**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 270, 275, and 279**

**[Release Nos. IA-6935; IC-35864; File No. S7-2026-01]**

**RIN 3235-AN39**

# Amendments to the "Small Business" and "Small Organization" Definitions for Investment Companies and Investment Advisers for Purposes of the Regulatory Flexibility Act

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (the "Commission" or the "SEC") is proposing to amend the rules under the Investment Company Act of 1940 (the "Investment Company Act") and under the Investment Advisers Act of 1940 (the "Advisers Act") that define the terms "small business" and "small organization" for purposes of the Regulatory Flexibility Act (the "RFA") to increase the asset-based thresholds used in those definitions. The Commission also is proposing a mechanism for periodic future inflation adjustments of the asset-based thresholds used in these definitions. The Commission further is proposing amendments to Form ADV and the rule providing continuing hardship exemptions from filing electronically for investment advisers in connection with the proposed amendments.

**DATES:** Comments should be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments:*

- Use the Commission's comment form (https://www.sec.gov/comments/s7-2026-01/small-entity-definition-amendments-investment-advisers-investment-companies); or

- Send an email to rule-comments@sec.gov. Please include File Number S7-2026-01 on the subject line.

*Paper Comments:*

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

All submissions should refer to File Number S7-2026-01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (https://www.sec.gov/comments/s7-2026-01/small-entity-definition-amendments-investment-advisers-investment-companies). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at www.sec.gov to receive notifications by email.

A summary of the proposal of not more than 100 words is posted on the Commission's website (https://www.sec.gov/rules-regulations/2026/01/s7-2026-01).

**FOR FURTHER INFORMATION CONTACT:** Andrew Deglin, Senior Counsel, Amanda Hollander Wagner, Senior Special Counsel, or Brian McLaughlin Johnson, Assistant Director, Investment Company Regulation Office, at (202) 551-6792, Alexander Haer, Attorney-Adviser,

Neema Nassiri, Senior Counsel, Sirimal R. Mukerjee, Senior Special Counsel, or Robert Holowka, Acting Assistant Director, Investment Adviser Regulation Office, at (202) 551-6787, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-8549.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing for public comment amendments to 17 CFR 275.0-7 ("rule 0-7") and 17 CFR 275.203-3(b) ("rule 203-3(b)") under the Advisers Act, 17 CFR 270.0-10 under the Investment Company Act ("rule 0-10" and, together with rule 0-7, the "Small Entity Rules"), and Form ADV (17 CFR 279.1) under the Advisers Act.

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# I. INTRODUCTION

## A. Background

The Commission has a longstanding commitment to understanding and addressing the concerns of small entities and has established the Office of Small Business Policy, the Office of the Advocate for Small Business Capital Formation (the "Small Business Advocate Office"), and the Small Business Capital Formation Advisory Committee to be responsive to such concerns.[1] In the context of rulemaking, the Commission tailors its regulations to the relevant characteristics of regulated entities and weighs the impact of its rules on small entities, including through performing analyses under the RFA. A purpose of the RFA is to promote the effectiveness and efficiency of regulations, including through consideration of alternative regulatory approaches, with the goal of minimizing the significant economic impact on small entities consistent with the

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[1] The Office of Small Business Policy in the Division of Corporation Finance, which was originally established by the Commission in 1979, assists companies seeking to raise capital through exempt or smaller registered offerings and answers interpretive questions on federal securities laws that may affect small businesses. *See* Office of Small Business Policy Division of Corporation Finance, *available at* https://www.sec.gov/resources-small-businesses/office-small-business-policy-division-corporation-finance. Pursuant to the SEC Small Business Advocate Act of 2016, the Commission in 2019 created its Small Business Advocate Office to advocate within the Commission and externally for practical solutions to challenges faced by small businesses and their investors. *See* 15 U.S.C. 78d and 78qq; *see also* Office of the Advocate for Small Business Capital Formation, *available at* https://www.sec.gov/about/divisions-offices/office-advocate-small-business-capital-formation. The Commission's Small Business Advocate Office provides an annual report to Congress that serves as a resource on the dynamics of small business capital raising and includes data-driven policy recommendations based on the office's feedback from and engagement with small businesses and their investors. Office of the Advocate for Small Business Capital Formation, *available at* https://www.sec.gov/about/divisions-offices/office-advocate-small-business-capital-formation. Pursuant to the SEC Small Business Advocate Act of 2016, the Commission also established the Small Business Capital Formation Advisory Committee (which succeeded the Advisory Committee on Small and Emerging Companies, whose term expired in 2017) to provide a formal mechanism for the Commission to receive advice and recommendations from market participants on Commission rules, regulations, and policy matters relating to small businesses. *See* Small Business Capital Formation Advisory Committee, *available at* https://www.sec.gov/about/advisory-committees/small-business-capital-formation-advisory-committee.

stated objectives of applicable statutes.[2] The Commission is required to determine if a rulemaking is likely to have a "significant economic impact on a substantial number of small entities" under the RFA.[3] Unless the Commission certifies that the rulemaking will not have such an impact, the Commission is required to conduct a regulatory flexibility analysis both during the proposal and final stages of adopting a rule.[4]

The Small Business Act gives the Administrator of the U.S. Small Business Administration (the "SBA") authority to establish small business size standards for all Federal agencies, in the absence of other specific statutory authority.[5] An agency may nevertheless prescribe its own small business size standard pursuant to section 601(3) of the RFA if, as described in 13 CFR 121.903(c), the agency consults with the SBA Office of Advocacy and the size standard will be used for the sole purpose of performing a regulatory flexibility analysis.[6] Allowing agencies to establish their own definitions for the terms "small business," "small organization," and "small governmental jurisdiction" for purposes of the RFA analyses gives agencies flexibility in applying the provisions of the RFA.[7]

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2 Pub. L. 96–354, §2, Sept. 19, 1980, 94 Stat. 1164; 5 U.S.C. 601–612.

3 *See* 5 U.S.C. 602. The RFA does not define "significant economic impact" or "substantial number of small entities."

4 5 U.S.C. 605.

5 15 U.S.C. 632(a)(2). 15 U.S.C. 632(a)(1) sets forth the default standard for a "small business concern" as "one which is independently owned and operated and which is not dominant in its field of operation."

6 13 CFR 121.903(c). *See also* Small Business Size Regulations; Size Standards for Programs of Other Agencies, 67 FR 13714 (Mar. 26, 2002).

7 5 U.S.C. 601. Under the RFA, the term "small entity" has the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" as defined under the RFA, unless the agency has established a definition of such term. In the latter case, the definition of the term is instead what was established by the agency.

As described in more detail below, the Commission in 1982 adopted rule 0-7 for investment advisers and rule 0-10 for investment companies to define "small business" and "small organization" for purposes of Commission rulemakings under the Advisers Act and Investment Company Act, respectively.[8] These definitions were last amended in 1998[9] and, in connection with outreach to small entities, the Commission has subsequently received requests to update the definitions.[10]

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8 *See* Final Definitions of "Small Business" and "Small Organization" for Purposes of the Regulatory Flexibility Act, Investment Company Act Release No. 12194 (Jan. 28, 1982) [47 FR 5215 (Feb. 4, 1982)] ("1982 Adopting Release"). Unless otherwise specified, the term "investment companies" or "funds" in this release refers collectively to registered investment companies and business development companies but not entities excluded from the definition of investment company under the Investment Company Act such as private funds.

9 *See* Definitions of "Small Business" or "Small Organization" Under the Investment Company Act of 1940, Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933, Investment Company Act Release No. 23272 (June 24, 1998) [63 FR 35508 (June 30, 1998)] ("1998 Adopting Release").

10 *See, e.g.*, Report on the 43rd Annual Small Business Forum (Sept. 20, 2024) (describing how participants in the Commission's 2024 Small Business Forum recommended that the Commission revise the definition of "small entity" under the RFA in order to better assess regulatory costs), *available at* https://www.sec.gov/files/2024-oasb-annual-forum-report.pdf; Investment Adviser Association; Petition for Rulemaking to Amend the Definition of "Small Entity" in Rule 0-7 under the Investment Advisers Act of 1940 for Purposes of the Regulatory Flexibility Act (Sept. 14, 2023) ("IAA Petition") (requesting that the Commission amend rule 0-7 to use the number of employees of an investment adviser as the appropriate size standard for purposes of determining the impact of regulations on small investment advisers), *available at* https://www.sec.gov/files/rules/petitions/2023/petn4-811.pdf; SEC Asset Management Advisory Committee, Final Report and Recommendations for Small Advisers and Funds (Nov. 3, 2021) ("AMAC Report") (recommending that the Commission modernize the definitions of "small entities" for RFA considerations), *available at* https://www.sec.gov/files/final-recommendations-amac-sec-small-advisers-and-funds-110321.pdf; and U.S. Department of the Treasury, A Financial System That Creates Economic Opportunities: Capital Markets (Oct. 6, 2017) (stating that thresholds for small entity definitions under the Investment Company Act and the Advisers Act have not been changed in many years), *available at* https://home.treasury.gov/system/files/136/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf.

Under rule 0-7, an investment adviser is deemed a small entity if it: (i) has regulatory assets under management ("RAUM") of less than $25 million (the "RAUM Threshold");[11] (ii) did not have total assets of $5 million or more on the last day of the most recent fiscal year (the "Total Assets Threshold"); and (iii) does not control, is not controlled by, and is not under common control with (a "control relationship") another investment adviser that has assets under management 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 the most recent fiscal year (the "Control Relationship Threshold"). Under rule 0-10, an investment company is deemed a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[12] A group of related investment companies is defined, with respect to management companies, as: two or more management companies (including series thereof) that: (1) hold themselves out to investors as related companies for purposes of investment and investor services; and (2) either (i) have a

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[11] Rule 0-7(a)(1) does not directly refer to the term "regulatory assets under management" for purposes of the RAUM Threshold but instead references "assets under management, as defined under Section 203A(a)(3) of the [Advisers] Act and reported on [the investment adviser's] annual updating amendment to Form ADV[.]" Section 203A(a)(3) of the Advisers Act defines "assets under management" to mean "the securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services," and rule 203A-3 under the Advisers Act further provides that such amount should be determined "as reported on the investment adviser's Form ADV." 17 CFR 275.203A-3. In turn, Form ADV requires investment advisers to calculate and report "the securities portfolios for which [they] provide continuous and regular supervisory or management services" as their "regulatory assets under management." Instruction 5.b. of Form ADV Part 1A; *see also* Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 3221 (June 22, 2011) [76 FR 42950 (July 19, 2011)] (using the term "regulatory assets under management" to implement a uniform method to calculate and report assets under management for Form ADV and other regulatory purposes). We use the term "regulatory assets under management" throughout this release because investment advisers are familiar in practice with the term in connection with their Form ADV reporting and other Advisers Act compliance obligations.

[12] *See* 17 CFR 210.6-04 (Regulation S-X section generally applicable to balance sheets filed by registered investment companies and business development companies, including requirements for disclosure of net assets).

common investment adviser or have investment advisers that are affiliated persons of each other; or (ii) have a common administrator.[13]

### 1. The Regulatory Flexibility Act of 1980

The RFA requires that the Commission conducts an initial regulatory flexibility analysis (an "IRFA") in connection with a proposed rule and a final regulatory flexibility analysis (a "FRFA") in connection with a final rule, subject to certain exceptions.[14] Each IRFA is required to include, among other items, a description of the reasons why action by the agency is being considered and a description of and, where feasible, an estimate of the number of small entities to which the proposed rule would apply[15] as well as a description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.[16] The IRFA, or a summary of the IRFA, must be published in the Federal Register at the time of the publication of the proposed rule.[17] This gives the public the opportunity to review the IRFA and provide comments on the agency's analysis.

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13 Rule 0-10(a). In the case of unit investment trusts ("UITs"), a group of related investment companies is defined as two or more UITs (including series thereof) that have a common sponsor.

14 5 U.S.C. 603–604. *See also* 5 U.S.C. 601(2) (RFA does not apply to a rule that is not considered a "rule" under the RFA) and 5 U.S.C. 605(b) (IRFA and FRFA are not required if an agency certifies the rule will not have a significant economic impact on a substantial number of small entities).

15 *See* 5 U.S.C. 603 (setting forth the requirements for the IRFA).

16 *See id*. (requiring the description to discuss significant alternatives such as "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities").

17 *Id*.

The FRFA complements the IRFA and requires the agency to include, among other items: a statement of the need for, and objectives of, the rule; a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; the response of the agency to any comments filed by the Chief Counsel for Advocacy of the SBA; and a description of the steps the agency has taken to minimize the significant economic impact on small entities.[18] The effect of the IRFA and FRFA elements collectively is that agencies take small entity considerations and relevant alternatives into account when proposing rules, and then go through a particular process in weighing public input on the IRFA and small entity considerations when adopting these rules.

The Commission is subject to other substantive requirements under the RFA, in addition to the IRFA and FRFA. The Commission must establish plans for periodically reviewing rules that have or will have a significant economic impact on a substantial number of small entities[19] and must publish regulatory flexibility agendas semiannually in the Federal Register that describe rules it is considering that may have a significant economic impact on a substantial number of small entities.[20] The Chief Counsel for Advocacy of the SBA must monitor compliance with the requirements created by the RFA and must provide a report annually to Congress and the President on its findings.[21] Small entities also have legal recourse when

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18 5 U.S.C. 604 (setting forth the requirements for the FRFA).

19 5 U.S.C. 610. The plans should provide for the review of such rules within 10 years of the publication of such rules as the final rules. However, completion of the review may be extended by up to 5 years if the head of the agency determines that completion is not feasible by the established date. *Id*.

20 5 U.S.C. 602.

21 5 U.S.C. 612.

adversely affected by final agency rules subject to the RFA—in 1996, Congress passed the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), which provides small entities an avenue for judicial review of an agency's compliance with certain of the requirements created by the RFA, including the FRFA.[22]

### 2. Investment Company Size Standards

#### a. *Initial Size Standards*

Shortly after Congress enacted the RFA, the Commission proposed and adopted rules to define which of the entities it regulates would qualify as "small entities" for purposes of the RFA.[23] While the SBA generally expressed its size standards in terms of number of employees or average annual receipts, the Commission determined that neither approach was appropriate for investment companies.[24] First, investment companies are typically externally managed and have few, if any, employees. Additionally, investment companies primarily generate revenue through capital appreciation and other investment returns, not receipts from the sale of goods or services. Even if the income from dividends and interest were considered receipts, investment companies

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22 5 U.S.C. 611; *see* Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601). Small entities are entitled to judicial review of agency compliance with the requirements of sections 601, 604, 605(b), 608(b), and 610 in accordance with Chapter 7 of Part I of Title 5 of the U.S. Code, and agency compliance with sections 607 and 609(a) is judicially reviewable in connection with judicial review of section 604.

23 Proposed Definitions of "Small Business" and "Small Organization" for Purposes of the Regulatory Flexibility Act, Investment Company Act Release No. 11694 (Mar. 20, 1981) [46 FR 19251 (Mar. 30, 1981)] ("1981 Proposing Release"); 1982 Adopting Release, *supra* footnote 8.

24 1981 Proposing Release, *supra* footnote 23, at section II.F; *see also* 1982 Adopting Release, *supra* footnote 8 (the definition of "small" was proposed "[i]n view of the apparent absence of appropriate standards" set forth in the Small Business Act, RFA, or the regulations promulgated by the SBA).

with different investment objectives would have varying receipts depending upon the investment objective of the company and not necessarily because of a given investment company's size.[25]

For investment companies, the Commission instead developed the initial threshold by analyzing a sample of investment companies' adjusted expense ratios and identifying a net asset threshold below which funds typically disclosed higher than average expense ratios.[26] The Commission's rationale was that those funds that already experienced high expenses as a percentage of net assets would not be as well-positioned to bear regulatory costs. Based on the analysis of expense ratios, the Commission ultimately adopted a threshold that deemed an investment company a small entity if it had $50 million or less in net assets as of the end of its most recent fiscal year.[27] At the time of adoption, approximately 62% of investment companies met the definition of a "small entity" for the purposes of the RFA.

### b. *Amendments to Size Standards*

As originally adopted, the definition of "small entity" focused only on individual investment companies' assets—that is, whether a given investment company was a small entity depended exclusively on the net asset size of that investment company. In 1996, however, the SBA adopted rules that, depending on certain facts and circumstances, treat multiple entities that

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25 *See also infra* footnote 62 (discussing the AMAC Report, which recommends defining small funds based on whether the fund's adviser has fewer than 50 employees or annual revenue less than $25 million).

26 *See* 1981 Proposing Release, *supra* footnote 23 at section II.F. An expense ratio is the quotient of expenses divided by average net assets. The adjusted expense ratio used for this analysis was computed by subtracting any taxes, interest, securities loan fees, or dividends from securities sold short from the fund's total expenses and dividing the remaining total by average net assets.

27 To arrive at this threshold, the Commission analyzed the adjusted expense ratios of a random sample of 500 investment companies. The Commission calculated the average (mean) adjusted expense ratio plus one standard deviation and identified the population of funds whose adjusted expense ratio exceeded that amount. The Commission then identified the range of sizes for funds in that higher expense group—ranging from approximately $6 million to $47.2 million in net assets—and set the threshold at $50 million to ensure that the largest fund within the high expense group would be deemed a "small entity."

have substantially identical business interests as a single entity.[28] Shortly thereafter, the Commission amended rule 0-10 to provide that "small entity" means "an investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less."[29] Therefore, while the "small entity" designation still applied to individual funds, whether any individual fund was deemed small depended upon the aggregate net assets of all funds within its respective "group of related investment companies."

A group of related investment companies was defined to include two or more management companies (including series thereof) that: (i) hold themselves out to investors as related companies for purposes of investment and investor services; and (ii) either (A) have a common investment adviser or have investment advisers that are affiliated persons of each other; or (B) have a common administrator.[30] For unit investment trusts, "group of related investment companies" was defined as two or more unit investment trusts (including series thereof) that have a common sponsor.[31] Finally, the Commission created a special rule for insurance company separate accounts, which requires that the assets of any separate account be cumulated with the

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28 *See* Small Business Size Standards, 61 FR 3280-01 (Jan. 31, 1996); *see also* 13 CFR 121.103 ("How does SBA determine affiliation?"). The SBA size standards consider if entities are affiliated by such factors as control, management, ownership, and contractual relationships in determining whether an entity is "independently owned and operated," and thus, "small." 15 U.S.C. 632(a)(1). These relationships allow the "small" affiliates to rely on a larger entity that centralizes administrative and compliance systems for all affiliates, significantly reducing regulatory burdens for each individual affiliate.

29 1998 Adopting Release, *supra* footnote 9.

30 Rule 0-10(a)(1). The investment company itself, not the group, continued to be the entity considered "small" for the purposes of the RFA.

31 Rule 0-10(a)(2).

assets of the general account and all other separate accounts of the insurance company to determine whether the separate account is a small entity.[32]

The shift to aggregating assets across groups of related investment companies reflected the Commission's understanding that funds within a complex typically use the same administrative, management, and compliance systems to oversee all the funds within the complex, so fees imposed on the fund by the adviser or administrator typically reflect economies of scale that the adviser or administrator achieves from managing other funds.[33] Because the Commission did not also change the net asset threshold, the requirement to aggregate the net assets of all funds within a group of related investment companies had the effect of substantially reducing the percentage of funds deemed "small entities" under rule 0-10. Shortly after this amendment, the Commission estimated that about 9% of investment companies were "small" for the purposes of the RFA.[34]

### 3. Investment Adviser Size Standards

#### a. *Initial Size Standards*

The Commission initially adopted definitions for "small business" and "small organization" pursuant to the RFA for investment advisers at the same time as it did for

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32 Rule 0-10(b).

33 Definitions of "Small Business" or "Small Organization" Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933, Investment Company Act Release No. 22478 (Jan. 22, 1997) [62 FR 4106 (Jan. 28, 1997)] ("1997 Proposing Release"), at section II.A.

34 Deregistration of Certain Registered Investment Companies, Investment Company Act Release No. 23588 (Dec. 4, 1998) [63 FR 69236 (Dec. 16, 1998)] ("Of approximately 3900 active registered investment companies (including BDCs), 339 funds are small entities."); *see also* 1998 Adopting Release, *supra* footnote 9, at text following n.35 (estimating that about 400 investment companies would be treated as small businesses under the amendments).

investment companies.[35] As noted above, the Commission did not adopt what it saw as the most relevant of the SBA size standards for "small entities," which are generally based on an entity's number of employees or average annual receipts. It did not do so because: (i) the Commission did not have sufficient information regarding investment advisers to apply these standards, (ii) the advisory industry is not generally labor intensive, and (iii) it was unlikely that any investment advisers would be larger than the most-relevant standards that were then being used or considered by the SBA.[36]

The Commission initially chose to define investment advisers as small entities using two alternative thresholds. The first threshold required that an investment adviser manage assets with a total value of $50 million or less (measured in assets under management instead of net assets as for investment companies) because of what the Commission at that time saw as the similarities between the investment company and investment advisory businesses with respect to the management of a portfolio of assets. 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. As a result of this second threshold, approximately 55% of investment advisers were deemed small.[37] The Commission originally selected this threshold because it reflected approximately the median value of advisers' business assets at the time.[38]

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35 *See* 1981 Proposing Release, *supra* footnote 23, and 1982 Adopting Release, *supra* footnote 8.

36 1981 Proposing Release, *supra* footnote 23, at section II.F.

37 1982 Adopting Release, *supra* footnote 8.

38 *See* 1997 Proposing Release, *supra* footnote 33, at n.57.

### b. *1998 Amendments*

The Commission revised rule 0-7 in 1998 so that an investment adviser would be 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.[39] The threshold was adjusted down from $50 million to $25 million in order to align the definition of "small entity" with the assets under management ("AUM") threshold that had been enacted under the National Securities Markets Improvement Act of 1996 ("NSMIA"), which allocated regulatory responsibility for investment advisers with less than $25 million in AUM to the states and generally prohibited their registration with the Commission.[40] The Commission, referencing Congressional reports, stated that NSMIA permitted states to assume a primary role with respect to investment advisers that were smaller local businesses, while the Commission would be focused on larger investment advisers most likely to be engaged in interstate commerce, and amended the definitions of "small business" and "small organization" accordingly.[41] Although the Dodd-Frank Act in 2010 (Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111-203, 124 Stat. 1376 (2010) (the "Dodd-Frank Act")) effectively raised the minimum registration threshold for investment advisers to $100 million, the RAUM Threshold was not increased at that time and, as a result, the number of small entities significantly decreased.

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39 *See* 1998 Adopting Release, *supra* footnote 9, at section II.B.

40 *See id.* at section II.B.

41 *See* 1998 Adopting Release, *supra* footnote 9, at n.47 and accompanying text.

The "control relationship" prong was designed to take into account SBA size standards in determining whether to consider an investment adviser as "small."[42] As stated above, the SBA size standards indicate that multiple entities that have substantially identical business or economic interests may be treated as a single entity,[43] and under the RFA, a small organization should be "independently owned and operated."[44] In line with these considerations, the Commission stated that an investment adviser in a control relationship with a different large financial services firm typically benefits from the financial and technical resources that the larger firm may bring to bear, and the larger firm may handle the administrative and compliance needs of the affiliated investment adviser using resources that would not be included in the calculation as to whether an investment adviser is a "small business" or "small organization" under rule 0-7 if only the investment adviser's financial resources were considered.[45] The "control relationship" prong thus prevents an investment adviser from being considered "small" if it is in a control relationship with (i) another investment adviser that has $25 million or more RAUM or (ii) any person (other than a natural person) with total assets of $5 million or more on the last day of the most recent fiscal year.[46] The 1998 amendments also replaced the "business assets" test with a more simplified formulation, instead measuring "total assets," changing the threshold to $5 million, and extending the test to all investment advisers.[47]

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42 *See id.* at section I; *see also supra* footnotes 6 and 28 (discussing elements of the SBA size standards set forth in 13 CFR 121).

43 13 CFR 121.103(f).

44 *See* 5 U.S.C. 601(4).

45 1997 Proposing Release, *supra* footnote 33, at section I.B.

46 *See* rule 0-7(a)(3).

47 *See* 1998 Adopting Release, *supra* footnote 9, at section II.B.

### B. Overview of the Proposal

We are proposing to amend the definitions of a "small entity" under the RFA for investment companies and investment advisers by raising the asset thresholds for both definitions. The proposal would:

- Amend rule 0-10 to: (i) increase the net asset threshold for investment companies from $50 million to $10 billion; and (ii) refer, for purposes of aggregating the net assets of related funds, to a "family of investment companies" as that term is used in Item B.5 of Form N-CEN rather than to a "group of related investment companies" as used in the current rule;[48]
- Amend rule 0-7 to increase the RAUM Threshold below which an investment adviser is considered to be a "small entity" from $25 million to $1 billion and to conform the assets under management threshold in the Control Relationship Threshold with the revisions made to the RAUM Threshold;
- Request comment on whether to amend the Total Assets Threshold, as well as the total assets threshold contained in the Control Relationship Threshold, in rule 0-7;
- Amend Form ADV to revise the instructions and Item 12 of Part 1A of Form ADV, including through making conforming changes; and
- Amend rule 0-10 and rule 0-7 to allow the Commission to make subsequent inflation adjustments to the asset thresholds by order every 10 years in accordance with the inflation adjustment mechanism set forth in section II.C below (the "Inflation Adjustment Mechanism").

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[48] Unless stated otherwise, the use of "fund family" or "fund families" in this release has the same meaning as "family of investment companies."

The proposal is designed to help the Commission more appropriately promote the effectiveness and efficiency of its regulations, with the goal of minimizing the significant economic impact on small entities, consistent with the RFA. The proposal would help 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. These analyses would, in turn, better inform the Commission of the regulatory impacts faced by small entities so that it may consider adapting its rulemaking accordingly.

The Small Entity Rules currently define small entities by reference to assets under management and net assets for investment advisers and investment companies, respectively. There has been substantial growth in assets under management and net assets over the decades since these thresholds were set. To this end, and as discussed in more detail below, the proposal is designed to capture the types and numbers of investment advisers and investment companies that the Commission now considers to be "small" in light of this growth.[49] Amending the definitions would help ensure the Commission's regulatory flexibility analyses capture a more meaningful population of "small entities" given asset growth over the past decades and, in turn, provide a clearer opportunity for public comment on the Commission's regulatory analyses with respect to this population.

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[49] *See infra* sections II.A and II.B (discussing the Commission's reasoning for increasing the asset-based thresholds for investment companies and investment advisers, respectively).

## II. DISCUSSION

### A. Proposed Amendments to Rule 0-10 of the Investment Company Act

#### 1. Raising the Net Asset Threshold

The proposal would amend paragraph (a) of rule 0-10 to increase the net asset threshold from $50 million to $10 billion and, as discussed in more detail in section II.C below, establish a mechanism to inflation-adjust this figure every ten years. The proposed increase accounts for the overall growth in the investment company industry since the $50 million threshold was originally set in 1982. In 1982, investment companies held $296.7 billion in net assets among 857 funds.[50] By the adoption of the 1998 amendments this had grown to $5.7 trillion among 7,829 funds,[51] with holdings of $41.6 trillion among 13,630 funds by 2024.[52] This growth in assets is attributable at least in part to overall economic growth leading to rising investment prices and the effects of inflation, as well as increased investor demand due to factors such as expansion of defined contribution retirement plans and easier access to investment services. One effect of this growth is that in 1982, 62.4% of investment companies were deemed "small entities,"[53] by 1998 that had dropped to 8.7%,[54] and by 2024, the share of investment companies

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50 Investment Company Institute, 2025 Investment Company Fact Book (2025), at Data Tables, *available at* https://www.icifactbook.org/25-fb-data-tables.html (sum of Tables 1, 9, 12). These figures do not include BDCs, as data regarding them is not readily available from this time.

51 *Id*.

52 The 2024 estimates are based on data reported in response to Items B.6, C.19, and F.11 on Form N-CEN as of Dec. 31, 2024.

53 1982 Adopting Release, *supra* footnote 8.

54 Deregistration of Certain Registered Investment Companies, Investment Company Act Release No. 23588 (Dec. 4, 1998) [63 FR 69236 (Dec. 16, 1998)] (339 out of approximately 3,900 funds are "small entities").

deemed "small entities" had fallen to 0.6%.[55] Raising the net asset threshold in rule 0-10 to reflect growth in the investment company industry over the past decades would improve the utility of RFA analyses by more closely reflecting the population of funds that does not have the same competitive advantages as larger fund groups (for instance, due to economies of scale when these larger groups perform certain compliance and other operational functions in-house). It also would more closely reflect the population of funds that does not have the same negotiating power as larger fund groups when retaining service providers to perform compliance and operational functions.

As discussed above, the Commission established the existing $50 million threshold in 1982 based on an analysis of adjusted expense ratios for a random sample of 500 investment companies. The Commission's approach at the time reflected a belief that funds that bear a higher level of expenses as a proportion of their net assets would be less able to bear regulatory costs relative to their peers with lower expense ratios. Taking into account the substantial changes in the fund industry since that time—including a high degree of concentration of assets in the largest fund complexes,[56] a greater differentiation of fund strategies (with different expense ratios that may reflect factors other than the fund's size), and the trend toward

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[55] 85 small entities / 13,630 total registered investment companies and BDCs = 0.6%. The number of small entities is based on Commission staff estimates of approximately 32 small open-end funds (including 4 exchange-traded funds), 38 small closed-end funds, 2 small UITs, and 13 small business development (together, 32 + 38 + 2 + 13 equals 85 small entities). This estimate is derived from an analysis of data obtained from Morningstar Direct and data reported to the Commission (*e.g.*, on Forms N-PORT, N-CSR, 10-Q, and 10-K) for the fourth quarter of 2024. *See also supra* footnote 52.

[56] In 1985 the top 10 fund complexes held 54% of total mutual fund and ETF assets, but by 2024 the top 10 complexes held 71% of these total assets. Investment Company Fact Book (2002), *available at* https://www.ici.org/system/files/attachments/2002_factbook.pdf; Investment Company Fact Book (2025), *available at* https://www.ici.org/system/files/2025-05/2025-factbook.pdf.

decreasing expense ratios across open-end funds generally[57]—the approach taken in 1982 may no longer be appropriate to set a small entity threshold.[58]

In determining how to calibrate the new proposed threshold, the Commission considered the distribution of assets across individual funds and fund families with the goal of ensuring that the proportion of funds that may face greater challenges in complying with Commission regulations due to their size be included in the small entity definition. Specifically, the Commission analyzed data reported on Form N-CEN to sort families of investment companies into percentiles according to their cumulative average total net assets. The Commission further analyzed this data to determine the percentage of individual funds and the percentage of average total net assets represented by each percentile. Table 1 below sets out the percentage of fund families, the percentage of individual funds, and the percentage of cumulative average total net assets that would be deemed small entities if the Commission were to set the threshold at the top end of each percentile.

**Table 1 - Distribution of Assets Across Funds and Fund Families**[59]

| Percentile of fund families[1] at or below threshold | Net Asset Threshold | % of individual funds[2] in fund families at or below threshold | % of fund assets[3] in fund families at or below threshold |
|---|---|---|---|
| 10th | $23.7 million | 0.87% | 0.0016% |
| 20th | $68.4 million | 1.84% | 0.01% |

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57 The average expense ratio for U.S. open-end funds is less than half of what it was two decades ago due to a combination of inflows into low-cost funds (with some index mutual funds and ETFs having fees that are close to zero), outflows from higher-cost funds, fee cuts, and relative underperformance by more-expensive funds. *See* Morningstar, "Fund Fees Are Still Declining, But Not as Quickly as They Once Were," May 28, 2025, *available at* https://www.morningstar.com/business/insights/blog/funds/us-fund-fee-study.

58 In light of these dynamics, that a fund's expense ratio is relatively high would not necessarily reflect that the fund is relatively small, but may be more attributable to the fund's strategy, perceived skill of the fund's investment adviser or management, or other factors unrelated to the fund's size.

59 Based on data reported on Form N-CEN through Jan. 21, 2025.

| Percentile of fund families[1] at or below threshold | Net Asset Threshold | % of individual funds[2] in fund families at or below threshold | % of fund assets[3] in fund families at or below threshold |
|---|---|---|---|
| 30th | $150.1 million | 2.92% | 0.03% |
| 40th | $319.6 million | 4.28% | 0.08% |
| 50th | $757.7 million | 6.03% | 0.18% |
| 60th | $1.69 billion | 9.16% | 0.43% |
| 70th | $3.54 billion | 13.99% | 0.95% |
| 80th | $10.04 billion | 22.91% | 2.13% |
| 90th | $43.47 billion | 37.87% | 6.99% |
| 100th | $9,450.72 billion | 100.00% | 100.00% |

Notes:
1. For purposes of these data, a fund family includes each fund that indicated on Form N-CEN that it is part of a family of investment companies. For a fund that did not indicate on Form N-CEN that it was part of a family of investment companies, it is included in this column as a separate fund family consisting solely of that fund.
2. "Fund" as used here refers to a registered investment company or business development company, including a separate series thereof.
3. As this table is based on Form N-CEN data, it does not include asset data for entities that do not report on Form N-CEN. The table does not include the data of investment companies exempt from registration, such as employees' securities companies. It also does not include the assets of business development companies, which do not file Form N-CEN. Rule 0-10 applies to all investment companies; the vast majority of investment company assets are reflected in investment companies that report on Form N-CEN.

Taken as a whole, registered investment companies have a total of approximately $41.6 trillion in net assets as of December 2024. As evidenced by Table 1, the assets of the investment company industry are heavily concentrated at the largest fund families.[60] For example, the Commission estimates that, as of December 2024, fund families above the 80th percentile in terms of aggregate average total net assets accounted for 97.9% of total net assets held by funds (as fund families at or below the 80th percentile threshold accounted for only 2.13% of fund assets). Similarly, as of December 2024, fund families above the 80th percentile accounted for

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60 The SBA considers economic characteristics composing the structure of an industry such as degree of competition, average firm size, start-up costs and entry barriers, and distribution of firms by size in establishing size standards. *See* 13 CFR 121.102. We have focused our analysis on the distribution of firms by size as that is the metric for which we have the best available data.

approximately 77% of individual funds (as the fund families at or below the 80th percentile threshold included 22.91% of individual funds). This reflects the fact that that the largest fund families not only manage the large majority of assets in the industry, but these large fund families also account for a majority of the individual funds.

While the Commission seeks to ensure that funds and fund groups that may face greater challenges with regulatory compliance due to their size be deemed small entities, we are also mindful that setting the threshold too high has the potential to be counterproductive and to undermine the purpose of the Commission's RFA analyses. A higher threshold would result in a larger pool of small entities and therefore would increase the number of small entities needed to be affected by a rule for the rule to "have a significant economic impact on a substantial number of small entities," which could lead to fewer RFA analyses being performed.[61] Accordingly, the Commission's proposed threshold is meant to identify a level below which a meaningful proportion of funds would be deemed small entities, but above which the size of, and concentration of assets in, fund families increases to such an extent that treating individual funds within those families as small entities would be counterproductive.

Based on analysis of the distribution of data in Table 1, we are proposing a "small entity" definition that corresponds closely to the 80th percentile threshold of $10.04 billion, which we have rounded for convenience in the proposed rule. The proposed $10 billion threshold would

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61 *See* 5 U.S.C. 605(b); *see also, e.g.*, 1982 Adopting Release, *supra* footnote 8, at n.41 and accompanying text (stating, in the context of the AUM threshold for investment advisers, "the bigger the class, the greater the number of entities within it that must be adversely affected by a particular rulemaking before it can be said that the rulemaking affects a 'substantial' number of the class"). Setting the threshold too high might also inadvertently lead to the Commission overlooking issues that concern the smallest entities when the Commission attempts to tailor its rules, and instead focusing primarily on issues of more general concern to the industry. Such an outcome might have the potential to perpetuate larger funds' advantages in the market, to the detriment of the smaller funds that the RFA was designed to protect. *See also* discussion at *infra* footnote 87 and accompanying text.

capture approximately 80% of fund families resulting in approximately 22.9% of individual funds holding approximately 2.13% of aggregate average total net assets being deemed small entities. While the proposed threshold would deem some relatively large individual funds "small" for purposes of the RFA, such an outcome is consistent with the economies of scale rationale for aggregating funds within a family. A single large fund with no other related investment companies would bear similar regulatory costs to several smaller, related funds that collectively represent a similar level of net assets.

We considered other approaches for defining investment companies that are small entities, including basing this definition on an entity's gross receipts.[62] The SBA Table of Size Standards lists "Open End Investment Funds" with a given size standard of $40 million in gross receipts.[63] For the Commission there is a better suited standard to identify a "small entity" for the investment company industry. This is primarily because the Commission does not have or collect data for gross receipts of registered investment companies. Additionally, as discussed above, funds primarily generate revenue through capital appreciation and other investment returns rather than receipts from the sale of goods or services. Moreover, a fund's investment returns may be attributable primarily to its particular investment strategy, meaning that two funds of identical size but pursuing different investment strategies may produce vastly different returns.

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62 One petitioner suggested that the Commission define "small entity" for funds to capture any fund with a principal adviser to the fund that has fewer than 50 employees or annual revenue less than $25 million. *See* AMAC Report, *supra* footnote 10; *see also infra* footnote 89. As discussed below, we are not proposing an employee-based size standard for investment advisers, and the Commission does not collect revenue data from investment advisers. We are therefore not proposing to define small investment advisers according to these metrics. *See infra* section II.B.1. As we are not proposing this standard to define investment advisers that are small entities, it would not be appropriate to define funds that are small entities according to the size of their adviser under this standard.

63 13 CFR 121.201, at subsector 525.

Accordingly, we do not believe that the gross receipts standard provides an appropriate means for the Commission to identify small investment companies for purposes of the RFA.[64]

We request comment on all aspects of the proposed revisions to the net asset threshold, including the following items:

1. Is the proposed $10 billion threshold useful for identifying investment companies that are "small entities"? Should the Commission adopt a higher or lower threshold? If so, why?
2. Are there alternative metrics other than net assets that would be effective to evaluate if an investment company is a "small entity"? If so, what are they and why would they be more effective than net assets? Please clarify what data that are already reported to the Commission could be used in applying those metrics. If they do not involve data that currently are reported to the Commission, should the Commission require them to be reported, what would be the costs of such reporting, and how are such costs justified?
3. Should the Commission use the SBA's standard for Open-End Investment Funds, which uses a threshold of $40 million in gross receipts? Should the threshold be based on another measure of revenue? If so, how should the Commission measure "gross receipts" (or other revenue measure) of an investment company or a family of investment companies for purposes of the threshold?
4. Are there alternative ways that the net asset threshold should be derived than the distribution-based analysis discussed above? For example, is the Commission's

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64 *See supra* section I.A.2.a.

expense ratio approach from 1982 a more appropriate way of setting the small entity threshold? If so, why?

5. Should the Commission consider a fund a "small entity" if its principal adviser is a "small entity" under rule 0-7? What about a sub-adviser that is a "small entity"? If so, why?

6. Should the Commission adjust the existing net asset threshold for inflation rather than setting a new threshold based on an analysis of the distribution of funds and fund assets since the threshold was set in 1982, as discussed above? If so, should the Commission measure the inflation adjustment from the time of the threshold's original adoption in 1982 or from the most recent amendments to the rule in 1998? If the Commission adjusted the existing threshold for inflation, is there a price index, such as the Personal Consumption Expenditures Chain-Type Price Index, the Consumer Price Index for All Urban Consumers, the Producer Price Index, or the GDP Price Deflator, that would be best suited for this adjustment?[65] Would using a securities market index such as the S&P 500 or the NYSE Composite Index, which is not based on inflation, be a better way to adjust the threshold that was set in 1982? Please supply explanations and reasoning.

### 2. Group Definition Amendments

We are proposing amendments to rule 0-10 to replace the term "group of related investment companies" with "family of investment companies," as that term is used in Item B.5 of Form N-CEN. This change would enable the Commission to rely on information that is

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[65] *See infra* footnote 126.

already reported on Form N-CEN to identify small entities for purposes of RFA analyses and to more efficiently consider whether future adjustments to the net asset threshold are warranted.

When the Commission amended rule 0-10 to aggregate net assets across groups of related investment companies, it defined the concept of a "group of related investment companies" in rule 0-10.[66] The Commission did not at that time adopt any corresponding disclosure requirements for a fund to specify whether it was part of a group of related investment companies. To date, the Commission still does not collect data that specifically identifies groups of related investment companies and their constituent funds. Instead, identifying groups of related investment companies requires a manual process (for example, assessing whether funds hold themselves out as related companies) to determine the number of small entities for purposes of conducting RFA analyses.[67]

We propose to replace the term "group of related investment companies" in rule 0-10 with "family of investment companies" as that term is used in Item B.5 of Form N-CEN.[68] That item requires investment companies to report whether they are part of a "family of investment companies" and, if so, to disclose the full name of the family of investment companies. The Commission has collected this information from funds since 1985 and is experienced with

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66 *See supra* footnotes 30-32 and accompanying text; *see also* 1998 Adopting Release, *supra* footnote 9.

67 The absence of specific data tailored to this purpose would also complicate setting a new net asset threshold based on the existing "group" definition. Using the "family of investment companies" definition from Form N-CEN has facilitated the approach to considering the new threshold for rule 0-10 in this proposal by incorporating data that funds report themselves.

68 Proposed rule 0-10(a)-(b).

analyzing this and other data collected on Form N-CEN.[69]

The definition of "family of investment companies" serves a substantially similar purpose to the definition of "group of related investment companies" in seeking to group together funds that hold themselves out to investors as related (the "holding out prong") and that share an investment adviser or key service provider (an administrator for a "group of related investment companies" or underwriter for a "family of investment companies"). For comparison, the table below provides the existing definition of "group of related investment companies" from rule 0-10 alongside the existing definition of "family of investment companies" from Form N-CEN:

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69 *See* Semi-Annual Report Form for Registered Investment Companies; Temporary Suspension of Quarterly Reporting Obligations of Certain Registered Investment Companies Pending Receipt of Comments on Proposed Final Action, Investment Company Act Release No. 14299 (Jan. 4, 1985) [50 FR 1442 (Jan. 11, 1985)] ("N-SAR Release") (this disclosure was originally part of Form N-SAR before that form was replaced by Form N-CEN).

**Table 2**

| "Group of Related Investment Companies" | "Family of Investment Companies" |
|---|---|
| (a) . . .<br><br>(1) In the case of a management company, ***group of related investment companies*** means two or more management companies (including series thereof) that:<br><br>(i) Hold themselves out to investors as related companies for purposes of investment and investor services; and<br><br>(ii) Either:<br><br>(A) Have a common investment adviser or have investment advisers that are affiliated persons of each other; or<br><br>(B) Have a common administrator<br><br>**(2)** In the case of a unit investment trust, the term ***group of related investment companies*** shall mean two or more unit investment trusts (including series thereof) that have a common sponsor.<br><br>**(b)** ***Special rule for insurance company separate accounts.*** In determining whether an insurance company separate account is a *small business* or *small entity* pursuant to paragraph (a) of this section, the assets of the separate account shall be cumulated with the assets of the general account and all other separate accounts of the insurance company. | "Family of investment companies" means, except for insurance company separate accounts, any two or more registered investment companies that:<br><br>(i) share the same investment adviser or principal underwriter; and<br><br>(ii) hold themselves out to investors as related companies for purposes of investment and investor services.<br><br>Insurance company separate accounts that may not hold themselves out to investors as related companies (products) for purposes of investment and investor services should consider themselves part of the same family if the operational or accounting or control systems under which these entities function are substantially similar. |

For management companies, both definitions require as one element that the investment companies hold themselves out to investors as related to one another for purposes of investment and/or investor services. Both definitions also focus on a shared investment adviser or other key service provider. While the specific differences between the two definitions are likely to result in

somewhat different outcomes in terms of which funds are or are not "small entities,"[70] the Commission nevertheless believes that the "family of investment companies" definition from Form N-CEN is an appropriate means of aggregating related funds for purposes of the small entity threshold. Indeed, the Commission has used the "family of investment companies" concept to group related funds in Form N-CEN (or a predecessor form) since 1985.[71] Moreover, utilizing the "family of investment companies" concept in the small entities context promotes consistency in our rules and avoids the need for the Commission to require new reporting from investment companies for the sole purpose of adjusting the small entity threshold and performing RFA analyses.

While we believe that the existing "family of investment companies" concept is sufficient and appropriate for this use, there are specific differences from the "group of related investment companies" concept that may produce different outcomes at the margins. For example, the "family of investment companies" definition groups funds that have a common principal underwriter, whereas the "group of related investment companies" definition groups funds that have a common administrator. The "family of investment companies" definition groups funds that have a common investment adviser, whereas the "group of related investment companies" definition groups funds that have *either* a common investment adviser or investment advisers

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70 Due to the absence of a reporting requirement relating to a fund's "group of related investment companies," as discussed *supra* at footnote 67 and accompanying text, performing a direct comparison of which funds would be small entities under a $10 billion threshold using the "group of related investment companies" definition versus which funds would be small entities using the "family of investment companies" definition, would require a significant amount of manual analysis. While the Commission has conducted this analysis in the past to calculate the number of small entities at the $50 million threshold, at the proposed $10 billion threshold the number of funds to manually analyze increases from a few hundred to several thousand, making performing the analysis impractical.

71 N-SAR Release, *supra* footnote 69 (adopting Form N-SAR).

that are affiliated persons of each other. These differences might lead to certain funds that are currently considered part of the same "group" not being part of the same "family" and vice versa, meaning that such funds would no longer be aggregated for purposes of the small entity threshold or would be newly aggregated for purposes of the small entity threshold, respectively. Any such differences, however, may be mitigated by other elements of the definition. For example, two funds whose advisers are merely affiliates of one another—and therefore do not meet the common adviser prong under the "family" definition—might share the same principal underwriter and would therefore continue to be aggregated for purposes of the small entity threshold, provided they also meet the holding out prong of the definition.

Moreover, notwithstanding the differences between the two terms, funds that are part of the same "family of investment companies" are likely to experience similar economies of scale as those funds that are part of the same "group of related investment companies." Examples of potential cost savings due to economies of scale might include complex-wide policies and procedures and recordkeeping systems, a shared chief compliance officer or board members, and one legal and compliance function that services the whole complex.

We recognize the proposed changes to the definition would alter the treatment of UITs (including insurance company separate accounts). In current rule 0-10, UITs receive differential treatment from management investment companies. They are not subject to the holding out prong and are considered part of a group of related investment companies only if they share a common sponsor.[72] Under the proposed changes, UITs would become subject to the holding out prong because all investment companies generally follow the same test under the definition of

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[72] Rule 0-10(a)(2).

"family of investment companies" in Form N-CEN.[73] Such a change is not expected to have a substantial effect on whether UITs are considered small entities because, based on staff experience, we understand that most UITs that have the same sponsor also have the same principal underwriter and hold themselves out as related.

There are particular considerations for insurance company separate accounts that are registered as UITs. In current rule 0-10, an insurance company's separate account is aggregated with the general account and all other separate accounts to determine whether the individual separate account is a small entity.[74] Under the proposed changes, however, the general account would no longer be considered in determining whether the family of investment companies is above or below the threshold. This approach is consistent with how the threshold applies to other types of investment companies because non-investment companies are generally excluded when assessing whether a family is above or below the threshold. For example, under both current rule 0-10 and under the proposed changes, a group of related investment companies or a family of investment companies, respectively, would not include any private funds (which are excluded from the Investment Company Act's definition of "investment company").

In addition to differences in approach involving aggregation among the general account and separate accounts, the proposed approach may affect the extent to which separate accounts are aggregated to determine whether individual separate accounts are small entities. Under the current approach, the assets of the separate account are cumulated with the assets of all other separate accounts of the insurance company. As discussed when the family of investment companies definition was adopted (and as would be the case if we were to adopt the proposed

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73 *See* Instruction to Item B.5 of Form N-CEN.

74 Rule 0-10(b).

family of investment companies approach in the investment company small entity definition), insurance company separate accounts that may not hold themselves out to investors as related companies would have their assets aggregated with each other only if the operational or accounting or control systems under which those entities function are substantially similar.[75] We do not expect this change would result in significant differences in the extent to which insurance company separate account assets are aggregated because, in the staff's experience, insurance company separate accounts tend to function under substantially similar operational or accounting or control systems.

The Commission has previously used the data reported in response to Item B.5 of Form N-CEN, together with other data reported on Form N-CEN, to estimate the number of "groups of related investment companies" that would or would not exceed a particular threshold, such as in the case of staggered compliance dates.[76] By amending rule 0-10 to refer to the term already used in Form N-CEN, the Commission could leverage existing data in this and future rulemakings and avoid any added burden of requiring new or different reporting from investment companies solely for purposes of assessing and setting a new small entity threshold.[77]

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75 *See* N-SAR Release, *supra* footnote 69.

76 Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Customer Information, Investment Company Act Release No. 35193 (May 16, 2024) [89 FR 47688 (June 3, 2024)], at Table 3; *see also* Investment Company Names, Investment Company Act Release No. 35000 (Sept. 20, 2023) [88 FR 70436 (Oct. 11, 2023)].

77 We also considered amending Form N-CEN to require investment companies to report whether they are part of a group of related investment companies as that term is currently defined in rule 0-10. We determined that such a change would not be justified by the added burden of: 1) increased reporting obligations on Form N-CEN; and 2) requiring funds to assess and report their affiliations using two distinct definitions within the same form.

We request comment on all aspects of the change to how the Commission proposes to aggregate funds under rule 0-10, including the following items:

7. Would the "family of investment companies" definition in Form N-CEN be an appropriate way of grouping investment companies for purposes of the small entity threshold? If not, why not?
8. Should the Commission make any changes to the definition of "family of investment companies" in Form N-CEN itself? For example, should that definition group together funds that meet the holding out prong of the definition but whose advisers are only affiliates of one another, as is currently the case under the "group of related investment companies" definition? Should the definition continue to require that funds hold themselves out *and* share a service provider or would the definition be more appropriate for identifying small entities without this holding out prong or if it required funds to hold themselves out *or* share a service provider? Please supply explanations and reasoning.
9. Should the Commission aggregate funds into groups or families in another manner? If so, how? Should the Commission instead eliminate the concept of "groups" or "families" altogether and look only to individual funds for purposes of assessing whether the fund is a small entity? If so, why?
10. Would the proposed changes to the treatment of UITs be appropriate for the small entity definition and if not, why not? How common is it for UITs that have the same sponsor to also have the same principal underwriter and hold themselves out as related?

11. Would the proposed changes to the treatment of insurance company separate accounts be appropriate for the small entity definition and if not, why not? For example, should the Commission's small entity assessment omit consideration of an insurance company's general account, as would be the case under the proposed changes? Is the instruction relating to separate accounts in Form N-CEN sufficiently clear? Is it correct that insurance company separate accounts generally tend to function under substantially similar operational or accounting or control systems?

12. Should we maintain the current definition of a group of related investment companies and create a new disclosure requirement for this item (for instance, in Form N-CEN)? What would the advantages of such a disclosure be, as compared to using the data already available from Form N-CEN? Or should we maintain the definition of a group of related investment companies and use it in place of "family of investment companies" in Form N-CEN?

### B. Proposed Amendments to Rule 0-7 of the Advisers Act

#### 1. The RAUM Threshold

The proposal would amend paragraph (a)(1) of rule 0-7 under the Advisers Act to raise the RAUM Threshold to $1 billion from $25 million and, as discussed in more detail in section II.C below, establish a mechanism to inflation-adjust this figure every ten years.[78] As discussed above, the current RAUM Threshold was adopted in the 1998 amendments to align the "small entity" definition applicable to advisers for RFA purposes with the $25 million AUM minimum

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78 Proposed rule 0-7(a)(1) under the Advisers Act.

threshold for adviser registration that had been enacted under NSMIA in 1996.[79] As a result, nearly all SEC-registered investment advisers have been excluded from treatment as a "small entity" in the Commission's RFA analyses. Because the current RAUM Threshold was aligned with the minimum threshold for adviser registration, RFA analyses in our rulemakings have not considered the substantial majority of advisers that are subject to registration under the Advisers Act and the full application of the Commission's rules thereunder.

The growth of the investment management industry in assets under management has over time also reduced the number of advisers that are deemed to be "small entities." According to Form ADV reporting, 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 RFA,[80] down from approximately 75% immediately before and 20% immediately after the 1998 amendments.[81]

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79 Consistent with this alignment, current paragraph (a)(1) also provides that the RAUM Threshold will increase in tandem with any increase to the minimum threshold for adviser registration that the Commission makes by rule. *See* 1998 Adopting Release, *supra* footnote 9, at n.48 (explaining the addition of "or such higher amount as the Commission may by rule deem appropriate under Section 203A(a)(1)(A) of the Act" to rule 0-7(a)(1)). Although the Dodd-Frank Act in 2010 effectively raised the minimum registration threshold for advisers from NSMIA's $25 million to $100 million, the RAUM Threshold was not increased. The proposal would revise paragraph (a)(1) to remove "or such higher amount as the Commission may by rule deem appropriate under Section 203A(a)(1)(A) of the Act (15 U.S.C. 80b-3a(a)(1)(A)" because the RAUM Threshold, as proposed, would exceed and thus not align with the minimum threshold for adviser registration.

80 Because exempt reporting advisers are not required to report on Form ADV whether they qualify as "small entities," the provided figures in this sentence are limited to registered investment advisers.

81 *See* 1997 Proposing Release, *supra* footnote 33, at n.59 and accompanying text (noting that up to 17,000 of approximately 22,500 total registered investment advisers met the then-rule's definition of "small entity" and that the Commission would lose regulatory responsibility for an estimated 16,000 of these "small" advisers as a result of NSMIA). Following the deregistration of advisers no longer eligible to register as a result of NSMIA, the Commission estimated that approximately 1,500 of 7,600 registered investment advisers (approximately 20%) would be treated as small entities. *See* 1998 Adopting Release, *supra* footnote 9, at n.52 and accompanying text.

The proposed amendments would increase the total number of investment advisers deemed to be "small entities." The Commission estimates that approximately 15,850 of the total 21,650 investment advisers, or approximately 75% of advisers,[82] have RAUM below the proposed RAUM Threshold. Taken as a whole, advisers manage a total of about $152.9 trillion in RAUM, with a mean of approximately $7 billion of RAUM per adviser. However, the distribution of RAUM across all advisers is highly uneven, in part due to some advisers that report having zero or virtually zero RAUM, and more significantly because of the concentration of RAUM with the very largest advisers in the industry, as illustrated in Table 3 below. The Commission estimates that over 85% of total RAUM is managed by the largest advisers in the top 95th to 100th size percentile (*i.e.*, by the top 5% of advisers in size). In light of this concentration, using the proposed $1 billion RAUM Threshold would still represent under 3% of total RAUM in the industry. In proposing the $1 billion RAUM Threshold, we considered the following distribution information on investment advisers, including RAUM values:

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[82] These estimates from Form ADV reporting data include only SEC-registered investment advisers and exempt reporting advisers. All of the Commission's rules under the Advisers Act may be applicable to investment advisers that are registered (or required to be registered), and some of its rules may also apply to exempt reporting advisers (*e.g.*, with respect to certain recordkeeping and reporting obligations, as well as insider trading and pay-to-play protections). Post-NSMIA, the Commission has generally not subjected state-registered advisers to its rules under the Advisers Act. *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997) [62 FR 28112 (May 22, 1997)], at nn.153-156 and accompanying text; *see also* Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles; Accredited Investors in Certain Private Investment Vehicles, Investment Advisers Act Release No. 2576 (Dec. 27, 2006) [72 FR 400 (Jan. 4, 2007)], at nn.14-19 and accompanying text. Additionally, because exempt reporting advisers are not required to provide RAUM information in Item 5 of Form ADV Part 1A, the data used for exempt reporting advisers reflects reported private fund gross asset values provided in Section 7.B. of Schedule D of Form ADV Part 1A. Private fund gross asset values are calculated in the same manner as RAUM in Item 5 in accordance with Form ADV instructions. *See* Instruction 6.e.(3) of Form ADV Part 1A (instructing filers to report as gross assets the assets of private funds that would be included in calculating RAUM under Item 5.F.).

**Table 3**

| Distribution of Investment Advisers and RAUM[83] | | | | |
|---|---|---|---|---|
| Percentile of Advisers | Individual RAUM of Adviser at Percentile[84] (Millions) | Total Number of All Advisers at or below Percentile | Total RAUM of All Advisers at or below Percentile | |
| | | | (Millions) | (Percent) |
| 10th | $33 | 2,172 | $21,482 | 0.0% |
| 20th | $96 | 4,331 | $151,003 | 0.1% |
| 25th | $125 | 5,414 | $271,591 | 0.2% |
| 50th | $324 | 10,827 | $1,399,259 | 0.9% |
| 55th | $399 | 11,910 | $1,788,139 | 1.2% |
| 60th | $500 | 12,993 | $2,271,386 | 1.5% |
| 65th | $632 | 14,075 | $2,879,161 | 1.9% |
| 70th | $834 | 15,158 | $3,665,541 | 2.4% |
| 75th | $1,130 | 16,240 | $4,711,141 | 3.1% |
| 80th | $1,654 | 17,323 | $6,182,565 | 4.0% |
| 85th | $2,612 | 18,406 | $8,342,641 | 5.5% |
| 90th | $4,944 | 19,488 | $12,370,725 | 8.1% |
| 95th | $14,040 | 20,571 | $21,290,612 | 13.9% |
| 100th | $10,246,596 | 21,654 | $152,878,412 | 100.0% |

In light of this significant concentration of RAUM with the very largest advisers, and although it would not result in the same proportion of advisers that were "small entities" as a result of the 1998 amendments, a $1 billion RAUM Threshold would strike an appropriate balance between the level of RAUM per "small" adviser and the proportion of total RAUM in the industry that would be captured by the new threshold. In addition, this proposed revision

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83 This table shows percentiles for the distribution of investment advisers (including only registered investment advisers and exempt reporting advisers) by size based on their RAUM and the share of total RAUM managed by all advisers at or below the included distribution percentiles. This data reflects Form ADV reporting as of Dec. 31, 2024, and does not reflect the impact of either the total asset or control relationship prongs in the "small entity" definition. It does not include advisers (other than exempt reporting advisers) that are not registered or required to be registered with the Commission.

84 This refers to the RAUM of the investment adviser at the distribution percentile cutoff.

would capture many advisers that are "not dominant in" their field, which is an element of the statutory definitions of small business and small organization in the RFA, due to the fact that such advisers individually manage much less RAUM relative to the largest advisers.[85] Although using $1 billion as the RAUM Threshold would classify as small a large proportion of investment advisers, this is a reasonable and appropriate result for purposes of our analyses under the RFA, in part due to the relative amount of assets managed by these advisers compared to the largest advisers, *i.e.*, those dominant in their field.[86]

We considered that the significant concentration of RAUM with the very largest advisers could suggest that an even higher RAUM Threshold than $1 billion should be used. However, a size standard threshold that is set too high could inadvertently cause the Commission's attempts to tailor its rules for small entities to focus on issues of more general concern to the industry, instead of on issues that particularly impact smaller entities, which the RFA was designed to protect.[87]

The Commission has received feedback suggesting alternatives to an asset-based approach to identifying small advisers. For example, the Commission received a petition to initiate rulemaking that recommends the "small entity" definition be amended to depend on

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85 5 U.S.C. 601(3), 601(4), and 15 U.S.C. 632(a). The Control Relationship Threshold addresses the other element of these definitions; namely, that the entity "is independently owned and operated." *See id.*; *see also infra* section II.B.3.

86 *See also* 1981 Proposing Release, *supra* footnote 23 (stating that an earlier small adviser standard that likewise encompassed a large proportion of investment advisers was reasonable and appropriate).

87 *See supra* footnote 61.

whether an investment adviser has no more than a certain number of employees.[88] Additionally, the SEC Asset Management Advisory Committee (the "AMAC") recommended that the "small entity" definition be amended to include advisers with fewer than a certain number of employees or with less than a certain amount of "annual revenue."[89] The parties making these suggestions state that their alternatives better reflect the restricted resources and other constraints faced by small advisers and, in the case of employee-based standards, are reported on Form ADV and not affected by inflation and other fluctuations.

Although we considered these suggestions, we are proposing to maintain a RAUM-based size standard. In developing size standards, the Commission has evaluated potential criteria both for their "capacity to differentiate small members of an industry from other members and [their ability to make] use of readily available information to derive [the] standards."[90] The Commission has been able to utilize RAUM to appropriately differentiate between small and other advisers to identify a universe of entities that are not dominant in the field, a principal element of small entity status under the RFA. Further, the Commission has ready access to RAUM data for the types of advisers that are generally subject to our rules, not just those registered with us.[91] Also, using RAUM to distinguish between advisers is an approach that is broadly consistent with size standards generally under the Advisers Act and the rules thereunder,

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88 IAA Petition, *supra* footnote 10 (suggesting that the Commission adopt a size standard of 100 employees or fewer). The Commission received comments in support of the IAA Petition's attempt to assess the economic impact of regulations on small advisers more realistically and consider less onerous alternatives. These comments are available at https://www.sec.gov/comments/4-811/4-811.htm.

89 AMAC Report, *supra* footnote 10 (suggesting that the Commission adopt a size standard of fewer than 50 employees or annual revenue of less than $25 million).

90 1998 Adopting Release, *supra* footnote 9, at n.50; 1997 Proposing Release, *supra* footnote 33, at n.58; 1981 Proposing Release, *supra* footnote 23.

91 *See supra* footnote 82.

as well as advisers' existing reporting and compliance obligations.[92] Investment advisers also typically charge their clients fees as a percentage of their assets under management, such that their business as a practical matter generally scales with their assets under management. Furthermore, an increased RAUM-based size standard is an appropriate metric to reflect the growth of the size of the asset management industry, which the proposal is partly designed to address, because as the industry grows it would report more assets under management.[93]

Accordingly, we are not proposing an employee-based or revenue-based size standard, but we request comment on employee-based, revenue-based, and other alternative size standards below (including whether the Commission should continue to use its own size standards for investment advisers rather than use the default size standards provided by the SBA).[94] The Commission has previously stated that an employee-based size standard was inappropriate for investment advisers because the then-recommended standard could have captured virtually all

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92 Congress has repeatedly differentiated the regulations to which an adviser is subject using assets under management thresholds as size standards under the Advisers Act. *See, e.g.*, section 203(m) (setting forth an assets under management threshold for the private fund adviser exemption from registration) and section 203A(a)(2) (setting forth an assets under management threshold for mid-sized advisers) of the Advisers Act.

93 *See supra* footnotes 79-81 and accompanying text. Appropriately increasing the RAUM-based size standard will also cause fewer "advisers that may manage higher AUM but still face similar resource constraints and other challenges that are characteristic of a small business" to be excluded from treatment as a small entity. IAA Petition, *supra* footnote 10.

94 *See supra* section I.A.3.a. (discussing SBA size standards for investment advisers). The category of industry in the SBA's size standards under which an investment adviser would generally come appears to be "Finance and Insurance—Portfolio Management and Investment Advice," where the existing SBA size standard is $47 million in "annual receipts" (which generally appears to be a measure of gross revenue or income). Notably, although the SBA uses an employee-based size standard for certain categories of industry, it does not do so with respect to this category. *See* 13 CFR 121.104, 121.201; *see also* Comment Letter from the SBA Office of Advocacy to FinCEN (May 15, 2024) (stating that FinCEN should use the SBA's default size standards for investment advisers rather than the Commission's size standards), *available at* https://advocacy.sba.gov/wp-content/uploads/2024/05/Comment-Letter-FInCEN-Investment-Advisors.pdf.

advisers and because the Commission did not at the time receive information regarding employees from advisers.[95] Although the Commission now receives employee information from registered investment advisers on Form ADV, the Commission does not receive this information from exempt reporting advisers. In addition, an employee-based standard raises implementation challenges in appropriately addressing the use of service providers and outsourcing by investment advisers, which could distort the extent to which the number of an adviser's own employees reflects its actual resources and size.[96] With regard to concerns raised in the IAA Petition about asset-based tests' ability to respond to inflation, as discussed in more detail below, we agree that inflation can be among the factors that impact the adequacy of dollar-based size standards over time and are proposing to include a mechanism to regularly adjust the RAUM Threshold for inflation.[97]

With respect to a revenue-based size standard, as was recommended by AMAC and as reflected in the SBA's default size standards, the Commission does not collect information regarding advisers' revenues and, because the fees and thus revenues of an adviser generally

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95 *See* 1982 Adopting Release, *supra* footnote 89; 1981 Proposing Release, *supra* footnote 23.

96 As the market for advisory services has become more specialized, competitive and technology-intensive over time, investment advisers have increasingly engaged service providers and used outsourcing (including, *e.g.*, using independent contractors that may perform advisory functions on the adviser's behalf) to meet evolving market complexity and client demands in a cost-effective manner. *See, e.g.*, *The Race to Scalability 2020: Current Insights from a Decade of Advisor Research on Investment Management Trends*, Flexshares (2020); Christopher Newman, *Asset Managers Continue to Outsource Middle Office Functions*, EisnerAmper (Oct. 21, 2020); *Smart Outsourcing Can Be a Game-Changer for RIAs*, ThinkAdvisor (Mar. 18, 2021). Additionally, consolidations in the advisory industry may have increased the likelihood that advisers that are part of a larger asset management group could use personnel who formally are employees of affiliates but who may not be taken into account by a purely employee-based size standard. *See infra* footnote 112 and accompanying text (discussing the types of benefits that derive from control relationship affiliations between an adviser and a larger firm and acknowledging that the RFA was not designed to confer benefits on entities with significant resources from their large business affiliates).

97 *See also infra* section II.C.

scale directly with its assets under management, the proposal is generally consistent with the approach of the SBA size standards to measure the amount of business carried out by an entity.[98]

We request comment on all aspects of the proposed amendments to the RAUM Threshold, including the following items:

13. If we maintain a RAUM-based size standard, should we use a threshold amount other than the proposed amount of $1 billion? Would a lesser or greater amount be more appropriate? For example, based on Form ADV reporting data (as shown in Table 3 above), using a $100 million threshold would cover approximately 20% of advisers, a $200 million threshold would cover approximately 35% of advisers, a $300 million threshold would cover approximately 50% of advisers, a $1.5 billion threshold would cover approximately 80% of advisers, a $2.5 billion threshold would cover approximately 85% of advisers, and a $5 billion threshold would cover approximately 90% of advisers. Alternatively, should the RAUM Threshold not be amended?
14. Should we use criteria instead of RAUM for our adviser size standards? For example, are there qualitative criteria that should be used (*e.g.*, types of clients)? Would any recommended alternative criterion enable the Commission to meaningfully differentiate small advisers from non-small advisers, and could it be used in size standards derived from information that is readily available to the Commission with respect to all advisers (*i.e.*, both registered investment advisers and exempt reporting advisers)? To the extent that necessary information related to the recommended criterion is not readily available to the Commission, please address whether the costs

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98 *See supra* footnote 28 and section I.A.3.a.

to advisers in reporting such information would be appropriate to enable the use of a small entity size standard based on that information.

15. Consistent with the IAA Petition and AMAC Report's recommendation, should the Commission develop a form of employee-based size standard and, if so, how many employees should establish its threshold?[99] Should we, as suggested in the IAA Petition, use a standard of 100 or fewer employees or, as recommended in the AMAC Report, use a standard of fewer than 50 employees—or should we use another higher or lower number of employees? If the Commission were to determine its own numerical threshold for an employee-based size standard, what factors should it consider when determining that number? Would an employee-based size standard enable the Commission to more meaningfully differentiate small advisers from non-small advisers for purposes of the RFA? In order to enable any employee-based size standard for all advisers, should exempt reporting advisers also be required to provide employee information on Form ADV? Who should qualify as an employee for this purpose? For example, if a person were an employee of an affiliate, but worked for the adviser full or part-time and was paid by the affiliate, should that person be considered an employee of the adviser? Additionally, how should the use of service providers and outsourcing by advisers impact a potential employee-based size standard (and any related reporting)? To the extent that an employee-based size standard would be relevant in combination with a RAUM-based standard (or a

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[99] For discussion related to employee-based size standards, see *supra* footnotes 88-96 and accompanying text.

revenue-based or other alternative size standard), how should it be meaningfully combined (*e.g.*, as an additional standard or as a standard in the alternative)?

16. Do commenters agree that the Commission should continue to have its own size standards for investment advisers rather than use the default size standards provided by the SBA? Would using a $47 million "annual receipts" size standard enable the Commission to meaningfully differentiate small advisers from non-small advisers for RFA purposes, and would advisers be capable of reporting this information to the Commission pursuant to potential amendments to Form ADV? Alternatively, should the Commission consider another form of a revenue-based size standard (or another amount)? For example, should the Commission utilize the AMAC's recommendation of annual revenue of less than $25 million? To the extent that a revenue-based size standard would be relevant in combination with another size standard, what is that size standard and how would it be meaningfully combined?

17. Should the RAUM Threshold be tied to adviser registration thresholds, as discussed above? For instance, should the RAUM Threshold be tied to the $100 million registration threshold for mid-sized advisers introduced by the Dodd-Frank Act in 2010, and if so, should the RAUM Threshold be further adjusted since 2010?[100] If the $100 million RAUM registration threshold from the Dodd-Frank Act were used and adjusted for inflation since its enactment in 2010, it would result in a RAUM Threshold of approximately $150 million and approximately 30% of advisers falling within the threshold.

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100 *See supra* footnote 79.

18. Alternatively, should the RAUM Threshold (or other aspects of the small entity definition for investment advisers) be tied to the particular registration status of an investment adviser, such that, for instance, rulemakings that create distinct obligations between registered investment advisers, exempt reporting advisers and/or unregistered advisers would use distinct criteria to identify advisers that are small entities within the distinct classes of registration status?

19. Should the Commission consider using the same figure for investment advisers' RAUM Threshold as for investment companies' net asset threshold (or vice versa) as was the case when initially adopted in 1982?[101] Why or why not?

### 2. The Total Assets Threshold

We are requesting comment on whether to amend the Total Assets Threshold. Currently this threshold excludes from the definition of small entity any adviser that has total assets of $5 million or more on the last day of its most recent fiscal year.[102] The Commission set this $5 million asset threshold in 1998 to in part to align with the $5 million total assets test used in the "small entity" definition in 17 CFR 240.0-10 ("Exchange Act rule 0-10").[103] The Commission

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101 *See supra* section II.A.1.

102 Rule 0-7(a)(2) under the Advisers Act. "Total assets" is defined in rule 0-7(b)(2) to mean total assets as shown on the balance sheet of the investment adviser (or of a "person" in a control relationship with the adviser in accordance with paragraph (a)(3) of rule 0-7). It includes business assets, such as leases and equipment, as well as other types of assets, such as cash and accounts receivable. *See* 1998 Adopting Release, *supra* footnote 9, at n.42.

103 Rule 0-10(a) under the Exchange Act; *see* 1998 Adopting Release, *supra* footnote 9, at n.51. Before the 1998 amendments, paragraph (a)(2) of rule 0-7 included a "business assets" test instead of a total assets test; and the threshold used for this test was approximately the median value for advisers' business assets at the time. *See* 1997 Proposing Release, *supra* footnote 33, at n.57 ("The Commission originally selected [the business asset threshold] because it was approximately the median value of advisers' business assets. . . . The median may have changed in recent years, but that figure remains significant inasmuch as more than half of all advisers apparently do not have assets exceeding it."); 1982 Adopting Release, *supra* footnote 8.

aligned the values in these "small entity" definitions under the Advisers Act and Exchange Act in view of financial industry affiliations between advisers and other large financial services firms to which the Exchange Act definition would apply.[104]

The Total Assets Threshold enables the Commission to differentiate more meaningfully between small advisers and non-small advisers that may not have significant RAUM but do have significant assets related to a non-advisory line or component of their business.[105] The Total Assets Threshold also works in concert with the Control Relationship Threshold in capturing common types of advisory industry affiliations. The Commission, however, receives limited information regarding advisers' total assets that would allow it to analyze with specificity the impact of potential changes to the Total Assets Threshold over the distribution of investment advisers. The Commission only receives information in Item 1.O. of Part 1A of Form ADV regarding investment advisers with $1 billion or more in total assets[106] as well as information in Item 12 from registered investment advisers with less than $25 million in RAUM regarding whether they have less than $5 million in total assets.[107] Accordingly, we are not proposing to

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104 *See* 1998 Adopting Release, *supra* footnote 9, at n.51; *see also* 1997 Proposing Release, *supra* footnote 33 ("An adviser in a control relationship with a large broker-dealer or other large financial services firm typically benefits from the financial and technical resources of the large firm. The large firm may handle much of the administrative and compliance needs of its affiliated adviser using resources not reflected in the adviser's client assets or business assets."). In addition, the 1998 amendments relatedly added paragraph (a)(3) to rule 0-7, which, as discussed below, applies the Total Assets Threshold in paragraph (a)(2) to any "person" in a control relationship with the investment adviser.

105 The IAA Petition states that using an asset-based standard, including standards based on total firm balance sheet assets, does not accurately reflect regulatory burdens imposed on smaller advisers. *See* IAA Petition, *supra* footnote 10. As with the RAUM Threshold discussed above, asset-based metrics like the Total Assets Threshold are an effective and appropriate method to differentiate small members of the investment advisory industry from other members. *See supra* footnotes 90-93 and accompanying text.

106 According to Form ADV data, about 680 investment advisers (over 3% of all advisers) report having $1 billion or more in total assets.

107 *See infra* section II.B.4. As discussed below, we are proposing to amend Item 12 of Part 1A of Form ADV to conform to any amendments made to rule 0-7.

modify the Total Assets Threshold at this time, but are requesting comment on possible changes to the threshold.

Although we are broadly seeking comment on whether and, if so, how to update the Total Assets Threshold, we are proposing to include an Inflation Adjustment Mechanism to inflation-adjust the Total Assets Threshold every ten years, rounded to the nearest multiple of $500,000, or 10% of the current Total Assets Threshold. We expect that in any final rule this mechanism would be calculated against and scale with the Total Assets Threshold ultimately used by the Commission. If an updated Total Assets Threshold were ultimately adopted, we would adjust the dollar amount to be rounded to the nearest multiple of 10% of such updated Total Assets Threshold (*e.g.*, if the final Total Assets Threshold is updated to $10 million, then future inflation adjustments would be rounded to the nearest multiple of $1 million).

We request comment on all aspects of the proposed Total Assets Threshold, including the following items:

20. Should the Total Assets Threshold remain $5 million? If the threshold should be increased, to what should it be increased, and why? If the threshold should be decreased, to what should it be decreased, and why? Should we look to a median or other value for investment advisers based on information provided to the Commission as a result of public comment?
21. Should the Total Assets Threshold continue to be aligned with the total asset threshold in Exchange Act rule 0-10(a)? If so, should we expressly tie the Total Assets Threshold to the total assets threshold in Exchange Act rule 0-10(a) by cross-referencing that rule in rule 0-7 under the Advisers Act? Are there other total asset

thresholds under Commission regulations to which the Total Assets Threshold should be aligned? If so, what are they, and why?

22. Should the Total Assets Threshold be adjusted based on inflation or some other market growth metric? If so, which metric or index and from when should the threshold be adjusted, and why? For example, the Inflation Adjustment Mechanism as proposed to apply to the Total Assets Threshold utilizes the Personal Consumption Expenditures Chain-Type Price Index and compares it to 1998 prices. Applying that standard to the Total Assets Threshold itself would result in a new threshold value of approximately $10 million.
23. Should the Total Assets Threshold be adjusted to represent an increase proportionate to the proposed amendments to the RAUM Threshold by increasing the Total Assets Threshold by the same factor (x40, as proposed) that we are increasing the RAUM Threshold (*e.g.*, $200 million)? Why or why not?
24. Should the Total Assets Threshold be eliminated from rule 0-7? Given that there are some investment advisers that register with the Commission but report to have zero or virtually zero RAUM, as well as that there are large advisers that may have insignificant RAUM but have significant assets from a non-advisory component of their business, would removing the total assets test diminish the Commission's capacity to differentiate these types of advisers and small advisers for RFA purposes? If the total assets test were removed, what other size standards (*e.g.*, employee or client-based) could be used to differentiate these advisers, and why should they be used? What existing sources of data does the Commission have to support the use of such other standards? If the Commission does not have existing sources of data,

should the Commission require the reporting of such data, what would be the costs to registrants of such reporting, and how are the costs of such reporting justified?

25. In what ways should the Inflation Adjustment Mechanism be adjusted should the Commission adopt a different Total Assets Threshold from the current one?

### 3. The Control Relationship Threshold

Currently, the Control Relationship Threshold uses an assets under management standard to establish the disqualifying size of affiliated advisers that is the same standard ($25 million) used in the RAUM Threshold. The proposal would amend paragraph (a)(3) of rule 0-7 under the Advisers Act to increase this assets under management threshold from $25 million to $1 billion.[108] The proposal would also, as discussed in more detail in section II.C, include Inflation Adjustment Mechanisms for the assets under management and total assets aspects of the Control Relationship Threshold that are identical to those proposed for the RAUM and Total Assets Thresholds, respectively.[109]

The proposed amendments are designed to conform this threshold to the proposed revisions to the RAUM Threshold and the inclusion of an Inflation Adjustment Mechanism in the Total Assets Threshold.[110] The Commission previously stated that "Congress did not intend

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[108] Proposed rule 0-7(a)(3) under the Advisers Act. The proposal would also revise paragraph (a)(3) to remove "(or such higher amount as the Commission may deem appropriate)" in line with the proposed removal of related language in paragraph (a)(1). *See supra* footnote 79 (discussing the proposal's revision to paragraph (a)(1) to remove "or such higher amount as the Commission may by rule deem appropriate under Section 203A(a)(1)(A) of the Act (15 U.S.C. 80b-3a(a)(1)(A)").

[109] Proposed rule 0-7(c) under the Advisers Act.

[110] The proposed amendments to the Control Relationship Threshold would continue to consider an adviser's affiliates on an individual basis, unlike the proposed amendments applicable to investment companies, which would instead continue to consider the net assets of multiple related investment companies as

to confer the benefit of any determination that an entity is small upon the affiliates of large businesses, because only those business and organizations that are 'independently owned' may qualify as small entities pursuant to the definitions contained in the RFA."[111] As such, the Commission noted its belief "that it is appropriate . . . to preclude entities with significant economic or financial resources [from their large business affiliates] from obtaining potential regulatory benefits under the RFA."[112] The proposed amendments to the Control Relationship Threshold would align its assets under management threshold to the RAUM Threshold that, as discussed above, more appropriately captures advisers that should be deemed "small entities" for purposes of our analyses under the RFA.

Based on Form ADV reporting, the Commission estimates that updating the Control Relationship Threshold to reflect the increase of the RAUM Threshold from $25 million to $1 billion would result in approximately 1,225 investment advisers (or approximately 5.7% of all

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aggregated together. *See supra* section II.A.2. The proposed amendments would thus remain consistent with the Commission's historically distinct approaches between identifying "small entity" investment advisers and "small entity" investment companies. Retaining this distinction as proposed would continue to be appropriate in light of the distinct operational and organizational structures of investment advisers and investment companies (for example, investment companies generally do not have any staff, unlike investment advisers, but instead rely on service providers for all of their operations, including regulatory compliance), as well as because of the distinct reporting information that the Commission receives with respect to investment advisers and investment companies.

111 1981 Proposing Release, *supra* footnote 23 (citing 5 U.S.C. 601(4) and 15 U.S.C. 632, which define as a small business or small organization an entity that "is independently owned and operated and is not dominant in its field"); *see also* 1997 Proposing Release, *supra* footnote 33.

112 *See* 1997 Proposing Release, *supra* footnote 33. A non-control affiliation with a large adviser or other person, or a control relationship with an adviser or other person that is itself a "small entity," would not trigger exclusion under the Control Relationship Threshold. As noted above, per the Commission's prior positions and staff observations, advisers that are in a control relationship with other large firms typically benefit from the financial and technical resources of the large firm in a manner that is not reflected in advisers' own client or balance sheet assets. We continue to view this benefit as typically deriving from a control relationship rather than mere affiliation and, accordingly, believe that the RFA's exclusion of businesses that benefit from large affiliates is appropriately applied to advisers that are in a control relationship with other large advisers (or other firms).

advisers) being excluded from treatment as a "small entity." As such, the Commission estimates that, as a result of the proposed amendments to the assets under management thresholds in paragraphs (a)(1) and (a)(3), approximately 14,620 of the total 21,650 investment advisers, or approximately 70% of all advisers, would meet the revised RAUM and Control Relationship Thresholds. This would be an appropriate result despite the increase in excluded advisers. As noted above, one aspect of the statutory definition of small business or small organization under the RFA is that the entity is "independently owned and operated."[113] The continued application of a control relationship threshold (including as amended) would exclude advisers that may not have significant RAUM or total assets themselves but are in a control relationship with a large adviser (or other firm) and thus are not "independently owned and operated," appropriately focusing the Commission's analyses on those advisers that are small for purposes of the RFA.[114]

We are not at this time proposing revisions to the Total Assets Threshold. Accordingly, we are not proposing to amend the total assets threshold in the Control Relationship Threshold, but are requesting comment on whether to revise the threshold.

We request comment on all aspects of the proposed amendments to the Control Relationship Threshold, including the following items:

26. Should the assets under management threshold in the Control Relationship Threshold be increased to $1 billion as proposed? Should the threshold be tied to the RAUM Threshold as proposed? Should the total assets threshold in the Control Relationship Threshold be changed? If so, what should it be changed to, and why? Should the threshold be tied to the Total Assets Threshold? Or should we use a different assets

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113 5 U.S.C. 601(3), 601(4), and 15 U.S.C. 632(a).

114 *See supra* footnotes 109-110 and accompanying text.

under management threshold and total assets threshold for this purpose? Should the Control Relationship Threshold include alternative criteria other than assets under management and total assets, for example, if alternative criteria are used at adoption to replace or modify the current RAUM Threshold and/or Total Assets Threshold?[115] Should the Control Relationship Threshold be eliminated?

27. As discussed above, the Commission is considering whether to amend the Total Assets Threshold but is not proposing specific revisions to it at this time. Should the Commission incorporate any future amendments to the Total Assets Threshold into the Control Relationship Threshold? If the Commission modifies or eliminates the Total Assets Threshold in paragraph (a)(2) with respect to investment advisers, should it also do so or instead maintain the total assets threshold with respect to persons that are control affiliates in paragraph (a)(3)? Why or why not?

28. Does paragraph (a)(3)'s treatment of advisers affiliated with other advisers and persons that are not themselves "small entities" properly focus on control affiliations? Are there other relationships that more appropriately capture the types of affiliations the Control Relationship Threshold was designed to capture? If so, what are they, and why? Are there specific factors that would appropriately include as small entities those advisers that are substantially managed and resourced independently of any control affiliate?[116] If so, what are they, and why? Are they different from the types

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115 *See supra* sections II.B.1 and II.B.2.

116 *See* IAA Petition, *supra* footnote 10 ("We would expect the Commission, as part of the notice and comment process, to seek input on all elements of the proposed definition, including what specific factors would appropriately include as small entities those advisers that are substantially managed and resourced independently of any control affiliate.").

of factors that may already be used to rebut the presumption of control arising from ownership?

29. Should the Control Relationship Threshold be amended to consider an adviser's control affiliates on an aggregate rather than individual basis, similar to the historical and proposed approach for investment companies, notwithstanding the operational and organizational differences between investment advisers and investment companies? If so, why, and how should this aggregation of control affiliates function? For example, should an adviser be considered a "small entity" if it, collectively with other investment advisers that are its control affiliates, has less than a certain amount of RAUM (*e.g.*, $1 billion)?

#### 4. Form ADV Amendments

The proposal would amend Form ADV to revise Instruction 17 of the General Instructions,[117] Item 12 of Part 1A of Form ADV,[118] and rule 203-3(b).[119] The proposed amendments to Form ADV are designed to reflect the proposed revisions to the RAUM Threshold and the Control Relationship Threshold. Instruction 17, pursuant to rule 203-3(b), currently provides a continuing hardship exemption from electronic filing requirements if a registered or registering investment adviser is a small business and can demonstrate that filing electronically would impose an undue hardship.[120] In line with the amendments to the definition of small entity, the proposed amendments to Instruction 17 would permit a continuing hardship

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117 *See* proposed Form ADV General Instructions, Instruction 17.

118 *See* proposed Form ADV, Part 1A, Item 12.

119 *See* 17 CFR 275.203-3(b) (setting forth the conditions for an investment adviser to apply for a continuing hardship exemption).

120 *See* current Form ADV General Instructions, Instruction 17.

exemption from electronic filing requirements for investment advisers which: (i) can demonstrate that filing electronically would impose an undue hardship, (ii) are required to answer Item 12 because they have less than $1 billion, instead of $25 million, in RAUM, and (iii) are able to respond "no" to each question in Item 12, which would continue to track the elements of the small entity definition and which determines whether registered or registering investment advisers meet the definition of "small business" or "small organization" under rule 0-7.[121] We are also proposing to remove the parenthetical "(because you have assets under management of less than $25 million)" from Instruction 17 because this language is implicit in Instruction 17's requirement that an investment adviser be required to answer Item 12 and the threshold amount set forth in Instruction 17 would otherwise need to be updated periodically in conformity with rule 0-7 to remain valid. We are also proposing to revise the language of Instruction 17 and rule 203-3(b) to explicitly apply to an investment adviser who is either a "small business" or "small organization" in conformity with Item 12.

The amendments to Item 12 would revise the RAUM threshold under which an investment adviser must complete Item 12 from $25 million to $1 billion, corresponding with the proposed amendments to the definitions of "small business" and "small organization" under rule 0-7.[122] They would also revise the thresholds set forth in Items 12.B.(1) and C.(1)—which collect information on the elements of the small entity definition—to align with the proposed Total Assets Threshold and Control Relationship Threshold. Finally, we are proposing to revise Item 12 in order to: (i) provide more context regarding the significance of Item 12 in determining

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121 A registered or registering investment adviser which can respond "no" to each question in Item 12 has not exceeded the RAUM Threshold, Total Assets Threshold, or Control Relationship Threshold.

122 *See* current Form ADV, Part 1A, Item 12.

whether an adviser is a "small entity," (ii) reference updates to the form by the Commission to reflect changes to these thresholds due to the Inflation Adjustment Mechanism, and (iii) explain that the thresholds in Item 12 will be adjusted in conformity with the thresholds in rule 0-7.

We request comment on all aspects of the proposed revisions to Form ADV, including the following items:

30. Should Form ADV be revised to conform to the proposed revisions to rule 0-7, as proposed? Do commenters foresee any difficulties arising from increasing the RAUM threshold in Instruction 17 under which investment advisers may seek a continuing hardship exemption from electronic filing requirements? Are investment advisers with greater than $25 million in RAUM likely to take advantage of this continuing hardship exemption?
31. Should the Commission amend Form ADV to require investment advisers to report additional information regarding their total assets? For example, in addition to what is already required, should Item 1.O be amended to require an investment adviser to report its total assets on the last day of its most recent fiscal year, to report whether it has $5 million (or any revised threshold adopted by the Commission) or more in assets on the last day of its most recent fiscal year, or to report any other range?
32. Should the Commission amend Form ADV to require investment advisers to report additional information regarding other persons (other than natural persons) that the investment adviser controls? For example, should an investment adviser have to report the approximate total assets of persons (other than private funds reported in Section 7.B.(1)) that the investment adviser controls in Section 7.A. of Schedule D of Form ADV, as of the last day of the person's most recent fiscal year?

33. Should the Commission amend Form ADV to require investment advisers to report additional information regarding other persons (other than natural persons) that control or are under common control with the investment adviser? What information could be requested here that would assist the Commission in establishing that a controlled investment adviser is a "small entity" for the purposes of the analyses conducted under the RFA?

34. Should the Commission require investment advisers to report additional information regarding the nature of their control relationships? For example, if the Commission required an investment adviser to report whether it received financial or administrative assistance from a person (other than a natural person) it is in a control relationship with, should the absence of such assistance impact whether an investment adviser is considered a "small entity" for purposes of the RFA?

35. Does the text proposed to be added to Item 12 clarify that an investment adviser that is required to answer Item 12 and is properly able to respond "no" to each question in Item 12.A, B, and C is considered a "small entity" for the purposes of the analyses conducted under the RFA? Should the Commission require investment advisers to self-report their "small entity" status following completion of Item 12, or would it be helpful to add an automated message in the Investment Adviser Registration Depository ("IARD") indicating an investment adviser's reported "small entity" status once it properly completes Item 12? Would indicating an investment adviser's reported "small entity" status be useful for investors reviewing Form ADV filings or for investment advisers completing Form ADV?

36. Should the Commission require exempt reporting advisers to complete Item 12 or report their RAUM on Form ADV? If so, how should exempt reporting advisers report their RAUM?

37. Should the Commission remove the parenthetical "(because you have assets under management of less than $25 million)" from Instruction 17? Would it provide investment advisers with useful information if the Commission instead left the parenthetical in Instruction 17 and periodically updated the threshold amount for inflation in accordance with the proposed rule 0-7(c)? Why or why not?

38. Does the additional language proposed to be added to Item 12 regarding the inflation adjustment make clear that the thresholds in that item would be adjusted for inflation in conformity with the inflation adjustments to the thresholds in rule 0-7? Would referencing the inflation adjustments create confusion for investment advisers filling out Item 12? Why or why not?

### C. Periodic Future Adjustments

In addition to proposing to adjust the asset-based thresholds, we are also proposing amendments to rules 0-7 and 0-10 that would provide a mechanism for periodic future adjustments of the asset-based thresholds used in these rules' small entity definitions.[123] Specifically, the amendments would provide that the Commission will issue an order every ten years adjusting: (i) the net asset threshold in the investment company small entity definition; and (ii) in the investment adviser small entity definition, the RAUM Threshold, the Total Assets

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[123] Proposed rule 0-10(c); proposed rule 0-7(c).

Threshold, and the assets under management and total assets aspects of the Control Relationship Threshold.

In proposing to adjust certain asset-based thresholds for "small entity" definitions as discussed above, the Commission considered an analysis of the distribution of fund and adviser assets and the growth in these assets over time. The thresholds provided for by the amendments would improve the utility of the RFA analysis at adoption in a manner, for the reasons discussed above, that is more appropriate than the alternatives we considered (*e.g.*, an employee-based or revenue-based size standard or inflation adjusting the current thresholds). These proposed thresholds, however, may become less useful over time due to growth in markets and any subsequent changes in the investment company and investment adviser industries. The proposed adjustment would ensure that the thresholds are adjusted every ten years, because the adjustment would be required by rule and effected through a Commission order. Adjustments that the Commission makes mechanically by order could help maintain the thresholds at levels that reflect the buying power of money over time, without the need for Commission action through rulemaking. The Commission has historically incorporated automatic inflation adjustments to certain dollar-based thresholds in regulations affecting investment companies and investment advisers.[124] These automatic adjustments reflect that some level of change in dollar value is reasonably anticipated to occur in the future, and help ensure that the rules' intended application remains consistent and relevant over time. We similarly expect that the proposed adjustments would prevent the thresholds in the small entity definitions from becoming less meaningful over time on account of anticipated changes in dollar value. Specifically, because a fund's size is

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[124] *See, e.g.*, rule 3c-7 under the Investment Company Act; rule 205-3 under the Advisers Act; *see also infra* footnote 128.

related to its ability to bear compliance costs, adjusting the asset-based thresholds is designed to account for potential increases in those compliance costs. It is possible, but less predictable, that the net asset thresholds may become less useful over time even taking the proposed adjustments into account (for example, with the advent of market events, changes in the makeup or distribution of size of the fund or adviser markets, or other industry changes). In this case, the Commission could consider performing appropriate analyses to propose amendments to the thresholds again in the future.

Unlike our analysis that informed the proposed increases to the asset-based thresholds, inflation is a known factor for which a precise value can reliably be derived from a defined index. The proposed amendments to rule 0-10 and rule 0-7 would require that the adjustment of the asset-based thresholds be calculated by reference to the Personal Consumption Expenditures Chain-Type Price Index (the "PCE Index"),[125] which is published by the Department of

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[125] Proposed rule 0-10 would require the net asset threshold for small entities be adjusted for inflation by (i) dividing the year-end value of the PCE Index for the calendar year preceding the calendar year in which the order is being issued, by the year-end value of the PCE Index for the calendar year any final rule is adopted, (ii) multiplying $10 billion (*i.e.*, the proposed net asset threshold) by that quotient, and (iii) rounding the product to the nearest multiple of $1 billion. Proposed rule 0-7(c)(1) would adjust the RAUM Threshold and assets under management aspects of the Control Relationship Threshold by starting with the same quotient but would multiply that by $1 billion, rounded to the nearest multiple of $100 million. Proposed rule 0-7(c)(2) would, as discussed above, adjust the Total Assets Threshold and the net assets aspect of the Control Relationship Threshold by multiplying the same quotient by $5 million, rounded to the nearest multiple of $500,000. *See also supra* section II.B.2.

Commerce.[126] The PCE Index is often used as an indicator of inflation in the U.S. economy.[127] Additionally, the Commission routinely has used the PCE Index in similar contexts in Commission rules, and it is also used in provisions of the federal securities laws.[128] We are proposing to use the PCE Index to calculate inflation adjustments for this rulemaking for consistency with other Commission rules, and because the methodology and scope of the PCE Index reflects a broad sector of the U.S. economy.

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126 The values of the PCE Index are available from the Bureau of Economic Analysis, a bureau of the Department of Commerce. *See* https://www.bea.gov. The PCE Index measures the prices that people living in the United States, or those buying on their behalf, pay for goods and services. The PCE Index is known for capturing inflation (or deflation) across a wide range of consumer expenses and reflecting changes in consumer behavior. *See* https://www.bea.gov/data/personal-consumption-expenditures-price-index.

127 *See, e.g.*, Clinton P. McCully, Brian C. Moyer & Kenneth J. Stewart, Comparing the Consumer Price Index and the Personal Consumption Expenditures Price Index, SURVEY OF CURRENT BUS., Nov. 2007, at 26, n.1 (PCE Index measures changes in "prices paid for goods and services by the personal sector in the U.S. national income and product accounts" and is primarily used for macroeconomic analysis and forecasting); *see also* FEDERAL RESERVE BOARD, MONETARY POLICY REPORT TO THE CONGRESS, at n.1 (Feb. 17, 2000), *available at* https://www.federalreserve.gov/boarddocs/hh/2000/february/ReportSection1.htm#FN1 (noting the reasons for using the PCE Index rather than the consumer price index).

128 *See, e.g.*, Qualifying Venture Capital Funds Inflation Adjustment, Investment Company Act Release No. 35305 (Aug. 24, 2024) [89 FR 70479 (Aug. 30, 2024)] (adopting a rule that adjusts for inflation the dollar threshold used in defining a "qualifying venture capital fund" using the PCE Index); Investment Adviser Performance Compensation, Investment Advisers Act Release No. 3372 (Feb. 15, 2012) [77 FR 10358, 10367 (Feb. 22, 2012)] (stating that the Commission is using the PCE Index in connection with required inflation adjustments to the dollar thresholds in the definition of "qualified client" appearing in 17 CFR 275.205-3, and stating that the PCE Index is widely used as a broad indicator of inflation in the economy); Definitions of Terms and Exemptions Relating to the "Broker" Exceptions for Banks, Securities Exchange Act Release No. 56501 (Sept. 24, 2007) [72 FR 56514 (Oct. 3, 2007)] (using PCE Index in adopting periodic inflation adjustments to the fixed-dollar thresholds for both "institutional customers" and "high net worth customers" under rule 701 of Regulation R "because it is a widely used and broad indicator of inflation in the U.S. economy"); *see also* Amendments to Form ADV, Investment Advisers Act Release No. 3060 (July 28, 2010) [75 FR 49234 (Aug. 12, 2010)] (using PCE Index in increasing for inflation the threshold amount for prepayment of advisory fees that triggers an adviser's duty to provide clients with an audited balance sheet and the dollar threshold triggering the exception to the delivery of brochures to advisory clients receiving only impersonal advice). The Dodd-Frank Act also requires the use of the PCE Index to calculate inflation adjustments for the cash limit protection of each investor under the Securities Investor Protection Act of 1970. *See* section 929H(a) of the Dodd-Frank Act, 15 U.S.C. 78fff-3.

We are proposing a schedule of adjusting the investment company and investment adviser small entity asset thresholds for inflation every 10 years. Given the distributions of different-sized entities for investment companies and investment advisers, inflationary changes over shorter periods would generally not result in a meaningfully different set of investment companies and investment advisers being considered small entities under their respective definitions. Additionally, implementing more frequent adjustments would pose challenges for the Commission's RFA analysis because more frequent inflation adjustments make it more likely that a fund's or adviser's small entity status would change between proposal and adoption.

The proposed amendments providing for future inflation adjustment to the investment company small entity net asset threshold would require rounding to the nearest multiple of $1,000,000,000. The proposed amendments to the investment adviser small entity RAUM Threshold and assets under management aspect of the Control Relationship Threshold would require rounding to the nearest multiple of $100,000,000 whereas the amendments to the Total Assets Threshold and total assets aspect of the Control Relationship Threshold would require rounding to the nearest multiple of $500,000. Due to the magnitude of each of these thresholds ($10 billion, $1 billion and $5 million respectively), rounding with greater specificity would not be a useful differentiator of funds' or advisers' ability to bear regulatory cost due to size.[129]

We request comment on all aspects of the proposed amendments to rules 0-10 and 0-7 that would provide for periodic future inflation adjustments to the asset-based thresholds used in these rules' small entity definitions, including the following items:

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[129] We are proposing to round all the asset-based thresholds to the nearest 10% of the amount of the adjusted threshold. *See* proposed rule 0-7(c)(1)(ii) and (c)(2)(ii) and proposed rule 0-10(c)(2).

39. Should the Commission adopt the proposed mechanism for periodic adjustments of the small entity asset-based thresholds in rule 0-10 and rule 0-7 by order, and if not, why not? Is adjusting for inflation the best mechanism for determining this periodic adjustment? If so, is the PCE Index the price index best suited for this purpose? Are there other price indexes, such as the Consumer Price Index for All Urban Consumers, the Producer Price Index, or the GDP Price Deflator, that would be better suited for this purpose, and why?

40. Instead of or in addition to periodically adjusting for inflation, should the Commission periodically and mechanically adjust the small entity thresholds to reflect any other metric? If so, why? For example, should the Commission periodically and mechanically adjust the thresholds to reflect overall growth in the markets (as a proxy for asset growth in the investment company and investment adviser industries) by reference to a securities market index or a blend of security market indexes? If so, what index, or blend of indexes, would be appropriate, given that funds and advisers invest in all types of securities, including in private markets? Should the Commission make periodic adjustments to the asset thresholds in order to maintain a fixed percentage of investment companies and investment advisers as small entities? Should this percentage be of fund families, total number of entities, total industry assets or some other metric? If the Commission were to maintain a fixed percentage of small entities, what should that percentage be for investment companies and for investment advisers? For example, should it be the percentages that result following the proposed increase in asset thresholds in rules 0-10 and 0-7, as discussed above?

41. Is 10 years an appropriate timeframe for future adjustments for the investment company and investment adviser small entity asset thresholds and if not, why not? Would a shorter or longer timeframe such as 1, 3, 5 or 15 years be more appropriate? Would different timeframes be appropriate for investment companies and investment advisers? Should there be circumstances where the rules specify that the periodic adjustment should not occur or should be postponed (*e.g.*, in the case of a significant market downturn that extends beyond a certain period)?

42. Should the Commission select an adjustment cycle that starts on a specified year, rather than based on the date of final adoption? For instance, if the Commission were to adopt these rules in 2026, should the first adjustment occur in 2035 and then every 10 years thereafter (*e.g.*, 2045, 2055, 2065, etc.)? Should the adjustment period coincide with the adjustment cycles for other rules?[130]

43. When calculating the inflation-adjusted asset thresholds, should we round the dollar amount or use an exact number for the threshold? If we are rounding, is rounding to the proposed amounts the appropriate level of specificity for these calculations? Are there any considerations that are unique to any of the asset-based thresholds? Please supply explanations and reasoning.

## III. ECONOMIC ANALYSIS

The Commission is mindful of the economic effects, including the costs and benefits, of its rules. The Commission has a long-held focus on small entities when engaged in rulemaking. A purpose of the RFA is to promote the effectiveness and efficiency of regulations, including

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[130] *See supra* footnote 128.

through consideration of alternative regulatory approaches, with the goal of minimizing the significant economic impact on small entities consistent with the stated objectives of applicable statutes.[131] The Commission is required to determine if a rulemaking is likely to have a "significant economic impact on a substantial number of small entities" under the RFA.[132] In applicable rulemakings, the Commission's definitions of "small entities" determine the scope of the IRFA and FRFA. The proposed definitions are expected 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. These analyses would, in turn, better inform the Commission of the regulatory impacts faced by small entities so that it may consider adapting its rulemaking accordingly. To the extent such adaptations to future rulemakings would occur, the use of the amended definitions of "small entities" in RFA analyses could result in different benefits and costs of such rulemakings. For example, if the Commission, informed by the more tailored RFA analyses, determined to scope fewer small entities into future rulemakings or tailor obligations imposed by such rulemakings differently for small entities, there could be fewer compliance costs imposed on such entities.

In addition to these indirect effects, the proposed rule would have direct economic effects where the proposed small entity definitions would affect the application of existing Commission rules and regulations. Currently, the Commission's definition of "small entity" under the RFA is incorporated into the Commission's other rules and regulations only in connection with an adviser's responses to Form ADV (and the Commission is proposing to make corresponding amendments to the form). We thus consider the effects of the proposed definition as it relates to

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131 *See supra* footnote 2.

132 *See supra* footnote 3.

the use of that definition in Form ADV as well as the effects of the associated proposed changes to the form.

First, the proposal would amend Form ADV to revise Instruction 17 of the General Instructions, which currently permits registered or registering investment advisers to receive a continuing hardship exemption from Form ADV electronic filing requirements, pursuant to rule 203-3(b), if such investment adviser is a small business and can demonstrate that filing Form ADV electronically would impose an undue hardship. Instruction 17, as revised, defines an investment adviser as a "small business" or "small organization" if it is required to answer Item 12 (which itself relies on the definition in rule 0-7) and it is able to respond "no" to each question in Item 12. Since the proposed amendments to Item 12, in conformity with rule 0-7, would reflect that the RAUM Threshold was increased from $25 million to $1 billion, Instruction 17 would similarly reflect this increase in the threshold for the availability of the continuing hardship exemption.[133] Approximately 10,051[134] additional registered investment advisers may be eligible for the exemption under the revised definition, as reflected in the amended Instruction 17, before any future adjustment for inflation.[135]

We expect that the increased availability of the continuing hardship exemption to registered investment advisers meeting the proposed definition would have minimal economic impact. Due to the ubiquity of inexpensive access to computers and the internet - both to advisers themselves and to the service providers they may employ - any newly eligible advisers are

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133 *See supra* section II.B.4II.B.4.

134 This estimate captures the number of registered investment advisers with RAUM equal to or above $25 million but below $1 billion. *See infra* footnote 149.

135 *See supra* section II.C.

unlikely to be able to demonstrate that filing Form ADV electronically would impose an undue hardship.[136] We therefore anticipate that few, if any, additional advisers would be able to rely on the exemption.

Second, the proposal would amend Item 12 of Part 1A of Form ADV to align the RAUM threshold for completing the questions in that item with the proposed amendments to the definitions of "small business" and "small organization" under rule 0-7; the amendments to that item would also revise the questions in Items 12.B.(1) and C.(1) to collect information on the elements of the amended small entity definition.[137] As a result, approximately 10,051[138] additional registered investment advisers would be required to complete Item 12 of Part 1A (before any future adjustment for inflation).[139] Because the information to complete the corresponding questions would be readily available to advisers, we estimate that the cost increase for each affected adviser would be minimal, averaging approximately $95 per adviser per year.[140]

We use a discount rate to adjust for differences in the timing of estimated benefits and costs.[141] Table 4 presents the discounted present value of expected annualized benefits and costs that are monetized in our economic analysis, using real discount rates of 3 percent and 7

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136 The Commission has not received applications for the continuing hardship exemption in recent years. In addition, advisers may still be eligible for the temporary hardship exemption under 17 CFR 275.203-3(a), regardless of whether they are a small business or small organization, if they experience unforeseen technical difficulties.

137 *See supra* section II.B.4II.B.4.

138 *See supra* footnote 134.

139 *See supra* section II.C.

140 The $95 is based on the following calculations: hourly rate of a Management Analyst in the securities industry at $378 for 0.25 hours ≈ $95. *See infra* footnote 151.

141 *See* OMB, CIRCULAR A-4, at 32 (Sept. 17, 2003) (discussing the main rationales for this understanding).

percent.[142] We use a 10-year horizon that encompasses the principal expected benefits and costs that are monetized in the economic analysis.[143]

**Table 4: Present Discounted Value of Monetized Benefits and Costs (in 2025 $) Over a 10-year Time Horizon[1]**

| Estimated Effects | 3% real discount rate | 7% real discount rate |
|---|---|---|
| Benefits | n/a | n/a |
| Costs | $8,266,294[2] | $6,937,187[3] |

[1] This Table includes only benefits and costs that are monetized in the economic analysis.
[2] We estimate recurring annual compliance costs of approximately $95 per adviser for 10,051 affected advisers. The resulting aggregate annual burden is $954,845. We assume that these costs are incurred in a steady stream, and we apply mid-year discount factors.
[3] *Id.*

We do not anticipate that the proposed amendments would have any direct effects on efficiency, competition, or capital formation because, as discussed above, they would have minimal direct economic impact. But to the extent that the amended definitions of "small entities" contribute to the Commission better tailoring its rulemaking to account for the regulatory challenges faced by small entities, they could have indirect effects on efficiency, competition, and capital formation resulting from future rulemakings. For example, if the Commission, informed by the more tailored RFA analyses, determined to tailor future rulemakings to reduce compliance costs for small entities, there could be benefits to competition.

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142 Consistent with OMB Circular A-4 and to reflect the difference in timing of economic effects when benefits and costs do not take place in the same time period, the Commission presents monetized economic effects using discount factors. *See id.* at 31-34 (stating that, "[f]or regulatory analysis, [agencies] should provide estimates of net benefits using both 3 percent and 7 percent" discount rates and discussing why those rates are reasonable default rates).

143 *See id.* at 31 (stating that "[t]he ending point should be far enough in the future to encompass all the significant benefits and costs likely to result from the rule").

Lastly, the Commission considered alternatives to the proposed amendments to Form ADV to align the form with the amended definition.[144] Specifically, we considered replacing Item 12 of Part 1A of Form ADV with a single question that would ask advisers to indicate whether they fall under the amended small entity definition, instead of providing the information in Items 12.A, B, and C that would allow the Commission to continue to make that determination, under the amended definition. While the alternative would streamline the information reported in that item, we understand that it would not reduce costs for advisers because an adviser would still have to gather from its own records the information needed to apply the small entity definition.[145] In addition, maintaining the requirement for advisers to report the information needed to apply the "small entity" definition would continue to provide the Commission with insight into the class of small entity advisers and how the individual parts of the definition affect whether advisers qualify as a small entity.

We request comment on all aspects of the economic analysis of the proposed amendments. To the extent possible, we request that commenters provide supporting data and analysis on the benefits, costs, and effects on competition, efficiency, and capital formation of the proposed amendments or any reasonable alternatives.

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144 Given the scope and context for this rulemaking, the Commission does not believe there are specific reasonable alternatives to the proposed conforming changes to the instruction for the continuing hardship exemption because these changes merely align the language in the instruction with the amended small entity definition and related changes to Item 12.

145 We anticipate that advisers would generate the necessary records in the ordinary course of their advisory businesses. *See infra* footnote 152.

## IV. PAPERWORK REDUCTION ACT

### A. Introduction

The proposal would revise an existing "collection of information" within the meaning of the Paperwork Reduction Act of 1995 (the "PRA").[146] The title for the collection of information is: "Form ADV" (OMB control number 3235-0049). The Commission is submitting this collection of information to the OMB for review and approval in accordance with the PRA.[147] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

We discuss below the collection of information burdens associated with the proposed amendments to Form ADV. Responses to the disclosure requirements of the proposed amendment to Form ADV are not kept confidential.

### B. Proposed Amendments to Form ADV

The proposal would amend Form ADV to revise Item 12 of Part 1A of Form ADV to increase the RAUM Threshold under which an investment adviser must complete Item 12 from $25 million to $1 billion, corresponding with the proposed amendments to the definitions of "small business" and "small organization" under rule 0-7 under the Advisers Act.[148] The proposal would also revise the thresholds set forth in Items 12.B.(1) and C.(1)—which collect information on the elements of the small entity definition—to align with the proposed changes to the Control Relationship Threshold. These collections of information would provide information to the Commission and investors. The Commission staff may also use the collection of

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146 44 U.S.C. 3501 *et seq*.

147 44 U.S.C. 3507(d); 5 CFR 1320.11.

148 *See supra* section II.B.1.

information in its examination and oversight program. Because the proposal would expand the group of advisers that are required to provide responses to Item 12, an additional burden would be imposed on advisers that have between $25 million and $1 billion in RAUM.

We estimate this burden to amount to an average of fifteen minutes (or 0.25 hours) annually per adviser. We estimate the number of respondents to this information collection to be 10,850 advisers, including 799 advisers that have less than $25 million in RAUM and may already complete Item 12.[149] Accordingly, we estimate the total burden hours for the new Form ADV amendments to be 2,512.75 hours.[150] We estimate that the total monetized cost to each registered investment adviser that would be newly required to respond to Item 12 as a result of

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[149] This estimate is based on information reported by advisers through the IARD. Based on IARD data as of Dec. 31, 2024, of the 15,909 SEC-registered advisers, 10,850 responded to Item 5.F. of Part 1A of Form ADV indicating that they have RAUM of less than $1 billion, and 799 indicated that they have RAUM of less than $25 million.

[150] 10,850 – 799 = 10,051 advisers. One-quarter (.25) hour x 10,051 advisers = 2,512.75 hours.

the amendments would be approximately $94.50,[151] and that the total monetized cost for such advisers would be $949,819.50.[152]

### C. Proposed Amendments to Rule 0-7 of the Advisers Act and Rule 0-10 of the Investment Company Act

Each of proposed rule 0-7 and rule 0-10 does not contain a "collection of information" requirement within the meaning of the Paperwork Reduction Act of 1995 (the "PRA"), nor does it create any new filing, reporting, recordkeeping, or disclosure reporting requirements.[153] Accordingly, the PRA is not applicable.[154]

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151 We estimate the cost at a rate of $378 per hour, which is the compensation rate that we have calculated for a Management Analyst in the securities industry. One-quarter (0.25) hours x $378 per hour = $94.50. To calculate the occupational hourly rates used in this release, the Commission uses occupation-specific mean hourly wage data from the Occupational Employment and Wage Statistics (OEWS) program of the Bureau of Labor Statistics (BLS) for the securities industry (NAICS 523). *See Occupational Employment and Wage Statistics*, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/oes/; *see also Standard Occupational Classification*, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/soc/ (describing occupational classification system used by BLS); EXEC. OFF. OF THE PRESIDENT, OFF. OF MGMT. & BUDGET, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (2022), *available at* https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf (describing the industry classification system used by BLS and other agencies). To account for any changes in wages between the data reference period and when the data are released, the mean hourly wage for each occupation is multiplied by the seasonally adjusted employment cost index for private wages and salaries. *See Employment Cost Index*, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/eci/. The adjusted mean hourly wage is then multiplied by a factor that accounts for nonwage costs, such as bonuses, benefits, and overhead. The nonwage cost adjustment factor is calculated as an average over the 10 most recently available years of data of the ratio of the Bureau of Economic Analysis's annual gross output data for the securities industry to total annual wages across all occupations for the securities industry's OEWS data. *See Gross Output by Industry*, U.S. BUREAU OF ECONOMIC ANALYSIS, https://www.bea.gov/data/industries/gross-output-by-industry; *Occupational Employment and Wage Statistics*, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/oes/. The final product is the occupational hourly rate. *See generally* UPDATED METHODOLOGY FOR CALCULATING OCCUPATIONAL HOURLY RATES (Dec. 19, 2025), *available at* https://www.sec.gov/files/method-occupational-hourly-rates.pdf.

152 2,512.75 hours x $378 per hour = $949,819.50. We do not expect advisers to incur any external cost burden in connection with this information collection because advisers generate the necessary records in the ordinary course of their advisory businesses.

153 44 U.S.C. 3502(3).

154 44 U.S.C. 3501 *et seq*.

### D. Total Estimated Burden

We estimate that investment advisers that would be newly required to respond to Item 12 of Part 1A of Form ADV would incur a total annual hour burden resulting from the collections of information discussed above of approximately 2,512.75 hours, at a monetized cost of $949,819.50.[155] The total external burden costs would be $0.

A chart summarizing the proposed components of the total annual burden for investment advisers is below.

| Form ADV Description of New Requirements | No. of Responses | Internal Burden Hours | External Burden Costs |
|---|---|---|---|
| Annual burden for making representations on Item 12 of Part 1A of Form ADV. | 10,051 | 2,512.75 (0.25 hours per adviser) | 0 |

We estimate the total burden associated with the proposed amendments to Form ADV to amount to an average of one-quarter (0.25) hours annually per adviser. The amendments do not require investment advisers to collect any new types of information. The only differences in burden hours and internal monetized costs between current and proposed Item 12 of Part 1A of Form ADV will be determined by the number of advisers newly required to respond to Item 12.

### E. Request for Comments

We request comment on whether our estimates for burden hours and any external costs as described above are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the

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[155] This estimate is based upon the following calculation: 2,512.75 hours x $378 per hour.

information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information, including whether the estimates are too high or too low; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

In addition to these general requests for comment, we also request comment specifically on the following issues:

44. Our analysis relies upon certain assumptions, such as that it will take advisers approximately one-quarter (0.25) hours per year to respond to the proposed amendments to Item 12. Do commenters agree with these assumptions? If not, why not, and what data would commenters recommend that we use?

Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the OMB Desk Officer for the Securities and Exchange Commission, MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov, and should send a copy to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090, with reference to File No. S7-2026-01. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release; therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-2026-01, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

## V. REGULATORY FLEXIBILITY ACT CERTIFICATION

The RFA[156] requires the SEC to prepare and make available for public comment an initial regulatory flexibly analysis of the impact of the proposed rule amendments on small entities, unless the SEC certifies that the rules, if adopted would not have a significant economic impact on a substantial number of small entities.[157] Pursuant to section 605(b) of the RFA, the SEC hereby certifies that the proposed amendments to rule 0-10 under the Investment Company Act, rules 0-7 and 203-3(b) under the Advisers Act, and Form ADV would not, if adopted, have a significant economic impact on a substantial number of small entities.

For the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (i) has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management 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.[158] For the purposes of the Investment Company Act and the Regulatory Flexibility Act, investment companies are considered small entities if they, together with other funds in the same group of related funds, have net assets of $50 million or less as of the end of its most recent fiscal year.[159]

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156 5 U.S.C. 601 *et seq.*

157 *See* 5 U.S.C. 603(a) and 605(b).

158 Rule 0-7.

159 Rule 0-10.

The Commission's proposed amendments to the Small Entity Rules would ultimately affect its analyses under the RFA in future rulemakings but would not themselves impose an economic impact on funds or advisers. The proposed amendments to rule 203-3(b) are clarifying in nature and would not impose a significant economic impact on advisers. While additional investment advisers would have to complete Item 12 of Form ADV, the information required by this Item is readily available to advisers and the additional cost of this change would be minimal.[160] Therefore, there would be no significant economic impact on a substantial number of small entities as a result of these proposed amendments. The SEC encourages written comments on the certification. Commentators are asked to describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

The Commission understands that no regulatory flexibility analysis is required for the proposed amendments. The proposed amendments to the definitions of the terms "small business" and "small organization" for investment companies and investment advisers do not impose any substantive requirements on small businesses.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the SEC hereby certifies that the proposed amendments to Investment Company Act rule 0-10, Advisers Act rule 0-7 and Form ADV would not, if adopted, have a significant economic impact on a substantial number of small entities.

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160 *See supra* footnote 140 and accompanying text.

## VI. CONSIDERATION OF IMPACT ON THE ECONOMY

For purposes of SBREFA,[161] we must advise OMB whether a regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results in or is likely to result in (i) an annual effect on the economy of $100 million or more; (ii) a major increase in costs or prices for consumers or individual industries; or (iii) significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

## VII. OTHER MATTERS

This action is a significant regulatory action under Executive Order 12866, as amended, and has been reviewed by the Office of Management and Budget.

## STATUTORY AUTHORITY

The Commission is proposing the rule and form amendments contained in this document under the authority set forth in chapter 6 of title 5 of the United States Code (particularly section 601 thereof [5 U.S.C. 601]), the Investment Company Act, particularly, section 38 thereof [15 U.S.C. 80a-37], the Advisers Act, particularly section 211 thereof [15 U.S.C. 80b-11].

**List of Subjects in 17 CFR Parts 270, 275, and 279**

Investment companies, Investment advisers, Reporting and recordkeeping requirements, Administrative practice and procedure.

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[161] Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).

**Text of Proposed Rule and Form Amendments**

For the reasons set out in the preamble, the SEC proposes to amend title 17, chapter II of the Code of Federal Regulations as follows:

**PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940**

1. The authority citation for part 270 continues to read, in part, as follows:

**Authority**: 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, 80a-39, 1681w(a)(1), 6801-6809, 6825, and Pub. L. 111-203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

2. Amend § 270.0-10 by:

a. Revising paragraph (a).

b. Removing paragraph (b).

c. Revising paragraph (c) and redesignating paragraph (c) as paragraph (b).

d. Adding new paragraph (c).

The revisions read as follows:

**§ 270.0-10 Small entities under the Investment Company Act for purposes of the Regulatory Flexibility Act.**

(a) ***General.*** For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 *et seq.*) and unless otherwise defined for purposes of a particular rulemaking, the term *small business* or *small organization* for purposes of the Investment Company Act of 1940 shall mean an investment company that, together with other investment companies in the same family of investment companies, has net assets of $10 billion or less as of the end of its most recent fiscal year, or, following [DATE TEN YEARS AFTER EFFECTIVE DATE OF FINAL RULE], the dollar

amount specified in the most recent order issued by the Commission in accordance with paragraph (c) of this section and as published in the FEDERAL REGISTER. For purposes of this section, family of investment companies has the same meaning and conditions as in Item B.5. of Form N-CEN.

(b) ***Determination of net assets.*** The Commission may calculate its determination of the net assets of a family of investment companies based on the net assets of each investment company in the family of investment companies as of the end of such company's fiscal year.

(c) ***Future inflation adjustments.*** The dollar amount specified in paragraph (a) of this section shall be adjusted by order of the Commission, issued on or about [DATE TEN YEARS AFTER EFFECTIVE DATE OF FINAL RULE], and approximately every ten years thereafter. The adjusted dollar amount established in such orders shall be computed by:

(1) Dividing the year-end value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), as published by the United States Department of Commerce, for the calendar year preceding the calendar year in which the order is being issued, by the year-end value of such index (or successor) for the calendar year [YEAR OF EFFECTIVE DATE OF FINAL RULE]; and

(2) Multiplying $10 billion times the quotient obtained in paragraph (c)(1) of this section and rounding the product to the nearest multiple of $1 billion.

**PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940**

3. The authority citation for part 275 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 80b-2(a)(11)(G), 80b-2(a)(11)(H), 80b-2(a)(17), 80b-3, 80b-4, 80b-4a, 80b-6(4), 80b-6a, 80b-11, 1681w(a)(1), 6801-6809, and 6825, unless otherwise noted.

* * * * *

4. Amend § 275.0-7 by revising paragraph (a) and adding new paragraph (c).

The revisions read as follows:

**§ 275.0-7 Small entities under the Investment Advisers Act for purposes of the Regulatory Flexibility Act.**

(a) For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 *et seq.*) and unless otherwise defined for purposes of a particular rulemaking proceeding, the term *small business* or *small organization* for purposes of the Investment Advisers Act of 1940 shall mean an investment adviser that:

(1) Has assets under management, as defined under Section 203A(a)(3) of the Act (15 U.S.C. 80b-3a(a)(2)) and reported on its annual updating amendment to Form ADV (17 CFR 279.1), of less than $1 billion, or, following [DATE TEN YEARS AFTER EFFECTIVE DATE OF FINAL RULE], the dollar amount specified in the most recent order issued by the Commission in accordance with paragraph (c) of this section and as published in the Federal Register;

(2) Did not have total assets of $5 million or more on the last day of the most recent fiscal year, or, following [DATE TEN YEARS AFTER EFFECTIVE DATE OF FINAL RULE], did not have total assets equal to or greater than on the last day of the most recent fiscal year the dollar amount specified in the most recent order issued by the Commission in accordance with paragraph (c) of this section and as published in the Federal Register; and

(3) Does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $1 billion or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of the

most recent fiscal year, or following [DATE TEN YEARS AFTER EFFECTIVE DATE OF FINAL RULE], does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management equal to or greater than the dollar amount specified in the most recent order issued by the Commission in accordance with paragraph (c) of this section and as published in the Federal Register, or any person (other than a natural person) that had total assets equal to or greater than the dollar amount specified in the most recent order issued by the Commission in accordance with paragraph (c) of this section and as published in the Federal Register;

* * * * *

(c) The dollar amounts specified in paragraph (a) of this section shall be adjusted by order of the Commission, issued on or about [DATE TEN YEARS AFTER EFFECTIVE DATE OF FINAL RULE], and approximately every ten years thereafter. The adjusted dollar amounts established in such orders shall be computed by:

(1) For purposes of paragraph (a)(1) and determining assets under management for purposes of paragraph (a)(3),

(i) Dividing the year-end value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), as published by the United States Department of Commerce, for the calendar year preceding the calendar year in which the order is being issued, by the year-end value of such index (or successor) for the calendar year [YEAR OF EFFECTIVE DATE OF FINAL RULE]; and

(ii) Multiplying $1 billion times the quotient obtained in paragraph (c)(1)(i) of this section and rounding the product to the nearest multiple of $100 million; and

(2) For purposes of paragraph (a)(2) and determining total assets for purposes of paragraph (a)(3),

(i) Dividing the year-end value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), as published by the United States Department of Commerce, for the calendar year preceding the calendar year in which the order is being issued, by the year-end value of such index (or successor) for the calendar year [YEAR OF EFFECTIVE DATE OF FINAL RULE]; and

(ii) Multiplying $5 million times the quotient obtained in paragraph (c)(2)(i) of this section and rounding the product to the nearest multiple of $500,000.

* * * * *

5. Amend § 275.203-3 by revising paragraph (b).

The revisions read as follows:

**§ 275.203-3 Hardship exemptions**

* * * * *

(b) ***Continuing hardship exemption —***

(1) ***Eligibility for exemption.*** If you are a "small business" or "small organization" (as described in paragraph (b)(5) of this section), you may apply for a continuing hardship exemption.

The period of the exemption may be no longer than one year after the date on which you apply for the exemption.

* * * * *

(5) ***Small business or small organization.*** You are a "small business" or "small organization" for purposes of this section if you are required to answer Item 12 of Form ADV (17 CFR 279.1) and checked "no" to each question in Item 12 that you were required to answer.

**PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940**

6. The authority citation for part 279 continues to read as follows:

**Authority:** The Investment Advisers Act of 1940, 15 U.S.C. 80b-1, *et seq.*, Pub. L. 111-203, 124 Stat. 1376.

* * * * *

7. Amend Form ADV (referenced in § 279.1) by:

a. In the General Instructions, revising the second bullet point paragraph of Instruction 17 related to continuing hardship exemptions; and

b. In Part 1A, revising Item 12.

**NOTE: Form ADV is attached as Appendix A to this document. The text of Form ADV does not, and this amendment will not, appear in the Code of Federal Regulations.**

By the Commission.

Dated: January 7, 2026.

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

**Note: The following appendix will not appear in the Code of Federal Regulations.**

**APPENDIX A**

**FORM ADV (Paper Version)**

**UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION AND**

**REPORT BY EXEMPT REPORTING ADVISERS**

**Form ADV General Instructions**

* * * * *

**17. What if I am not able to file electronically?**

If you are required to file electronically but cannot do so, you may be eligible for one of two types of hardship exemptions from the electronic filing requirements.

* * * * *

- A **continuing hardship exemption** may be granted if you are a small business or small organization and you can demonstrate that filing electronically would impose an undue hardship. You are a small business or small organization, and may be eligible for a continuing hardship exemption, if you are required to answer Item 12 of Part 1A and you are able to respond "no" to each question in Item 12. See SEC rule 0-7.

  If you have been granted a continuing hardship exemption, you must complete and submit the paper version of Form ADV to FINRA. FINRA will enter your responses into the IARD. As discussed in General Instruction 16, FINRA will charge you a fee to reimburse it for the expense of data entry.

* * * * *

**PART 1A**

* * * * *

## Item 12 Small Businesses

The SEC is required by the Regulatory Flexibility Act to consider the effect of its regulations on small entities. In order to do this, we need to determine whether you meet the definition of "small business" or "small organization" under rule 0-7. You are a "small business" or "small organization" under rule 0-7 if you have regulatory assets under management of less than $1 billion and you answer "no" to each question in A., B., and C. below. Each of these thresholds is updated every [TEN YEARS AFTER EFFECTIVE DATE OF FINAL RULE] for inflation in accordance with rule 0-7(c). The thresholds described in this item will be updated accordingly when the thresholds in rule 0-7 are inflation adjusted.

Answer this Item 12 only if you are registered or registering with the SEC and you indicated in response to Item 5.F.(2)(c) that you have regulatory assets under management of less than $1 billion. You are not required to answer this Item 12 if you are filing for initial registration as a state adviser, amending a current state registration, or switching from SEC to state registration.

For purposes of this Item 12 only:

- Total Assets refers to the total assets of a firm, rather than the assets managed on behalf of *clients*. In determining your or another *person's* total assets, you may use the total assets shown on a current balance sheet (but use total assets reported on a consolidated balance sheet with subsidiaries included, if that amount is larger).

- *Control* means the power to direct or cause the direction of the management or policies of a *person*, whether through ownership of securities, by contract, or otherwise. Any *person* that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of another *person* is presumed to *control* the other *person*.

| | Yes | No |
|---|---|---|
| A. Did you have total assets of $5 million or more on the last day of your most recent fiscal year? | ☐ | ☐ |

*If "yes," you do not need to answer Items 12.B. and 12.C.*

B. Do you:

| | | |
|---|---|---|
| (1) *control* another investment adviser that had regulatory assets under management (calculated in response to Item 5.F.(2)(c) of Form ADV) of $1 billion or more on the last day of its most recent fiscal year? | ☐ | ☐ |
| (2) *control* another *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? | ☐ | ☐ |

C. Are you:

| | | |
|---|---|---|
| (1) *controlled* by or under common *control* with another investment adviser that had regulatory assets under management (calculated in response to Item 5.F.(2)(c) of Form ADV) of $1 billion or more on the last day of its most recent fiscal year? | ☐ | ☐ |
| (2) *controlled* by or under common *control* with another *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? | ☐ | ☐ |

* * * * *