March 13, 2026

VIA EMAIL to *rule-comments@sec.gov*

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

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

Dear Secretary Countryman,

On behalf of CFP Board, the Financial Planning Association ("FPA®"), the National Association of Personal Financial Advisors ("NAPFA"), and XY Planning Network ("XYPN"), we appreciate the opportunity to comment on the U.S. Securities and Exchange Commission's ("Commission" or "SEC") proposed amendments to the "small entity" definitions under the Regulatory Flexibility Act ("RFA")[1].

We appreciate and support the Commission's recognition in the proposal that most investment advisers are small businesses working to help individual Americans maximize their financial goals. As the Commission acknowledges through the proposed amendments, smaller investment advisers are uniquely burdened by the cumulative impact of regulations that require substantial investments in infrastructure, technology, personnel, and systems. Consideration of these burdens, as they relate to a firm's size and resources, can promote a diverse marketplace, allow smaller participants to focus their resources on serving their clients' best interests, and create a supportive environment for innovation, entrepreneurship, and new business formation.

As described below, we agree with the Commission that the current definition of a "small entity" investment adviser for purposes of the RFA, based on regulatory assets under management ("RAUM") of less than $25 million, is outdated and in need of updating. However, we are concerned that the proposed $1 billion RAUM threshold may not adequately reflect the breadth of compliance resources that firms may or may not have available, as different business models and client types can result in a wide range of

[1] "Small Business'' and "Small Organization'' Definitions for Investment Companies and Investment Advisers for Purposes of the Regulatory Flexibility Act, 91 Fed. Reg. 1107 (Jan. 12, 2026) ("Proposing Release.").

employee headcounts. As a result, and for the reasons stated below, we believe that alternative measures based on readily available data, like employee count, may better reflect what constitutes a "small entity" for purposes of understanding which businesses may need special consideration regarding the burden of compliance regulation. No matter the approach, the Commission should establish a structured methodology that grounds any definition of a "small entity" in empirical data.

## I. Our Organizations

### A. CFP Board

CFP Board consists of two affiliated non-profit organizations, the Certified Financial Planner Board of Standards, Inc. and the Certified Financial Planner Board of Standards Center for Financial Planning, Inc. (collectively, "CFP Board"). CFP Board operates the CFP® certification program, which sets high standards of competency and ethics for financial planning and is accredited by the National Commission for Certifying Agencies. CFP Board works to advance the financial planning profession for the public's benefit.

Today, CFP Board certifies more than 107,000 CFP® professionals (or more than one-third of all retail financial professionals) who operate under different business and compensation models and provide professional services on behalf of investment advisers, broker-dealers, insurance companies, banks, and trust companies, among other business types. Currently, more than 75% of CFP® professionals are investment adviser representatives ("IARs"), with many affiliated with smaller firms, as measured by RAUM or number of employees.

According to the 2025 *Investment Adviser Industry Snapshot*, investment advisers employed over 412,000 IARs at the end of 2024, 94.3% of whom were affiliated with Commission-registered firms.[2] That *Snapshot* reports that nearly 14% of IARs hold the CFP® certification, up from just over 12% in May 2022.[3]

### B. The Financial Planning Association

The Financial Planning Association® ("FPA®") is a 501(c)(6) trade association and the leading membership organization for CERTIFIED FINANCIAL PLANNER® professionals and those engaged in the financial planning process. FPA represents and supports over 17,000 members and 75 state and local chapters nationwide. FPA is the CFP® professional's partner in planning by helping them realize their vision of professional fulfillment through practice support, learning, advocacy, and networking.

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[2] *Investment Adviser Industry Snapshot* (2025) ("*Snapshot*") at 53, https://www.investmentadviser.org/wp-content/uploads/2025/05/Snapshot2025.pdf.

[3] *Id*. at 56.

C. The National Association for Personal Financial Advisors

NAPFA is the nation's leading organization of fee-only, comprehensive financial planning professionals. There are more than 4,600 NAPFA members across the country serving clients from all backgrounds. NAPFA members adhere to standards of professional conduct that are widely recognized as among the highest in the financial planning profession. A "NAPFA-Registered Financial Advisor" must be registered with the SEC, or with a state securities regulator, as a "registered investment adviser" or "RIA." A "NAPFA-Registered Financial Advisor" also must hold the CERTIFIED FINANCIAL PLANNER® designation from CFP Board.

D. XY Planning Network

XYPN is a national advisor support network providing education, practice management, technology, and compliance support to over 2,200 IARs operating within nearly 2,000 RIAs across all 50 states, and comprises primarily Generation X and Generation Y financial planners who offer financial planning services for a monthly subscription fee without any investment/asset minimums. Approximately 98% of XYPN members are affiliated with state-registered RIAs and operate businesses with fewer than five team members, making them acutely aware of how compliance burdens impact small businesses. While the CFP® designation is not required to join XYPN, the network views it as a certification that all financial planners should obtain, and requires members to have the CFP® certification to be publicly listed on its website. Approximately two-thirds of XYPN members today are CFP® professionals. According to the 2025 *NASAA Investment Adviser Section Annual Report*, there are 16,575 state-registered RIAs, which means that nearly 12% of all state-registered RIAs are members of XYPN.[4]

## II. Background

### A. The Regulatory Flexibility Act

#### 1. The RFA Seeks a Level Playing Field for Small Entities

Congress enacted the RFA in 1980 to require federal agencies to consider the effects of their regulations on small businesses and other "small entities." While the RFA does not allow preferential treatment for small entities, it requires agencies to examine public policy issues using an analytical process that identifies, among other things, barriers to small business competitiveness and seeks a level playing field for small entities.

[4] *2025 NASAA Investment Adviser Section Annual Report* ("2025 *NASAA Report")* at 3, https://www.nasaa.org/wp-content/uploads/2025/09/IA-Section-2025-Report-FINAL.pdf

If a regulation is expected to have a "significant economic impact on a substantial number of small entities," the RFA requires the issuing agency to consider regulatory impacts and alternatives, with the goal of minimizing significant economic impacts on small entities.[5] Unless the agency certifies that the rulemaking will not have such an impact, the agency is required to conduct a regulatory flexibility analysis at both the proposal and final stages of rulemaking. This may include the consideration of alternative regulatory approaches, with the goal of minimizing significant economic impact on small entities consistent with the stated objectives of applicable statutes.

Among other requirements, the RFA also mandates that the agency establish plans for the periodic review of rules that have or will have a significant economic impact on a substantial number of small entities.[6]

2. The Current Definition of "Small Entity" for Investment Advisers for RFA

The U.S. Small Business Administration ("SBA") has the authority to establish the meaning of "small entity", but agencies can also prescribe their own definition in consultation with the SBA for purposes of performing a regulatory flexibility analysis. The Commission's small entity definitions for investment advisers were initially set in 1982 using two thresholds. The first threshold required that an investment adviser manage assets with a total value of $50 million or less. The second threshold defined investment advisers as small entities if the adviser, solely or in addition to managing assets of $50 million or less, rendered other advisory services, and the assets relating to its advisory business did not exceed $50,000 in value as of the most recent fiscal year end. When the original 1982 threshold was adopted, approximately 55% of investment advisers were deemed "small."[7]

The Commission revised the definition in 1998 to align with the definition of "small entity" under the RAUM threshold enacted under the National Securities Markets Improvement Act of 1996 ("NSMIA"). NSMIA allocated regulatory responsibility for investment advisers with less than $25 million in RAUM to the states and generally prohibited their registration with the Commission. Today, Rule 0-7 under the Investment Advisers Act of 1940 (the "Advisers Act") states that an investment adviser is considered a "small entity" if: (i) neither the investment adviser, nor any investment adviser it has a control relationship with, has $25 million or more of RAUM, and (ii) neither the investment adviser, nor any person (other than a natural person) in a control relationship with the investment adviser, has $5 million or more of total assets.

[5] Notably, the RFA does not define "significant economic impact" or "substantial number of small entities."
[6] For example, the Commission released such a list of rules it intends to review under this analysis on the same day it released this proposal.
[7] Proposing Release at 1111.

Since the definition was originally adopted and later revised, industry RAUM have grown substantially, reducing the number of investment advisers that qualify as "small" under the existing RFA threshold. As a result, according to the Commission's Proposing Release, only 3% of the total number of investment advisers registered with the Commission were considered small entities for RFA purposes in 2025.[8] With so few investment advisers currently defined as "small entities" for purposes of the RFA, this raises the question of the value of any analysis the Commission conducts of the impact on smaller advisers, and whether the Commission is insufficiently evaluating the impact of proposed regulations on a wider range of RIAs that, today, would be considered "small entities."[9]

B. The SEC's Proposed Amendments for "Small Entity" Investment Advisers

The proposed amendments would raise the RAUM threshold for investment advisers defined as "small entities" from $25 million to $1 billion. The proposal would also make conforming changes to the control relationship test, so that an investment adviser is not "small" if it is in a control relationship with another adviser that has $1 billion or more in RAUM or with any non-natural person with $5 million or more in total assets. In addition, the proposal would allow the SEC to adjust the thresholds for inflation approximately every 10 years.

The Commission states in the Proposing Release that the amendments would increase the percentage of investment advisers classified as "small entities" for purposes of the RFA from 3% to 75%, a 25-fold increase.[10]

## III. Analysis of the Proposed Rulemaking and Recommendations

We support the Commission's recognition that the current definition of a "small entity" for investment advisers is outdated. The definition should be amended to reflect the reality of the investment adviser industry, including its modern business structures and challenges.

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[8] The Commission states in the Proposing Release that Form ADV reporting shows that only 451 of 15,909 investment advisers registered with the Commission (about 3%) qualified as "small entities" in 2025 under the current rules. Proposing Release at 1117. Of course, if state-registered RIAs were also considered, small advisors would make up a much larger proportion of the population.

[9] Relatedly, CFP Board has endorsed "The Small Entity Update Act of 2025" (H.R.3382/S.2924), which would instruct the SEC to assess proposed regulations' effect on small businesses and develop an alternative method under which organizations are classified as small entities for purposes of the RFA. The bill recently passed the U.S. House of Representatives as part of the INVEST Act, and is now under consideration by the U.S. Senate.

[10] The proposed $1 billion RAUM threshold would increase the proportion of investment advisers captured, with the SEC estimating about 15,850 of 21,650 SEC-registered investment advisers and exempt reporting advisers (roughly 75%) would fall below the proposed threshold. *Id*. at 38. However, as the Commission notes, that this would still represent under 3% of total industry RAUM due to concentration among the largest advisers. Proposing Release at 1117.

However, formulating a definition based on a $1 billion RAUM – or any regulatory RAUM – threshold may not adequately recognize that a small business's constraints in complying with regulation are typically a function of the number of employees to fulfill those compliance obligations, not necessarily the assets that are managed. This is important because different business models and client types can support $1 billion in managed assets with substantially different employee headcounts, ranging from fewer than half a dozen people providing pension consulting services to $1 billion in institutional assets, to more than 50 people providing wealth management services to $1 billion of mass affluent retail investors.

For this reason, we urge the Commission to provide further analysis or justification for the proposed RAUM-based threshold that includes the methodology and empirical data the Commission used to select this figure. Further, we respectfully submit that other measurements for a "small entity" based upon the number of employees may more accurately reflect the business of "small" investment advisers. Consistent with numerous other small business laws and regulations, we observe that a threshold based on an employee count of roughly 40-50 might be appropriate, as described below. This information is already reported and available on Form ADV.

A. Why This Matters

Having a realistic definition of a "small entity" investment adviser is important. The investment adviser industry has grown substantially through entrepreneurship and the formation of small businesses. Today, there are more state-registered investment advisers with under $100 million in regulatory RAUM than there are SEC-registered firms in the first place.[11] A failure to properly consider the impact of regulations on truly small entities risks stifling economic growth and may reduce the industry's innovation and competitiveness, which otherwise benefit consumers.

In that regard, small firms have special challenges, risks and opportunities that are often distinct from those of large firms. As the Commission's Asset Management Advisory Committee ("AMAC") noted in its 2021 "Final Report and Recommendations for Small Advisers and Funds," regulator mandates or "best practices" for risk management or compliance are often based on those of large institutional firms, which are difficult for smaller advisers to achieve.[12] This is exacerbated by increasing fixed costs for small

[11] *2025 NASAA Report* at 3.

[12] Securities and Exchange Commission, Asset Management Advisory Committee, *Report and Recommendations on Regulatory Approach for Small Advisers and Funds* (November 1, 2021) at 6, https://www.sec.gov/files/final-report-and-recommendations-small-advisers-and-small-funds-subcommittee-110121.pdf.

advisers and fee compression challenges, all of which can ultimately adversely impact investors.[13]

B. An Employee-Count Threshold Would Better Evidence the Compliance Burdens and Risks of Small Entity Investment Advisers

While we appreciate the Commission's efforts to address this important issue within the rulemaking process, we respectfully submit that the Commission should consider differentiating small advisers with criteria beyond RAUM for purposes of the RFA. We believe that an employee-based size standard is likely a better reflection, compared to RAUM, of an advisory firm's capability to manage additional compliance burdens without reducing competitiveness for small entities. While advisers with a smaller amount of RAUM are more likely to be small businesses, a definition based entirely on RAUM may exclude investment advisers that may manage more assets but still face the challenges of those of a small business because their client type necessitates a smaller number of employees (which in turn means the advisory firm may lack the headcount to manage additional compliance burdens). Further, like RAUM, data on the number of employees is already readily available on Form ADV in Item 5.A and would impose no additional reporting burdens on investment advisers.

While a range of employee thresholds could be appropriate under these circumstances, we observe that a threshold of roughly 40-50 employees would be consistent with the above-mentioned recommendation from the AMAC. This threshold would also be consistent with a number of other regulations of employers that have considered the impact of regulatory and compliance burdens on small businesses, including the Family Medical Leave Act (with requirements that begin when private businesses exceed 50 employees), the Affordable Care Act (which requires employer shared responsibility coverage requirements at 50 employees), and mandatory Equal Employment Opportunity reporting for government contractors (which begins to apply mandatory reporting requirements at 50 employees and is increased to 100 employees for private businesses not contracting with the government). Nevertheless, the Commission should develop an appropriate methodology for identifying the number of employees that is appropriate in this circumstance, rather than selecting the number out of whole cloth or simply adopting the number used in other statutes in other circumstances.

C. An Employee-Count Threshold Would Indirectly Reflect Client Type

Notably, because different client types and business models require different staffing structures, an employee-count threshold would indirectly reflect the types of clients being

[13] *Id*.

served. A $1 billion RAUM firm would likely have a drastically different headcount if it provides pension consulting services to institutions versus wealth management services to retail mass affluent investors. This is important because firms serving primarily individual investors have business models that are entirely distinct from those serving national or global institutional markets and usually involve activities with a very different risk profile.[14]

D. Any RAUM-Based Threshold Should Be More Robustly Supported

To the extent the Commission proceeds with an RAUM-based threshold, we believe the current small entity threshold amount for investment advisers under the RFA is far too low. As discussed above, in addition to the impacts of inflation, the $100 million threshold for most investment advisers to register with the Commission results in too few small entities to meaningfully measure the impact of regulations on small advisers in the RFA process. However, even if the proposed threshold of $1 billion RAUM is appropriate, the Commission's proposal does not provide details about why the threshold should be $1 billion and not another number, describing instead that the proposed amendment seeks to separate those who are "dominant in their field" from those who are "not dominant in" their field. The Commission does not explain this "dominance" test, why that test is appropriate in this circumstance, and what data the Commission used in selecting the $1 billion threshold, especially since such a threshold could impose substantially different compliance burdens and risks depending on the nature of the client type being served to achieve that "dominant" RAUM threshold. We suggest that the Commission provide further explanation or economic analysis to justify the proposed amendment.

E. Any Increased RAUM Threshold for RFA Purposes Should Not Be Tied to Registration

As discussed in the Proposing Release, the current threshold was reduced from $50 million RAUM to $25 million in 1998 in order to align the definition with the AUM threshold under NSMIA. While there is a historical (and logical) connection between the two thresholds, we do not believe that the threshold for registration with the Commission should be $1 billion, as the Commission currently proposes for purposes of the RFA.

## IV. Conclusion

While we support the need for the Commission's proposed rulemaking, we urge the Commission to consider more tailored alternatives, such as a definition for a small entity investment adviser tied to a firm's total employee count. We believe such a metric may consider small business regulatory burdens more effectively than RAUM-based standards.

[14] In 2024, advisers that manage money primarily for individuals employ, on average, eight employees, have two offices, and have $393.4 million in assets under management. *Snapshot* at 45.

In either case, the Commission should explain the methodology and identify the data used to develop the definition.

Thank you for the opportunity to comment on this proposal. Should you have any questions or wish to discuss these recommendations further, please contact the undersigned individuals.

Sincerely,

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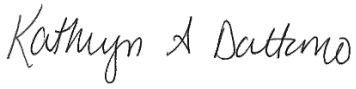

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