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Secretary Securities and Exchange Commission
100 F Street NE
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Re: File Number S7-2026-01; Small Business and Small Organization Definitions for Investment Companies and Investment Advisers

I. Executive Summary The Commission's proposal to modernize the definitions of "small business" and "small organization" is an overdue recognition of the asset inflation and industry concentration that has occurred since 1998. Increasing the Regulatory Assets Under Management (RAUM) threshold for investment advisers to **$1 billion** and the net asset threshold for investment companies to **$10 billion** aligns with current market realities, where the top 5% of advisers manage over 85% of total RAUM. However, while the *quantitative* thresholds are statistically defensible, the *operational mechanisms* proposed—specifically the decennial inflation adjustment and the "Family of Investment Companies" aggregation logic—introduce significant friction.

The proposed 10-year interval for inflation adjustments creates a "compliance cliff" rather than a smooth regulatory curve, potentially subjecting the Commission's future RFA analyses to staleness challenges under the Administrative Procedure Act (APA). Furthermore, relying on the Form N-CEN definition of "Family of Investment Companies" risks aggregating entities that share a principal underwriter but possess distinct compliance infrastructures, thereby artificially inflating the size of truly independent small entities. The following technical analysis proposes specific redlines to ensure the Final Rule creates a durable, operationally sound record.

II. Procedural & Statutory Alignment The Regulatory Flexibility Act (RFA) requires the Commission to measure the impact of rules on entities that are "not dominant in their field." By tethering the new thresholds to the 80th percentile of fund families, the Commission has constructed a defensible dataset. However, the proposal invites risk regarding the "logical outgrowth" test if the transition to the Form N-CEN definition ("Family of Investment Companies") inadvertently captures entities that do not share economies of scale. If unrelated funds are aggregated solely due to a shared underwriter, the RFA analysis becomes arbitrary, as it presumes a shared cost structure that does not exist.

III. Section-by-Section Technical Analysis

1. Inflation Adjustment Mechanism (Proposed Rules 0-10(c) and 0-7(c))

Current Proposal: "The dollar amount specified... shall be adjusted by order of the Commission... approximately every ten years thereafter."

Issue: A decennial adjustment period is operationally dissonant with the pace of economic change. Over a 10-year period, cumulative inflation can significantly erode the purchasing power of the threshold, causing a "drift" where entities that should be protected by the RFA are gradually excluded until a sudden, massive adjustment occurs in year 10. This "stair-step" approach creates unpredictability.

Recommendation: Shorten the adjustment interval to 5 years. This aligns more closely with standard strategic planning cycles and reduces the magnitude of the threshold jump, facilitating smoother implementation.

Proposed Redline (Rule 0-10(c)):

"The dollar amount specified in paragraph (a) of this section shall be adjusted by order of the Commission, issued on or about [DATE **FIVE** YEARS AFTER EFFECTIVE DATE OF FINAL RULE], and approximately every **five** years thereafter."

2. Aggregation Logic: "Family" vs. "Group" (Proposed Rule 0-10(a))

Current Proposal: "For purposes of this section, family of investment companies has the same meaning and conditions as in Item B.5. of Form N-CEN."

Issue: Item B.5 of Form N-CEN aggregates funds that share a "principal underwriter." While this is useful for census data, it is a flawed proxy for the operational capacity to bear regulatory costs. A shared underwriter does not imply shared compliance staff, legal counsel, or IT infrastructure. Aggregating funds based on distribution channels (underwriting) rather than management channels (advising) artificially excludes entities from RFA protection.

Recommendation: The definition should be modified for RFA purposes to exclude the "principal underwriter" prong unless there is also common control or a common investment adviser.

Proposed Redline (Rule 0-10(a)):

"...family of investment companies has the same meaning and conditions as in Item B.5. of Form N-CEN**, provided that two or more registered investment companies sharing a principal underwriter shall not be considered part of the same family unless they also share a common investment adviser or are affiliated persons of each other.**"

3. The Employee-Based Standard Alternative (Request for Comment #15)

Issue: The Commission solicits comment on using employee count (e.g., 100 employees) rather than AUM.

Operational Reality: Adopting an employee-based metric penalizes operational efficiency and outsourcing. A modern, tech-forward adviser may manage **$2 billion** with 15 employees, while a legacy firm manages **$500 million** with 50 employees. The former is not necessarily more "dominant" or better equipped to handle new regulatory burdens; they simply have a different leverage model. Moving to a headcount standard would incentivize the misclassification of staff as contractors to maintain "small entity" status. The Commission should reject employee-based metrics in favor of the proposed RAUM metrics, which directly correlate to the financial resources available for compliance.

IV. Operational Impact Assessment

The "Middle Market" Twilight Zone Raising the adviser threshold to **$1 billion** RAUM creates a distinct operational tranche of firms managing between **$100 million** (the Dodd-Frank registration threshold) and **$1 billion**. These firms are now "small" for RFA purposes but remain fully subject to the compliance costs of "large" registrants.

- **Friction:** While the RFA designation triggers an analysis of economic impact, it does not automatically grant relief.
- **Risk:** The Commission must ensure that future rulemakings explicitly use this new definition to create *tiered* compliance dates. If the definition is updated but applied only for the purpose of the Final Regulatory Flexibility Analysis (FRFA) without influencing the substantive rule requirements (e.g., extended implementation timelines for "small" entities), the update is performative rather than substantive.

Data Consistency & Total Assets The proposal maintains the **$5 million** "Total Assets" threshold (Rule 0-7(a)(2)). This figure is operationally obsolete. For a firm managing close to **$1 billion** in RAUM, a balance sheet restriction of **$5 million** in total assets is incongruent. It fails to account for firms that may retain earnings for operational resiliency.

- **Recommendation:** Align the Total Assets threshold using the same multiplier applied to the RAUM threshold (40x increase), or index it strictly to inflation from 1998. The current retention of $5 million

creates a mismatch where a firm qualifies as small by RAUM but fails due to prudent balance sheet management.

V. Next Steps

To ensure the Final Rule is operationally robust and minimizes litigation risk:

1. **Adopt the 5-Year Adjustment:** Modify the inflation adjustment mechanism to a 5-year cycle to prevent "stair-step" regulatory shocks.
2. **Refine Aggregation:** Carve out "principal underwriter" from the "Family of Investment Companies" definition for RFA purposes to ensure true independence is recognized.
3. **Update Total Assets:** Concurrently update the Total Assets threshold to reflect the same inflationary realities applied to RAUM.

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