



June 14, 2022

VIA ELECTRONIC SUBMISSION

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

Re: Private Fund Advisers Documentation of Registered Investment Adviser
Compliance Reviews: Release No. IA-5955; File No. S7-03-22

Ladies & Gentlemen:

The Private Investor Coalition (“PIC”) is submitting this comment letter in response to the solicitation by the Securities and Exchange Commission (“SEC”) of public comments in connection with the SEC’s rule proposal under the Investment Advisers Act of 1940 (the “Advisers Act”) titled “Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews” (“Proposing Release,” and the rules being proposed, the “Proposed Rules”).¹ We appreciate the extension of the time period for receipt of public comments.

About the Private Investor Coalition

PIC is a nationwide organization consisting of single family offices (“SFOs”) who share a common interest in public policy issues impacting the SFO community. PIC describes itself as the recognized authority on legislative and regulatory issues affecting SFOs and serves as the primary resource for disseminating information on legislative, regulatory and compliance issues impacting SFOs. SFOs are a critical part of America’s business success story representing many of the most successful family-owned businesses in America. SFOs are also important investors in American small businesses, public markets, and many other asset classes, through investments to which many SFOs are in a position to devote substantial resources.

SFOs invest both directly and through SEC-regulated and private funds, among other means of investing. In the context of private funds, PIC supports Congress’s and the SEC’s goals of transparency and the mitigation of, and disclosures about, conflicts of interest between a private fund adviser and the private funds it advises. PIC, however, also wishes to comment on certain aspects of the Proposed Rules that, if adopted, it believes would adversely affect investors and

¹ Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, SEC Release IA-5955 (Feb. 9, 2022).

the U.S. economy, especially for small businesses. PIC appreciates this opportunity to be heard and appreciates the SEC's consideration.

Requested Exclusion from the Definition of "Private Fund" under the Proposed Rules

Request

We request that any entity that is a "family client" of a "family office," each as defined in Rule 202(a)(11)(G)-1 under the Advisers Act (the "Family Office Rule")², be excluded from the definition of "private fund" for purposes of the Proposed Rules. Otherwise, such a "family client" entity would become subject to "private fund" regulation under the Advisers Act if it engages an SEC-registered investment adviser to provide it with any investment advice.

Background

Consistent with the statutory directive set out in Section 202(a)(11)(G) of the Advisers Act, the Family Office Rule excludes "family offices," the clients of which are limited to "family clients," from being considered investment advisers under the Advisers Act, so that "they will not be subject to regulation under the Advisers Act."³ The SEC, through orders, historically "provided an exclusion for family offices because [the SEC] viewed them as not the sort of arrangement that the Advisers Act was designed to regulate."⁴ In enacting Section 202(a)(11)(G) of the Advisers Act, Congress codified such exclusion for family offices because, among other things, "the Advisers Act is not designed to regulate the interactions of family members" and regulation under the Advisers Act "would unnecessarily intrude on the privacy of the family involved."⁵ However, treating a family office's family client as a private fund under the Proposed Rules when the family office or family client engages an outside SEC-registered investment adviser to provide advice would result in the family client being subject to regulation under the Advisers Act. In our view, this would be at odds with the Congressional directive and purpose of the Family Office Rule to preserve the family unit from such federal regulation under the circumstances specified in the Family Office Rule.

In adopting the Family Office Rule, the SEC specified that, "[i]n light of the purpose of the exclusion and the legislative instructions we received,"⁶ the exclusion treats a family unit differently from any other group of persons. The SEC cited, as a key rationale, that "[d]isputes among family members concerning the operation of the family office could ... be resolved within the family unit or, if necessary, through state courts under laws designed to govern family

² Family Offices, SEC Release IA-3220 (Jun. 22, 2011).

³ Family Office Rule Adopting Release at 1.

⁴ *Id.* at 5, *citing* the Family Office Rule's proposing release (Family Offices, SEC Release No. IA-3098 (Oct. 12, 2010) (proposing release) (the "Family Office Rule Proposing Release")) for a discussion of the rationale for the family office exclusion. *See also id.* at 37 ("we believe the Advisers Act was not designed to regulate" family offices).

⁵ Family Office Rule Proposing Release at 6 n. 13, *quoting from* S. CONF. REP. NO. 111-176, at 38-39 (2010) (Senate committee report).

⁶ Family Office Rule Adopting Release at 5.

disputes.”⁷ The family unit is thus treated as a single unitary body that solely owns and benefits from any entity that is a “family client.”⁸

The family office’s family client would still be a client of the outside investment adviser, and as such, would benefit from, among other things, the fiduciary duty and other obligations under the Advisers Act that the adviser owes to any client. As with any separately managed account, however, the family office would have adequate transparency over the account because the account is owned and controlled by the family office or its family clients. For that reason, for example, the family client should not be required to undergo annual financial statement audits and be subject to other regulation under the Proposed Rules.

Conclusion

In closing, PIC supports the SEC’s efforts to increase transparency and fairness for investors in private funds managed and/or operated by outside investment advisers and the Proposed Rules as drafted are meritorious on multiple levels. However, we respectfully request that “family clients” of a “family office” be excluded from the definition of “private fund” for purposes of the Proposed Rules. We believe the inclusion of such family investment vehicles within the reach of the Proposed Rules was inadvertent and an unintended consequence of using the defined term “private fund.”

We hope that the SEC will consider the foregoing points as it finalizes the Proposed Rules. We appreciate the opportunity to provide these comments.

Respectfully submitted,



Timothy P. Terry

Secretary, Private Investor Coalition

PIC@PrivateInvestorCoalition.com

⁷ *Id.*

⁸ See Rule 202(a)(11)(G)-1(d)(4)(xi) (to be a “family client,” a company that is an investment vehicle must be “wholly owned (directly or indirectly) exclusively by, and operated for the sole benefit of, one or more other family clients,” such as family members within the same family unit).