market participants and promoting the supply of capital in the private offering market.

The SEC staff's report also briefly addressed the Commission's definition of "qualified institutional buyer" (QIB), another category of financially sophisticated investors, as part of Rule 144A offerings. Rule 144A provides a safe harbor exemption from the registration requirements for resales of restricted securities to QIBs. A number of interpretive questions have arisen regarding the QIB definition, and although this issue may not be the focus of the Commission's deliberations relating to the "accredited investor" definition, we encourage the Commission to reconsider and clarify the definition of QIB as well.[23] In particular, we suggest that the Commission expand the definition by applying the same analysis and reasoning regarding investment advisers to QIBs. Additional entities not currently specified in the rule, that satisfy the $100 million in securities of unaffiliated issuers component of the QIB definition in Rule 144A(1)(i) and that have investment advisers acting on their behalf, should qualify as QIBs. For example, non-U.S. sovereign entities should also be considered to qualify as QIBs if they meet the asset threshold.

General Solicitation of Private Offerings

A core objective of the JOBS Act was to reduce barriers to capital formation for smaller companies. The JOBS Act requires, among other things, the Commission to amend existing exemptions from SEC registration and create new exemptions permitting issuers to raise capital without registration. In response, the Commission amended Rule 506 of Regulation D and Rule 144A under the Securities Act to implement the requirements of the JOBS Act.

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[22] *See* IAA Comment Letter to SEC Staff Report on the Review of the Definition of "Accredited Investor" (June 29, 2016), available at https://www.investmentadviser.org/eweb/docs/Publications_News/Comments_and_Statements/Current_Comments_Statements/160629cmnt.pdf.

[23] As part of its retrospective review, we suggest that the Commission consider harmonizing and streamlining, to the extent appropriate, other definitions relating to the category of investors that are permitted to participate in unregistered offerings and for other purposes. In addition to accredited investor and QIB status, many advisers must assess and operationalize the differing definitions of "qualified client" under Advisers Act Rule 205-3 and "qualified purchaser" under Investment Company Act Section 2(a)(51). Many advisers also have to assess "qualified eligible person" status under CFTC rules.

However, we have concerns about an outstanding Commission proposal from 2013 that continues to have unintended consequences. As directed in the JOBS Act, the Commission adopted new Rule 506(c) to permit general solicitation of private offerings under certain circumstances, including that the investors in the offering are accredited investors.[24] However, the Commission simultaneously proposed more restrictive, impractical regulations that would apply to those same issuers eligible to rely on the relief granted by Rule 506(c).[25] In our comment letter, we noted that the proposal was unnecessary and burdensome in light of the current anti-fraud rules applicable to Rule 506(c) solicitations.[26] Industry data suggests that many issuers have been reluctant to engage in Rule 506(c) offerings at least in part due to concerns relating to the proposal.[27] We continue to believe this proposal is flawed in many respects, and we recommend the SEC withdraw it at this time to eliminate the potential chilling effect on issuers that may wish to avail themselves of Rule 506(c) but are unable to determine the SEC's intention with regard to these proposed regulations.

Section 2: Proposed Rules

The Commission has proposed, but not yet acted upon, a substantial number of new regulations during the past two years, many of which were intended to enhance risk monitoring and regulatory safeguards for the asset management industry. We discuss three of these proposals below—business continuity and transition plans; derivatives use by registered investment companies; and incentive-based compensation. The IAA's positions are explained in greater detail in our cited comment letters.

Adviser Business Continuity and Transition Plans

The SEC has proposed rules that would require registered investment advisers to adopt and implement written business continuity and transition plans.[28] As we noted in our comment

[24] *See Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings*, available at https://www.sec.gov/rules/final/2013/33-9415.pdf.

[25] *See* SEC Proposal: *Amendments to Regulation D, Form D and Rule 156*, SEC Rel. No. 33-9416 (July 10, 2013), available at https://www.sec.gov/rules/proposed/2013/33-9416.pdf.

[26] *See* IAA Letter to SEC on Amendments to Regulation D, Form D, and Rule 156 under the Securities Act (Sep. 23, 2013), available at https://www.investmentadviser.org/eweb/docs/Publications_News/Comments_and_Statements/Current_Comments_Statements/130923cmnt.pdf.

[27] *See* Speech by SEC Chair Mary Jo White (Jan. 26, 2016) (noting that Rule 506(c) offerings are not being "used perhaps as much as some would have thought it might be"), available at https://www.sec.gov/news/speech/securities-regulation-institute-keynote-white.html.

[28] *Adviser Business Continuity and Transition Plans*, SEC Rel. IA-4439 (June 28, 2016), available at https://www.sec.gov/rules/proposed/2016/ia-4439.pdf.

letter, we understand and appreciate the goals underlying the proposal.[29] We also appreciate that the Commission intended to propose a principles-based rule that would allow advisers to tailor their business continuity and transition planning to the unique attributes of their businesses. As the Commission knows, there are literally thousands of investment advisers with a myriad of business models and client bases. Some are very large and quite complex, but most are small firms with relatively simple and straightforward businesses. It is extremely important that each investment adviser has sufficient flexibility to satisfy the principles described in the proposing release in ways that make sense given its unique business model.

We had two principal criticisms of the proposal. First, we do not believe that it was necessary to create an entirely new anti-fraud rule under the Advisers Act for business continuity planning (BCP). Rule 206(4)-7 under the Advisers Act, which already requires advisers to have an effective compliance program, provides the Commission with an appropriate and well-established framework to mandate and evaluate business continuity and transition planning. Indeed, the release adopting the rule specifically stated that an adviser's compliance program should include policies and procedures related to BCPs. Second, we questioned whether the Commission needed to extend those business continuity concepts to transition planning. We understand the desire to do so likely stems from systemic risk debates – which are inapplicable to investment advisers that manage assets for clients on an agency basis and do not undertake proprietary or depository activities. We also note that these requirements impose material fixed costs on all firms, including smaller advisers that present the least risk.

We strongly recommend that the Commission withdraw this proposed rule and consider whether interpretive guidance under Rule 206(4)-7 that covers solely BCPs would be an appropriate alternative.[30] As noted above, we believe that no further Commission action is warranted or appropriate relating to transition planning by advisers. We believe that this approach would more efficiently achieve the Commission's goals, while allowing for a principles-based approach to business continuity planning.

Use of Derivatives by Registered Investment Companies and Business Development Companies

The Commission has proposed a new rule to govern the use of derivatives by registered funds that was generally comprised of three elements: overall portfolio limitations based on a fund's gross notional exposure to derivatives; a derivatives risk management program; and enhancements to the current approach to compliance with the Investment Company Act based on

[29] *See* IAA Comment Letter (SEC Rel. IA-4439) (Sept. 6, 2016), available at https://www.investmentadviser.org/eweb/docs/Publications_News/Comments_and_Statements/Current_Comments_Statements/160906cmnt.pdf.

[30] We note that the staff issued guidance instead of a rule for mutual fund BCPs and request that the Commission issue any interpretive guidance after opportunity for industry feedback.

asset segregation.[31] The primary goals of the rule are to modernize guidance regarding funds' use of derivatives and prevent funds from becoming unduly speculative. We recommend that the Commission withdraw this rulemaking and reassess whether these goals and objectives are more effectively addressed by an alternate approach. Withdrawing the proposal would also allow the Commission to consider issues raised by commenters that may not have been fully addressed in the proposing release.

While we supported many of the goals of the proposal, we specifically opposed the Commission's proposed overall portfolio limitations.[32] The use of portfolio limits represents a significant change in the Commission's approach to regulating funds' use of derivatives, and would supersede decades of guidance—so much so that the Commission states that it would cause some currently operating funds to cease operating as registered investment companies. In our view, portfolio limits are unnecessary to protect investors or appropriately limit leverage in fund portfolios, and ultimately will reduce investor access to certain types of funds and portfolio strategies—including some that serve to mitigate investment risk—that are beneficial to investors. Portfolio limits could also have a negative impact on capital formation, market participation, and market efficiency. Should the Commission determine to move forward with the rulemaking, we would urge the Commission to reconsider the imposition of portfolio limits, focusing instead on the other two parts of the proposal.[33]

Incentive-Based Compensation Arrangements

Section 956 of the Dodd-Frank Act requires the SEC and five other financial regulators to adopt rules on incentive-based compensation arrangements utilized by certain financial institutions, including very large investment advisers. The SEC and the other financial regulators have twice attempted to implement this Dodd-Frank mandate, most recently last May.[34] Each effort proved highly contentious.

While we generally supported the way the SEC proposed to implement rules, we recognize that the proposals give rise to a number of practical implementation questions that

[31] *Use of Derivatives by Registered Investment Companies and Business Development Companies*, SEC Rel. IC-31933 (Dec. 11, 2015), available at https://www.sec.gov/rules/proposed/2015/ic-31933.pdf.

[32] *See* IAA Comment Letter (SEC Rel. IC-31933) (Mar. 28, 2016), available at https://www.investmentadviser.org/eweb/docs/Publications_News/Comments_and_Statements/Current_Comments_Statements/160328cmnt.pdf.

[33] With respect to those other two elements, we made a number of recommendations in our comment letter that we believe could be consistent with the goals outlined in the proposing release while making compliance less burdensome for investment advisers that mange funds.

[34] *Incentive-Based Compensation Arrangements*, SEC Rel. IA-4383 (May 6, 2016), available at https://www.sec.gov/rules/proposed/2016/34-77776.pdf.

would have to be addressed in any final rulemaking.[35] For example, we pointed out interpretive issues that would arise based on the proposed definition of "covered financial institution" and other key terms such as "non-proprietary assets." We also highlighted the need to clearly address the treatment of parent-subsidiary structures and explain when and how the SEC would approach the operational integration of multiple advisers for purposes of the rule.

The nature of this Section 956 rulemaking is unusual in that it involves multiple regulators acting jointly with respect to a wide array of banks and other financial services firms. It is understandable, then, that the question of whether to move forward at all with this rulemaking is part of a much larger discussion around Dodd-Frank implementation and executive compensation rulemaking. If the Commission determines to move forward with this rulemaking, however, we would strongly reiterate our essential recommendation that the Commission recognize that different types of financial services firms, like investment advisers, will face unique interpretive issues. The Commission should not feel bound to adopt a final rule with obvious ambiguities simply because the nature of this joint rulemaking effort makes it difficult to speak with particularity to the various types of covered financial institutions.

Section 3: Ongoing Regulatory Debates and Potential Rulemaking Affecting Advisers

As you review the current regulatory and oversight framework for investment advisers, you will undoubtedly note the various re-occurring themes or ongoing regulatory debates noted below. Specifically, in this section of the letter, we emphasize the importance of maintaining the existing fiduciary duty of advisers, investor confusion over the difference between investment advisers and other financial professionals, and the appropriate examination oversight of investment advisers. Also addressed are "FinTech" issues, including the increasing use of automation in the provision of advice, and the notion of stress testing large advisory firms separately from the large portfolios that they advise.

Fiduciary Standard/Holding Out as an Investment Adviser

Investment advisers are subject to a stringent overarching fiduciary duty that requires them to act in the best interests of clients and to place the interests of clients before their own.[36] The IAA believes that financial professionals who provide investment advice about securities to clients should be subject to the same high standard of care – the fiduciary duty standard under the Advisers Act – as investment advisers. Under current law, broker-dealers are excluded from the Advisers Act and its fiduciary duty if they provide investment advice "solely incidental" to the conduct of their business as a broker-dealer and receive no "special compensation" for such services.[37] Instead, they are subject to the suitability standard and a separate regulatory

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[35] *See* IAA Comment Letter (IA-4383) (July 22, 2016), available at https://www.investmentadviser.org/eweb/docs/Publications_News/Comments_and_Statements/Current_Comments_Statements/160722cmnt.pdf.

[36] *See SEC v. Capital Gains Research Bureau*, 375 U.S. 180 (1963).

[37] Section 202(a)(11)(C) of the Advisers Act.

framework. Since at least 1999, the SEC has considered whether broker-dealers giving investment advice should be subject to the same fiduciary duty as investment advisers. Despite years of effort, the SEC has not resolved these issues.

The IAA urges the SEC to focus its future efforts in this area on the standard of care for brokers and refrain from rulemaking with respect to the robust fiduciary principles already embodied in the Advisers Act. Further, in considering the appropriate standard of care for broker-dealers, the Commission should carefully consider the widespread confusion over the ways that financial professionals hold themselves out to the public. In 2008, the SEC released a study – known as the RAND study – that examined how investment advisers and broker-dealers market products and services to investors, and how investors understand the differences between investment advisers and broker-dealers.[38] The RAND study concluded, among other things, that investors generally do not understand the key distinctions between broker-dealers and investment advisers and that they are not entirely clear about the varying legal duties of and standards imposed on broker-dealers and investment advisers.

We believe that investor confusion continues to persist where certain financial professionals are permitted to use terms such as "financial consultant" or "financial advisor" that imply a relationship of trust and confidence but, in effect, disclaim fiduciary responsibility for such relationships. We urge the Commission to address this source of investor confusion by, for example, considering whether to prohibit firms or individuals from holding themselves out as trusted advisors without being subject to the Advisers Act fiduciary principles.

SEC Oversight and Examinations of Investment Advisers

Effective oversight of the advisory profession is critical to investor protection as well as investor confidence. The IAA believes that the SEC – an experienced and accountable governmental regulator – is in the best position to provide that oversight, and should retain its primacy in investment adviser regulation.

The need for the SEC to increase the frequency of investment adviser examinations has been a consistent theme for many years.[39] For example, Section 914 of the Dodd-Frank Act directed the SEC to analyze its oversight of advisers and to make recommendations to Congress on ways to improve it. As a result, the SEC staff issued a report in which it recommended three alternatives: establish an SRO for investment advisers, repurpose FINRA to oversee advisers that

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[38] *See* RAND Institute, Study on Investor and Industry Perspectives on Investment Advisers and Broker-Dealers, available at https://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf.

[39] We agree with the notion that the adequacy of SEC oversight should not be driven by exam rate statistics. *See* Audit Report of the SEC's Office of Inspector General, *Office of Compliance Inspections and Examinations' Management of Investment Adviser Examination Coverage Goals* (Mar. 10, 2016), available at https://www.sec.gov/oig/reportspubs/Office-of-Compliance-Inspections-and-Examinations-Management-of-Investment-Adviser-Examination-Coverage-Goals.pdf.

are also registered broker-dealers, or collect user fees from the industry to pay for examinations.[40]

The IAA strongly opposes subjecting advisers to an SRO because it would impose a costly and unnecessary additional layer of regulation and bureaucracy on advisers without providing a commensurate benefit to investor protection.[41] By some estimates, an SRO would cost at least twice as much as providing additional funding for the SEC.[42] Accordingly, of the three choices in the staff's report, the IAA has favored legislation that would impose user fees tied to increasing the examination coverage of investment advisers in lieu of an SRO.[43]

The IAA supports efforts by the SEC to use its existing resources in the most efficient and effective manner possible. We have long suggested that the SEC's examination unit (OCIE) leverage technology to streamline on-site examinations and enhance data analytics capabilities. Indeed, OCIE has made continued efforts to improve its ability to identify and target higher risk areas and advisers for examinations, including establishing a dedicated office to consolidate and streamline OCIE's risk assessment, market surveillance, and quantitative analysis efforts. We also commend OCIE for recently reassigning examiners from other units to conduct adviser examinations, a step we have long advocated.[44] And based on recent statistics, we are pleased that these initiatives seem to be producing notable results.[45]

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[40] *See SEC Study on Enhancing Investment Adviser Examinations*, available at http://www.sec.gov/news/studies/2011/914studyfinal.pdf.

[41] We have particularly voiced our objections to extending FINRA's examination or rulemaking authority to investment advisers due to its lack of transparency and accountability, the costs involved, conflicts of interest, and its general lack of expertise or experience to examine advisory firms. *See IAA Testimony before the House Committee on Financial Services* (June 6, 2013), available at https://www.investmentadviser.org/eweb/docs/Publications_News/Comments_and_Statements/Current_Comments_Statements/120606tstmny.pdf.

[42] *See Boston Consulting Group Study on Investment Adviser Oversight*, available at https://www.investmentadviser.org/eweb/docs/Publications_News/Reports_and_Brochures/12BCGSurvey/111215_BCG_IAO_Analysis.pdf. BCG also found that approximately 81% of advisers said they preferred the SEC over FINRA oversight, even if user fees were imposed.

[43] The IAA expressed support for H.R. 1627, the "Investment Adviser Examination Improvement Act of 2013." This legislation would have authorized the SEC to impose user fees on investment advisory firms that would be solely dedicated to enhancing the SEC's investment adviser examination program.

[44] *See* IAA Letter to Commissioner Daniel M. Gallagher (June 9, 2014), available at https://www.investmentadviser.org/eweb/docs/Publications_News/Comments_and_Statements/Current_Comments_Statements/140609cmnt.pdf.

[45] Commission staff has significantly increased the number of examinations it conducts, including over 2,400 examinations in fiscal year 2016, a 20 percent increase over fiscal year 2015 and a seven year high in examinations conducted. *See SEC Summary of Performance and Financial Information FY2016,*

Yet, we understand that at former Chair White's direction, the staff was actively considering another alternative — a rule that would require advisers to engage third parties to perform some sort of compliance assessment to augment the SEC's adviser oversight program. While clearly preferable to an SRO, such a rule would have many drawbacks. The SEC would have to address a number of serious concerns about the standards, scope and frequency of any such third-party reviews; the confidentiality of any work product generated; the qualification process for third parties; and the ability of the SEC to oversee the third parties. Even Chair White publicly acknowledged that the rule would be "suboptimal."

We also have significant concerns regarding the costs that could be imposed on investment advisers, particularly smaller firms which constitute the vast majority of investment advisers. We note too that these expenses would be in addition to costs that all advisers already incur to maintain robust compliance programs and that many advisers incur to engage third-party firms for various reasons. For example, advisers may retain compliance consultants to help establish and implement compliance programs (including annual reviews) or engage auditors to perform surprise exams under the Custody Rule, internal control reports or other required audits.

We have not supported the idea of a third-party compliance assessment rule because we strongly believe that examinations are inherently a governmental function, and in light of the concerns discussed above. Should the Commission move forward with a rule notwithstanding our concerns, we submit that any involvement of third parties should be for the purpose of supporting OCIE by conducting reviews that are clearly specified, limited in scope, and very narrowly tailored to achieve specific objectives. Any such reviews should avoid subjective areas that are prone to differing interpretations of regulatory requirements or discretionary findings, both governmental functions which must remain the sole province of SEC examiners. These reviews should not contemplate engagements where the third party is asked to make subjective determinations regarding the adviser's written policies or procedures or otherwise make judgments as to the adequacy of related controls. Not only would these subjective, broad engagements be cost prohibitive, but they would also lead to a wide variance of subjective reports and findings that would be less useful to OCIE.

Accordingly, recognizing that adviser oversight is an issue of critical importance, we urge you to proceed cautiously especially with respect to outsourcing some portion of the SEC's oversight function through the use of third parties. The Commission should allow time for the many transformative steps taken by OCIE and DERA to be fully realized and consider other ways to enhance the efficiency and effectiveness of its own examination program before the Commission heads down a suboptimal and costly path.

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available at https://www.sec.gov/reportspubs/annual-reports/sec-summary-of-performance-and-financial-info-fy2016-.pdf.

"FinTech" and the Increasing Use of Automation in Providing Advice

In November 2016, the SEC hosted a public forum to discuss financial technology (FinTech) innovation in the financial services industry. Among the many topics discussed was the increasing use of automation in providing investment advice. More recently and as a follow-up to the forum, the IM staff issued guidance directed at automated advisers (sometimes called "robo-advisers") noting that they represent a fast-growing trend within the investment advisory industry. The staff correctly noted that automated advisers operate under a wide variety of business models and provide a range of advisory services. We commend the SEC for being proactive in this emerging space and for encouraging innovation while balancing such goal with appropriate investor protection.[46]

Automated advisers, like all registered investment advisers, are subject to the substantive and fiduciary obligations of the Advisers Act. As the staff guidance highlighted, some aspects of their business models may give rise to unique interpretive issues. We recently formed a FinTech Committee consisting of representatives of IAA member firms that have a significant presence in emerging technologies, such as providing digital advice. Through this Committee, the IAA and our members look forward to continuing our open dialogue and working with the SEC to foster responsible innovation.

Stress Testing Larger Advisers Separately From Large Portfolios

Section 165(i) of the Dodd-Frank Act requires the SEC to adopt rules that would require large funds and large investment advisers to conduct stress tests. These rules have not yet been proposed. In our view, such a rulemaking is largely unnecessary at this point. The SEC's adoption of new rules designed to promote effective liquidity risk management by mutual funds included a provision that requires stress testing.[47] As a result, the Section 165(i) requirement for large funds is essentially duplicative.

Although advisers are not subject to a specific stress testing rule, we question whether a rulemaking that would apply solely to a handful of extremely large advisers (those with balance sheet assets exceeding $10 billion) is the highest and best use of the staff's limited rulemaking resources. The nature of an adviser's business – even a very large adviser – is almost entirely an agency business, managing client assets pursuant to agreed-upon investment mandates. Given this fundamental nature of the business, it is not clear how to design a stress test for the firm,

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[46] As noted by Commissioner Piwowar, the SEC is uniquely positioned to take the lead regulatory role in the FinTech area, because many FinTech companies are already registrants and, significantly, the SEC is the only federal agency whose mission includes capital formation. *See* Statement at Financial Technology Forum, available at https://www.sec.gov/news/statement/piwowar-statement-financial-technology-forum-111416.html.

[47] *See Investment Company Liquidity Risk Management Programs*, SEC Rel. No. IC-32315 (Oct. 13, 2016), available at https://www.sec.gov/rules/final/2016/33-10233.pdf.

separate and distinct from stress tests on client portfolios, and whether that test would add meaningfully to an understanding of the enterprise's risk.

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We appreciate the continued willingness of the Commission and its staff to engage in a dialogue with the investment adviser community and look forward to continuing that long history of constructive engagement during your tenure. Please do not hesitate to contact me at (202) 293-4222 if we may provide any additional information. We look forward to discussing these issues with you at your earliest convenience.

Respectfully,

Karen L. Barr

Karen L. Barr
President and Chief Executive Officer

cc: The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner
David W. Grim, Director, Division of Investment Management
Peter B. Driscoll, Acting Director, Office of Compliance Inspections and Examinations
Heather Seidel, Acting Director, Division of Trading and Markets
William H. Hinman, Director, Division of Corporation Finance