

March 16, 2026

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

Re: File Number S7-2026-01
SEC's Proposed Amendments to "Small Entity" Definitions¹

Dear Secretary Countryman:

I write on behalf of the Public Investors Advocate Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in securities arbitration and litigation. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by the SEC and the Financial Industry Regulatory Authority as they relate to investor protection.

PIABA is concerned that the proposed amendments to the "small entity" definition for investment advisers² will diminish investor rights. If the amendments are adopted, the SEC's future analyses under the Regulatory Flexibility Act (RFA) will disproportionately focus on the compliance costs and impact of proposed rules on advisers that are, in fact, *large* by any objective measure. This, in turn, will divert the focus of future rules away from investor rights.

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, although an agency can establish its own definition of the term.³ As point of comparison, the SBA defines most non-manufacturing "small businesses" as those with average annual receipts under \$7.5 million.⁴ The IRS defines a "small business" as an entity with assets under \$10

¹ SEC, "Small Business" and "Small Organization" Definitions for Investment Companies and Investment Advisers for Purposes of the Regulatory Flexibility Act, ("Proposing Release"), Rel. Nos. IA-6935; IC-35864 (Jan. 12, 2026).

² The Proposing Release would also amend the "small entity" definition applied to investment companies. However, this letter solely addresses the proposed amendments pertaining to investment advisers, as they more extensively service retail investors.

³ Proposing Release, 91 Fed. Reg. 1107, 1108 n.7.

⁴ See U.S. Small Business Administration, Basic Requirements, <https://www.sba.gov/federal-contracting/contracting-guide/basic-requirements#meet-size-standards> (last visited March 4, 2026).

million.⁵ The SEC’s current small entity threshold of \$25 million in assets under management (AUM), adjusted for inflation since its adoption in 1998, would be roughly \$49 million in AUM today.⁶ But under the SEC’s proposed amendments, the threshold for a “small entity” adviser would increase from \$25 million in AUM to *\$1 billion in AUM - a four-thousand percent increase from the current small adviser threshold.*

The RFA requires the SEC to weigh the impact of its rules on small entities, with the “goal of minimizing the significant economic impact on small entities, consistent with the objectives of applicable statutes.”⁷ The agency must also estimate the number of small entities that a proposed rule would affect.⁸ The proposed amendments to the “small entity” definition would result in *75% of all registered investment advisers qualifying as “small entities.”*⁹ The SEC’s future RFA analyses would therefore be distorted by estimated costs of a proposed rule on almost the entire investment adviser population.

The agency’s justification for the four-thousand percent increase from the current \$25 million AUM threshold to the proposed \$1 billion appears to be that the overall growth of advisers’ AUM, over time, has led to too few small entities.¹⁰ Therefore, the agency believes the “small entity” definition should be expanded to include more advisers with higher AUM.¹¹ This justification is circular. It is also counterintuitive that advisers’ significantly *increased* AUM supports their designation as “small entities.”

The SEC places much significance on the percentage of advisers excluded from the “small entity” definition. According to the Proposing Release, under the existing threshold, only three percent of registered investment advisers qualified as small entities in 2025.¹² For the SEC, this is a problem that should be solved by expanding the definition to include 75 percent of all registered investment advisers. The SEC lends no support for this proposition. Again, the circular logic of the proposal seems to be that the number of “small entity” advisers should increase because advisers now manage more AUM.

The Commission estimates that over 85% of registered investment advisers’ total AUM is concentrated in the top 95th to 100th size percentile (i.e., by the top 5% of advisers in size).¹³ The interests of these largest advisers will have outsized effect on the Commission’s RFA analysis. The effect of SEC rules on investment advisers managing \$25 million in AUM will be

⁵ See IRS, Small Business and Self Employed Tax Center, [https://www.irs.gov/businesses/small-businesses-self-employed#:~:text=What%20you'll%20find%20here,with%20assets%20under%20\\$10%20million](https://www.irs.gov/businesses/small-businesses-self-employed#:~:text=What%20you'll%20find%20here,with%20assets%20under%20$10%20million) (last visited March 4, 2026).

⁶ See U.S. Inflation Calculator, <https://www.usinflationcalculator.com> (last visited March 4, 2026).

⁷ Proposing Release, 91 Fed. Reg. at 1108.

⁸ *Id.* at 1109.

⁹ *Id.* at 1117.

¹⁰ SEC, Fact Sheet: Amendments to Small Entity Definitions, p. 1, <https://www.sec.gov/files/ia-6935-fact-sheet.pdf>.

¹¹ Proposing Release, 91 Fed. Reg. at 1117.

¹² *Id.*

¹³ *Id.*

immaterial when weighed against the greater population of so-called “small entities” managing \$1 billion in AUM.

The proposed amendments, if adopted, will lead to the absurd result that SEC rules promote the interests of large advisers, under the guise that the rules protect “small” advisers. In the end, industry interests will eclipse the interests of investors. The Proposing Release contains the following foretelling passage:

[T]o 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.*¹⁴ (Emphasis added).

PIABA understands that SEC rulemakings require a balancing between the agency’s multifaceted mission, but the proposed amendments prioritize the hypothetical efficiencies, capital formation, and competitive benefits supposedly gained by mislabeling large advisers as “small” entities. Historically, rules that focus on reducing industry costs harm investors.

In sum, PIABA is concerned that the proposed amendments will pave the way for agency rulemakings that use inflated compliance costs of “small entities” as justification to dilute or eliminate the investor protection function of SEC rules. To ensure the SEC’s investor protection mandate is fulfilled, we urge the Commission to reject these proposed amendments.

PIABA thanks you for the opportunity to comment on this important topic.

Very Truly Yours,



Michael C. Bixby
President, Public Investors Advocate Bar
Association

¹⁴ Proposing Release, 91 Fed. Reg. at 1125.