



March 13, 2026

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

Re: Amendments to the “Small Business” and “Small Organization” Definitions for Investment Companies and Investment Advisers for Purposes of the Regulatory Flexibility Act, File No. S7-2026-01, 91 Fed. Reg. 1107 (Jan. 12, 2026).

Dear Ms. Countryman:

Better Markets<sup>1</sup> appreciates the opportunity to comment on the above-referenced proposed amendments to increase the asset-based thresholds used in the definition of the terms “small business” and “small organization” for purposes of the Regulatory Flexibility Act (RFA).<sup>2</sup>

The SEC first adopted the rules it now proposes to amend in 1982. With respect to investment companies, the SEC originally set the threshold for an investment company to be considered small at \$50 million of net assets.<sup>3</sup> In 1998, the SEC amended the rule so that the \$50 million threshold only applied to investment companies within a fund complex that in the aggregate had no more than \$50 million of net assets.<sup>4</sup> This meant that, whereas initially 62% of investment companies met the definition of a “small” entity, after the amendment only about 9% of investment companies would be considered “small” for purposes of the RFA.<sup>5</sup>

With respect to investment advisers, the SEC originally considered investment advisers “small” if they managed assets with a total value of \$50 million or less and, if they rendered other advisory services, in addition to managing assets of \$50 million or less, the assets relating to its other advisory business did not exceed \$50,000.<sup>6</sup> In 1998, the SEC reduced the threshold so that an investment advisor would be considered small if it had no more than \$25 million of

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<sup>1</sup> Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans’ jobs, savings, retirements, and more.

<sup>2</sup> 91 Fed. Reg. 1107 (Jan. 12, 2026).

<sup>3</sup> *Id.* at 1110.

<sup>4</sup> *Id.* at 1110-1111.

<sup>5</sup> *Id.* at 1111.

<sup>6</sup> *Id.*

regulatory assets under management and no more than \$5 million of total assets.<sup>7</sup> Although under the original threshold 55% of investment advisers were considered small, after these amendments the number of investment advisers considered small decreased significantly.<sup>8</sup>

The SEC now proposes to increase the net asset threshold for investment companies from \$50 million to \$10 billion and increase the regulatory assets under management threshold for investment advisers from \$25 million to \$1 billion.<sup>9</sup> The Commission says that raising the thresholds in this manner will allow it to “better tailor the Commission’s analyses of the specific regulatory challenges faced by small entities by expanding the scope of the analyses that the Commission conducts under the RFA to include investment advisers and investment companies that should more appropriately be deemed small entities.”<sup>10</sup> These better analyses, according to the Commission, would “better inform the Commission of the regulatory impacts faced by small entities so that it may consider adapting its rulemaking accordingly.”<sup>11</sup>

The problem is that raising the thresholds in the manner the SEC proposes will not allow it to better consider the impact of its rules on small entities because entities that are actually large now will be considered small. Entities that “should more appropriately be deemed small entities” will not be deemed small entities. Entities that should appropriately be deemed large entities will be deemed small entities. That is because the Commission is proposing to say that investment companies with net assets of \$10 billion are actually small and that investment advisers with regulatory assets under management of \$1 billion are actually small. It strains credulity to say that entities with assets in the billions of dollars should be considered small entities.

The Commission seemingly acknowledges this reality when it says that the \$10 billion threshold “would deem some relatively large individual funds ‘small’ for purposes of the RFA.”<sup>12</sup> That is an understatement. It is hard to believe that any entity with \$10 billion of net assets could be considered small within any common understanding of a small entity.

Similarly, the Commission acknowledges that “using \$1 billion as the [regulatory assets under management] Threshold would classify as small a large proportion of investment advisers.”<sup>13</sup> This is unsurprising, since \$1 billion is a large rather than a small amount of money.

Perhaps most troubling about the Commission’s proposal is that it also proposes to adjust “the investment company and investment adviser small entity thresholds for inflation every 10

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 1112.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 1114.

<sup>13</sup> *Id.* at 1118.

years.”<sup>14</sup> This begs the question of why the Commission did not simply propose to adjust the existing \$50 million threshold for investment companies and \$25 million threshold for investment advisers for inflation. Adjusted for inflation, the \$50 million threshold from the 1998 amendments would be adjusted to about \$100 million today.<sup>15</sup> The \$25 million threshold for investment advisers would be about \$50 million today.<sup>16</sup> These are more reasonable adjustments.

Although the Commission requested comment on whether it should simply adjust the existing thresholds for inflation,<sup>17</sup> it does not appear to have explained why it did not propose that course of action. It does say that it considered, but rejected, defining investment companies that should be considered small by reference to an entity’s gross receipts.<sup>18</sup> It notes that the Small Business Administration has a chart that shows open end investment funds cannot be considered small if they have more than \$40 million in gross receipts.<sup>19</sup> The proposal says the Commission does not believe this standard is suited to the investment company industry.<sup>20</sup> Even if true, the Commission does not explain why, rather than a standard that would consider a fund small if it had \$40 *million* in gross receipts, it considers a fund small if it has \$10 *billion* in net assets.

The purpose of the RFA is to ensure that small businesses are not adversely affected by government rules and regulations.<sup>21</sup> Congress passed the RFA “to force the writers of regulations to consider and address small-business concerns in writing regulations that will impact small entities.”<sup>22</sup> But if the SEC treats large businesses as small businesses, actual small businesses will not receive the benefit of the more favorable treatment the RFA promises them. Treating large and small businesses alike does not align with the purposes of the RFA. The SEC will end up considering and addressing the concerns of businesses that are actually large.

Basically, the RFA provides advantages to regulated entities that the SEC considers small. These advantages are supposed to be conferred on actual small entities. An asset-based threshold that is too large and that allows too many entities to be considered small would not only skew the SEC’s analysis of how its rules impact “small” entities but also cause actual small entities to lose the advantages the RFA provides them by conferring them on large entities too.

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<sup>14</sup> *Id.* at 1124.

<sup>15</sup> See <https://www.nerdwallet.com/finance/calculators/inflation-calculator>.

<sup>16</sup> *Id.*

<sup>17</sup> 91 Fed. Reg. at 1114.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*: 13 C.F.R. § 121.201 (stating that the “number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small”).

<sup>20</sup> 91 Fed. Reg. at 1114.

<sup>21</sup> *Williams Alaska Petroleum, Inc. v. United States*, 57 Fed. Cl. 789, 801 (2003).

<sup>22</sup> Leslie Book et al., *Reducing Administrative Burdens to Protect Taxpayer Rights*, 74 Okla. L. Rev. 527, 553 (2022).

The SEC should not base its threshold for deeming entities small on the fact that there are some very large investment companies and investment advisers. Other investment companies and investment advisers may seem small by comparison, but they are not. It is hard to conceive of an investment company with \$10 billion or an investment adviser with \$1 billion as small.<sup>23</sup>

### **Conclusion**

We hope these comments are helpful as the Commission considers this matter.

Sincerely,

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<sup>23</sup> Cf. Heidi Mandanis Schooner, *Regulating Angels*, 50 Ga. L. Rev. 143, 160 (2015) (“[S]ometimes, commentators confuse complaints from larger institutions with those of smaller ones. . . . Zions Bancorp is only a ‘small’ bank when compared with the top few extremely large institutions . . . but Zions Bancorp has approximately \$50 billion in assets and is therefore very unlikely, under any definition, to be considered a small or community bank.”).