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Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Amendments to the "Small Business" and "Small Organization" Definitions for Investment Companies and Investment Advisers for Purposes of the Regulatory Flexibility Act (Release No. IA-6935; File No. S7-2026-01)

Dear Secretary Countryman:

Proskauer Rose LLP appreciates the opportunity to submit comments to the Securities and Exchange Commission (the "Commission") regarding the proposed amendments (the "Proposal") to the rules defining "small business" and "small organization" under the Regulatory Flexibility Act (the "RFA").[1] We support the Commission's objective of modernizing the small entity definitions, with the goal of promoting effectiveness and efficiency of regulations, including through consideration of alternative regulatory approaches and minimizing the significant economic impact on small entities consistent with the stated objectives of applicable statutes. We agree that the existing thresholds, which have not been meaningfully updated since 1998, no longer accurately reflect the structure of today's investment advisory industry. We also recognize that the Proposal, if adopted, will not diminish investor protection nor result in any registrant, including a registrant that is a small entity, being subject to fewer regulations. Instead, the effect of the Proposal, if adopted, will be that the Commission will be able to determine accurately the impact of its regulations on small entities so that it can achieve its goals as effectively and efficiently as possible, as required by the RFA.

We respectfully submit the following comments to suggest refinements that would further align the Proposal with the purposes of the RFA and the structure of the industry today. Our firm represents a wide range of asset management firms that provide investment advice to registered and private funds, as well as investors in such funds. We believe our experience representing both sponsors and institutional investors across asset classes on a daily basis gives us insight

[1] "Small Business" and "Small Organization" Definitions for Investment Companies and Investment Advisers for Purposes of the Regulatory Flexibility Act, Release No. IA-6935; File No. S7-2026-01 (Jan. 7, 2026) [91 FR 1107 (Jan. 12, 2026)].

into the considerations relevant to the industry; however, our comments and opinions do not represent the views of our clients.

## I. Executive Summary

We respectfully submit the comments below. We primarily address aspects of the Proposal relevant to investment advisers but note that certain of our comments could apply equally to aspects of the Proposal relating to investment companies:

A. The Commission should base inflation adjustments on a different measure than the Personal Consumption Expenditures Chain-Type Price Index (the "PCE Index"). Because regulatory assets under management ("RAUM")[2] reflect asset values, which move at different rates than consumer expenditures, PCE-based adjustment risks causing thresholds to drift away from the economic size they are intended to measure. We believe the most appropriate alternative measure would be a broad-based index of asset prices. Anchoring adjustments to a broad-based market index would better preserve the real meaning of the threshold over time.

B. The Commission should account for an adviser's registration status when setting RAUM thresholds. Registered investment advisers ("RIAs"), exempt reporting advisers ("ERAs") and unregistered advisers are subject to materially different compliance obligations and customarily have different "baseline" levels of operational or legal staff. Certain regulations impact investment advisers generally, while other regulations apply differently to RIAs, ERAs and other entities meeting the statutory definition of investment adviser. Tying RAUM thresholds to registration status would better align regulatory impact with an adviser's starting compliance burdens and capacity to absorb new requirements.

C. The Commission should eliminate the Total Assets Threshold. Total balance sheet assets are not a meaningful proxy for the scale or compliance capacity of an advisory business, and retaining the test could drive additional Form ADV reporting that would be inconsistent with the RFA's objective of minimizing unnecessary burdens. If the Commission nevertheless retains the Total Assets Threshold, it should not do so in a way that could be used to justify additional reporting obligations, and instead it should be tied to a percentage of the RAUM threshold (at least 5%) and adjusted periodically.

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[2] This comment is also applicable to the threshold for investment companies, which is based on net assets, and not RAUM. For ease of reference, we refer to "RAUM" throughout this letter.

Together, these refinements would improve the Commission's RFA analyses and ensure that, when considering the manner in which the Commission will implement a regulation, it gives appropriate consideration to the impacts of its regulations on small entities. This also provides the public with a better understanding of the Commission's regulatory analyses so that members of the public can determine whether to provide input on the Commission's proposals.

## II. Inflation Adjustments Should Be Based on a Measure Other Than PCE.

### A. Adjustment Based on Asset Prices

We support the aspect of the Proposal that would introduce an inflation-adjustment mechanism for the small entity thresholds. However, we respectfully submit that the adjustment should be based on asset prices, such as a broad-based market index that reflects the broader performance of the overall securities markets, rather than a consumer price inflation measure (such as the PCE Index used in the Proposal).[3]

The thresholds at issue are tied to RAUM, which is itself based on the value of financial assets. Asset prices and the PCE Index move at materially different rates over time. As a result, indexing RAUM-based thresholds to the PCE Index risks recreating the very problem the Commission is seeking to address – namely, a gradual drift between the threshold and what it is intended to measure.

Recent data illustrate the magnitude of this divergence. Over the past decade, equity prices increased far more rapidly than consumer prices. For example, the S&P 500 generated a cumulative 10-year return of approximately 250% as of December 2025,[4] while the PCE Index rose by approximately 31.96% between December 2015 and December 2025.[5] Similarly, the Commission's own statistics compiled from Form ADV show that aggregate RIA RAUM increased from approximately $43.1 trillion in 2010 to $145.8 trillion in 2024, while the PCE Index increased by approximately 36.94% from December 2010 to December 2024.[6] As such, asset values, and therefore reported RAUM, have grown at multiples of the rate of the PCE Index.

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[3] We do not take a position on the particular broad-based index; if the Commission were to adopt this approach, we believe it is in a better position than we are to determine which market index to use.

[4] S&P Capital IQ, S&P 500: Total Return Index (2026), available via S&P Capital IQ database.

[5] *See* U.S. Bureau of Labor Statistics, Personal Consumption Expenditures: Chain-type Price Index, *available at* https://fred.stlouisfed.org/series/PCEPI.

[6] *Id.*

As a result, if small entity thresholds are adjusted using the PCE Index while RAUM continues to rise at asset-based rates, the thresholds will become progressively less aligned with the value of the assets they are intended to measure. Over time, more advisers will exceed the threshold due solely to asset-price appreciation, even though their real economic size, staffing levels and compliance capacity have not changed.

Asset prices are also significantly more volatile than the PCE Index. This further underscores the shortcomings of a PCE Index-based escalator. During market expansions, an adviser may grow above the threshold due to valuation effects even as PCE-based adjustments lag behind. Conversely, during market downturns, advisers may fall below the threshold due to asset declines while PCE Index-based thresholds continue to ratchet upward. An asset-price-based adjustment mechanism would better reflect these dynamics and reduce distortions in both directions.[7]

While we acknowledge that the Commission has often used consumer price inflation measures (such as PCE) when updating regulatory thresholds, it has also recognized that those measures can be a poor proxy when the relevant change is market growth rather than prices of goods and services. For example, in the Commission's 2020 proposal to amend the threshold for reporting on Form 13F, the Commission noted that the U.S. equities market has grown at a rate significantly higher than PCE or CPI and concluded that a consumer-inflation adjustment would not "adequately or appropriately capture . . . the universe of managers contemplated by" Section 13(f).[8] In that same statutory context, Congress directed the Commission to "avoid unnecessarily duplicative reporting by, and minimize the compliance burden on" institutional investment managers, language that parallels the RFA's focus on minimizing regulatory burdens on small entities.[9] The same logic applies here: if the Commission's objective is to keep a "small entity" definition meaningfully calibrated to compliance capacity over time, the adjustment mechanism should be tied to the economic variable the definition is intended to track, not solely to consumer inflation.

Because a threshold based on RAUM is used as a measure of ability to bear the economic impact of regulation, anchoring inflation adjustments to an appropriate broad-based market index would better preserve the real meaning of the threshold by aligning it with the valuation environment in which RAUM is measured. Such a benchmark would provide a transparent, objective measure of

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[7] Due to the volatility of asset prices, if the Commission adopts this approach, it may wish to consider whether it would be appropriate to average the threshold over a three-year period. This would reduce the likelihood of an adjustment being conducted during a year that is anomalous.

[8] Reporting Threshold for Institutional Investment Managers, Release No. 34-89290, File No. S7-08-20 (July 10, 2020) [85 FR 46016 (July 31, 2020)] at 46022-23.

[9] *Compare* Exchange Act Section 13(f)(5) (15 U.S.C. 78m(f)(5)) *with* 5 U.S.C. 603(b)-(c).

market valuation levels and therefore offer a more appropriate reference point than PCE for adjusting asset-based thresholds. This approach would help preserve the intended scope of the small entity definition over time.

B. Adjustment Based on RAUM Percentiles

We believe that the most logical way to conduct the inflation adjustment would be to adjust based on asset prices, as noted above, and that this would be more consistent with the Commission's goals than adjusting based on PCE. To the extent the Commission agrees with our view that PCE is inappropriate to use to adjust the RAUM threshold for inflation but does not adopt our suggestion above (for example, because it is unable to determine the appropriate broad-based securities market index), another option would be to calibrate the threshold based on RAUM percentiles, consistent with Table 3 in the Proposal. This has the advantage of scaling along with the growth of the industry generally, as opposed to consumer expenditures, and also uses the same RAUM data that the Commission already collects. If the Commission adopts this suggestion, we believe that it would be appropriate to use the 75$^{th}$ percentile of RAUM based on information reported on Form ADV, consistent with the Proposal.

Whatever the Commission adopts, we believe it is important that the Commission use a mechanical adjustment based on criteria determined in the course of this rulemaking rather than a discretionary measure. A discretionary adjustment would require the Commission to devote staff resources 10 years from now to conducting an analysis informing how the Commission should exercise its discretion at that time – resources the future Commission may prefer to focus on other tasks. On the other hand, adopting a mechanical adjustment that does not call for the Commission to exercise discretion 10 years from now could be accomplished with relatively little additional effort.

III. RAUM Thresholds Should Account for an Adviser's Registration Status.

Because the Investment Advisers Act of 1940, as amended (the "Advisers Act") intentionally distinguishes among RIAs and ERAs, and each such category is subject to differing baseline compliance requirements, the Commission should tie any threshold it chooses to use for its RFA analyses (whether RAUM, number of employees or otherwise) to the particular registration status of an investment adviser. Rulemakings that apply to registered investment advisers and exempt reporting advisers should use distinct criteria to identify advisers that are small entities within the distinct classes of registration status.

A core purpose of the RFA is to minimize the significant economic impact of regulation on small entities, particularly those that may face greater challenges in complying due to their size and limited resources. Registration status is closely associated with an adviser's compliance

obligations and access to regulatory resources. An RIA with a particular level of RAUM is already required to have a robust compliance program, and thus may be more able to absorb new compliance obligations than an ERA with the same RAUM. Further, Congress has intentionally chosen to subject ERAs to different, and generally less burdensome, regulatory obligations; it would be inconsistent with the logic underlying the RFA and the Advisers Act not to assess the burden on ERAs independently in recognition of Congress' intent to subject these businesses to different regulatory regimes.

Accordingly, we believe the Commission should adopt different thresholds for RIAs and ERAs, with thresholds for ERAs generally set at higher levels to reflect their different baseline. This approach would better align regulatory impact with advisers' actual capacity to bear the economic impact of a new regulation.

Even if the Commission retains a single definition of "small entity" for investment advisers and does not adopt our suggestion to formally establish different thresholds for RIAs and ERAs, it should at least begin quantifying and analyzing each category of adviser differently in future rulemaking releases. This would be consistent with the purpose of the RFA and would partially address the differing impact of new regulation on each category of adviser.

## IV. The Commission Should Eliminate the Total Assets Threshold.

We respectfully submit that the Commission should eliminate the Total Assets Threshold in rule 0-7(a)(2). In our experience, an investment adviser's "total assets" (as reflected on its balance sheet) is not a reliable indicator of whether the adviser is "small" in the manner relevant to the RFA. Many advisers operate with relatively limited internal personnel and infrastructure and rely heavily on third-party service providers, while their balance sheets can fluctuate for reasons that do not reflect the scale of their advisory businesses (for example, the timing of receivables, office build-outs, seed investments, or other incidental balance sheet items). As a result, a balance sheet test can exclude advisers that are operationally small, while failing to meaningfully differentiate among advisers' ability to bear incremental compliance costs associated with Commission rulemakings.

The Total Assets Threshold also is not meaningfully comparable to Exchange Act rule 0-10(a). Entities for which Exchange Act rule 0-10(a) is most salient are more likely to be "traditional" operating companies, for which total assets often correlate more directly with enterprise scale, operational complexity and internal resources. The fact that the Exchange Act threshold is intended to apply to operating companies is apparent from the text of the rule, which excludes investment companies from the definition of "issuer" to which the threshold would apply. By contrast, for investment advisers, RAUM is a much more meaningful proxy for business scale and compliance capacity, not the amount of assets carried on the adviser's balance sheet. Indeed,

the Proposal itself reflects the Commission's longstanding reliance on RAUM as an appropriate size standard for advisers, because advisers' businesses typically scale with assets under management and RAUM is the metric the Commission receives and uses across numerous regulatory contexts.

The Commission requests comment on whether eliminating the Total Assets Threshold would diminish its ability to address investment advisers that register with the Commission but report to have zero or virtually zero RAUM, as well as "large" advisers that may have insignificant RAUM but have significant assets from a non-advisory component of their business. We do not believe eliminating the Total Assets Threshold would materially impair the Commission's objectives. Where an adviser has *de minimis* RAUM but substantial non-advisory assets, the adviser's investment advisory business is, by definition, not a meaningful component of the total firm. In that circumstance, total assets may reflect the scale of the firm, taken as a whole, but it does not reflect the resources that the firm is willing or able to allocate to an immaterial advisory business line. The compliance burden of regulation can fall on that advisory business line much like it would for a "true" small advisory business, because the relevant constraint is not firm size but the incentives to invest in compliance for a non-core activity.[10] Indeed, when new adviser-specific requirements increase fixed compliance costs, an enterprise with substantial non-advisory assets but minimal RAUM may rationally choose to exit the advisory business rather than devote incremental resources to comply with rules affecting an immaterial portion of its overall operations.

In addition, retaining the Total Assets Threshold would be difficult to calibrate and maintain without imposing new reporting burdens on advisers. The Commission has noted that it currently receives limited information regarding advisers' total assets and has requested comment on whether it should require additional Form ADV reporting to support potential changes to the Total Assets Threshold. We would not support additional reporting requirements adopted primarily to preserve this prong of the small entity definition. Any such expansion would create new paperwork and compliance process burdens for advisers that are otherwise unrelated to investor protection, capital formation or fair, orderly and efficient markets, and would be in tension with the RFA's purpose of promoting efficient regulation and minimizing unnecessary burdens on smaller businesses.

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[10] We note that there could be facial overlap with the Control Relationship Threshold, but that refers to one or more *advisory* businesses sharing resources. This discussion relates to firms where investment advice is likely to be a small portion of their overall operations, and any resources "shared" with a larger organization would be pulled away from compliance duties associated with the firm's main business line.

If, notwithstanding these considerations, the Commission determines to retain a Total Assets Threshold, we respectfully suggest that it be tied directly to the RAUM threshold so that it scales with the primary size metric the Commission already uses and advisers already report. Specifically, the Commission could set the Total Assets Threshold at a fixed percentage of the RAUM threshold, updated periodically along with the RAUM threshold. We believe tying the Total Assets Threshold to 20% of the RAUM threshold would be an appropriate minimum calibration.[11] This approach would better align the balance sheet prong with the economic meaning of the RAUM threshold, reduce the risk of excluding advisers that are small in operational terms, and avoid the need for incremental Form ADV reporting solely to facilitate recalibration of an otherwise weak proxy.

## V. Conclusion

We commend the Commission for undertaking a thoughtful reassessment of the small entity definition and respectfully urge it to refine the Proposal by (i) indexing RAUM thresholds to asset prices rather than PCE, (ii) accounting for registration status in setting thresholds and (iii) removing the Total Assets Threshold. These changes would materially improve the accuracy and effectiveness of the definition while remaining faithful to the objectives of the RFA.

We appreciate the Commission's consideration of these comments. We would be pleased to respond to any questions you may have regarding our letter or our views on the Proposal generally. If you have further questions, please contact Nathan R. Schuur at (202) 416-5825 or Robert H. Sutton at (212) 969-3480.

Respectfully submitted,

Proskauer Rose LLP

Proskauer Rose LLP

[11] This would be consistent with the Commission's request for comment on whether $200 million would be an appropriate threshold.