



March 13, 2026

**Via Electronic Mail: rule-comments@sec.gov**

Vanessa A. Countryman  
Secretary  
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)**

Dear Ms. Countryman:

MFA<sup>1</sup> appreciates the opportunity to submit to comment on the U.S. Securities and Exchange Commission (“**Commission**” or “**SEC**”) proposed amendments the definitions of “small business” and “small organization” (collectively “**Small Entities**”) under the Investment Company Act of 1940 (the “**Investment Company Act**”) and under the Investment Advisers Act of 1940 (the “**Advisers Act**”) for purposes of the Regulatory Flexibility Act of 1980 (the “**Reg Flex Act**”).<sup>2</sup> The proposal would modernize outdated, asset-based thresholds, introduce a mechanism for periodic future inflation adjustments, and make conforming amendments to Form ADV.

The current asset-based thresholds have remained unchanged since 1998, despite significant growth and structural change in the investment management industry. As a result, only a small fraction of SEC-registered advisers currently qualify as “small entities” for Reg Flex Act purposes, limiting the effectiveness of

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<sup>1</sup> Managed Funds Association (MFA), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA’s mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

<sup>2</sup> Proposed Amendments to the “Small Business” and “Small Organization” Definitions for Investment Companies and Investment Advisers for Purposes of the Regulatory Flexibility Act, Rel. No. IA-6935; IC-35864 (Jan. 12, 2026), available at: 91 Fed. Reg. 1107 (**Proposing Release**) Text of the Proposed Rule is available at: <https://www.sec.gov/files/rules/proposed/2026/ia-6935.pdf>.

**Washington, DC**  
1301 Pennsylvania Ave NW  
Suite 350  
Washington, DC 20004

**New York**  
546 5th Avenue  
12th Floor  
New York, NY 10036

**Brussels**  
40 Rue D’Arlon  
1000 Brussels, Belgium

**London**  
14 Hanover Square, Mayfair,  
London, United Kingdom, W1S 1HT

the Commission's economic analyses.<sup>3</sup> MFA strongly supports the Commission's efforts to update these definitions so that regulatory flexibility and cost-benefit analyses better reflect the composition of the modern advisory industry. The proposed changes would allow the SEC to better fulfill its obligations under the Reg Flex Act by including a more meaningful portion of the industry in its economic analyses, making the analyses more complete, durable and informative. We agree with the Commission that updating the definitions would help ensure a clearer opportunity for public comment on the Commission's regulatory analyses with respect to smaller advisers.

We suggest, however, that the 10-year update to the asset-based thresholds be calculated in the same manner as set forth in the proposal (instead of being based on inflation). Robust economic analysis is central to effective rulemaking under both the Reg Flex Act and the Administrative Procedures Act ("APA"), and is critical to ensuring that Commission's rules promote efficiency, competition, and capital formation as required by the Advisers Act.<sup>4</sup> MFA has long supported rigorous cost-benefit analyses in Commission rulemakings and appreciates the Commission's recognition that meaningful consideration of impacts on smaller advisers strengthens both regulatory outcomes and the administrative record.

## I. Background: The Reg Flex Act

The Reg Flex Act applies to rules subject to notice and comment rulemaking and requires agencies to consider regulatory alternatives that accomplish statutory objectives while minimizing unnecessary burdens on small entities.<sup>5</sup> The Act is intended to promote competition and ensure that regulatory frameworks account for differences in size and resources across regulated firms, without conferring preferential treatment or mandating exemptions for small entities.<sup>6</sup>

Compliance costs, such as staff time, recordkeeping, reliance on outside expertise, and other direct compliance costs, often do not scale with firm size.<sup>7</sup> As a result, fixed regulatory costs can disproportionately affect smaller advisers, limiting their ability to compete and producing unintended consequences in an

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<sup>3</sup> Indeed, the adviser data reported to the Commission on Form ADV indicates that "by 2025, only 451 of the total 15,909 SEC-registered investment advisers (approximately 3% of registered investment advisers) were considered to be "small entities" for purposes of the Reg Flex Act, down from approximately 75% immediately before and 20% immediately after the 1998 amendments." Proposing Release, p. 37. Although this Letter focuses solely on the portion of the proposed rulemaking relating to investment advisers, comments are similarly applicable to the investment company provisions.

<sup>4</sup> Section 202(c) of the Advisers Act. MFA also supports the Commission's proposed changes to the small entity definition related to the Investment Company Act but concentrates this Letter on the Advisers Act portion of the proposal.

<sup>5</sup> See Reg Flex Act, *Congressional Findings and Declaration of Purpose (Preamble)* at (b).

<sup>6</sup> See *How to Comply with the Regulatory Flexibility Act, A Guide for Government Agencies*, published by the SBA Office of Advocacy (Aug. 2017) (**SBA Guide**), available at <https://advocacy.sba.gov/resources/the-regulatory-flexibility-act/a-guide-for-government-agencies-how-to-comply-with-the-regulatory-flexibility-act/>.

<sup>7</sup> See SBA Guide at 1.

industry characterized by a large number of smaller firms.<sup>8</sup> Consistent with this reality, the Commission’s own data demonstrate that the investment adviser industry is largely comprised of small businesses.<sup>9</sup>

## II. Discussion

### A. Asset-Based Threshold

The analytical process required by the Reg Flex Act begins with a Commission determination as to whether a particular rulemaking is likely to have a significant economic impact on a substantial number of small entities. If so, the agency is required to conduct a regulatory flexibility analysis during both the proposal and final stages of adopting a rule. Although the Administrator of the U.S. Small Business Administration (the “SBA”) generally has authority to establish small business size standards for all Federal agencies, an agency may nevertheless prescribe its own small business size standard for purposes of the Reg Flex Act after consultation with the SBA Office of Advocacy.

For purposes of the Reg Flex Act, the SEC currently defines an adviser as a “small entity” under Rule 0-7 if it: (1) has less than \$25 million in regulatory assets under management (“**RAUM**”)<sup>10</sup>; (2) did not have total assets of \$5 million or more on the last day of the most recent fiscal year<sup>11</sup>; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has RAUM of \$25 million or more, or any person (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year.

In proposing the new adviser RAUM threshold, the Commission recognized that the investment management industry has undergone considerable growth since the 1998 amendments. In addition to industry growth, the Dodd-Frank Act in 2010 effectively raised the SEC registration threshold for advisers to \$100 million of AUM or more; consequently, Reg Flex analyses have not assessed the effects of rulemaking on the vast majority of advisers that are subject to registration and regulation under the Advisers Act.

The SEC’s proposed amendments would rectify this significant gap and increase appropriately the total number of investment advisers deemed to be “small entities.” Based on Form ADV filing data, 75% of advisers have RAUM below the proposed RAUM Threshold.<sup>12</sup> The Commission notes that the same data show that the distribution of RAUM across all advisers is uneven and significantly concentrated in the largest advisers (85% of total industry RAUM and top 5% of advisers in size). The proposed threshold captures many advisers that

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

<sup>9</sup> See Proposing Release, Section II.B. Table 3.

<sup>10</sup> See *Id.* at footnote 11 (explaining that the Reg Flex Act refers to “assets under management” as defined in the Advisers Act and reported on Form ADV, but the latter uses the term “regulatory assets under management”).

<sup>11</sup> See *infra* at footnote 13.

<sup>12</sup> See Proposing Release, Section II.B. Table 3 and p. 38-39.

are “not dominant in” their field, an element of the statutory definitions of small business and small organization in the Reg Flex Act, in the sense that such advisers individually manage much less RAUM relative to the largest advisers.<sup>13</sup>

Finally, we appreciate the Commission’s consideration of a threshold above that 75<sup>th</sup> percentile, given industry concentration. But we agree with the Commission that setting the threshold higher risks undermining its efforts to assess impacts of rulemaking on small entities, as required by the Reg Flex Act, and weakening the overall cost-benefit analysis that helps sustain regulations under the APA. Setting a higher threshold than proposed would likely obscure the impacts of rulemaking on small entities and deprive the public of a clear articulation of, and opportunity to comment on, those impacts.

### **B. Inflation Adjustment**

We support the aspect of the proposal that introduces an updating mechanism for the small entity thresholds. Without periodic adjustments, the thresholds would again run the risk of becoming outdated and be dependent on specific future rulemaking. As the proposal ably demonstrates, the Commission collects the data necessary to update the RAUM thresholds and its methodology fixes the adviser threshold at the RAUM that corresponds to the 75<sup>th</sup> percentile of advisers.

We respectfully submit that the adjustment should apply the same 75% percentile target with then-current RAUM data at the 10-year intervals proposed.<sup>14</sup> Inflation is but one small influence on the growth of the investment management industry<sup>15</sup>; using that as a proxy for small adviser growth will by definition be less accurate than using actual reported RAUM data.

### **III. Conclusion**

MFA commends the Commission’s commitment to understanding and addressing the concerns of small entities by updating the outdated and ineffective RAUM thresholds for small advisers. Adopting these updated standards and an appropriate updating mechanism based on the same methodology will facilitate more robust cost-benefit analyses in future Commission rulemaking, greater transparency around the effects of a proposal on small businesses and more opportunity for the Commission and commentators to engage on alternative regulatory approaches.

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<sup>13</sup> 5 U.S.C. 601(3), 601(4), and 15 U.S.C. 632(a). MFA would support the deletion or, at a minimum, updating of the net assets prong of the current small adviser definition to the extent it would prevent firms who would otherwise be considered “not dominant” in their field from being treated as small entities for Reg Flex Act purposes.

<sup>14</sup> The adjustment can be applied in a formulaic fashion, without further analysis, in light of the SEC’s desire for precision in the updating mechanism.

<sup>15</sup> See, e.g., Proposing Release at p. 20.

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We appreciate the opportunity to provide our comments to the Commission regarding the proposed rule, and we would be pleased to meet with the Commission and its staff to discuss our comments. If the staff has questions or comments, please do not hesitate to contact Jill R. Whitelaw at [JWhitelaw@mfaalts.org](mailto:JWhitelaw@mfaalts.org) or the undersigned at [Jhad@mfaalts.org](mailto:Jhad@mfaalts.org) with any questions regarding this letter.

Respectfully submitted,

/s/ Jennifer W. Han

Jennifer W. Han  
Chief Legal Officer and Head of Global Regulatory Affairs  
MFA

cc: The Hon. Paul S. Atkins, Chairman, SEC  
The Hon. Mark T. Uyeda, Commissioner  
The Hon. Hester M. Peirce, Commissioner  
Brian Daly, Director, Division of Investment Management  
Stephanie Fekete, Director of Interagency Affairs, Office of Advocacy - US Small Business Administration