Milbank

55 Hudson Yards | New York, NY 10001-2163
T: +1.212.530.5000

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VIA ELECTRONIC FILING

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

Re: **Safeguarding Advisory Client Assets (Rel. No. IA-6240; File No. S7-18-21)**

Dear Ms. Countryman:

Milbank LLP appreciates the opportunity to provide comments to the Securities and Exchange Commission (the "**Commission**") regarding the above-captioned release (the "**Release**") proposing Rule 223-1 (the "**Proposed Rule**") under the Investment Advisers Act of 1940 (the "**Advisers Act**"). We represent companies that acquire, lease, and finance aircraft, including some that manage aircraft investments on behalf of institutional private funds. A subset of these manage not only investments in "metal"—physical aircraft and components—but also in aviation-related or other securities and therefore have become registered investment advisers ("**RIAs**," and the advisers managing aviation-related assets, "**Aircraft RIAs**"). Under the existing Advisers Act custody rule, Rule 206(4)-2 (the "**Custody Rule**"), our Aircraft RIA clients are deemed to have custody of the funds and securities of the private funds they manage. If the Commission adopts the Proposed Rule, depending on the nature and form of a fund's investments, a fund manager may be deemed to have custody of client assets consisting of aircraft, engines, and other aircraft components.

In the Release, the Commission requests comments on the application of the Proposed Rule to particular types of assets.[1] We write on behalf of a group of Aircraft RIA clients to express significant concerns regarding the Proposed Rule, should it apply in the form proposed to a particular asset class—namely, registered commercial aircraft, engines, and other components ("**Aircraft Assets**"). This letter provides information about industry norms and practices and explains the reasons we believe the requirements of the Proposed Rule are unnecessary as applied to this heavily regulated and transparent asset class and would impose undue burdens on Aircraft RIAs and, ultimately, on investors.

[1] *See, e.g.*, Question 3 ("Are there particular types of assets held in a client's advisory account that should or should not be subject to the proposed rule?"); Question 4 ("To the extent that the adviser has custody of certain physical assets, should we narrow the proposed definition to exclude such physical assets?").

I. Background: Global aviation regulation requires all aircraft in operation to be uniquely identifiable, registered, and traceable

To assist the Commission in better understanding the framework of specialized legal, commercial, and practical safeguards that apply to Aircraft Assets, we provide below an overview of how ownership, possession, transfer, and operation of Aircraft Assets are tracked and overseen:

- Unique MSN identifier. Manufacturers of commercial airframes, aircraft engines, and propellers, propeller blades, and hubs assign a unique manufacturer's serial number ("**MSN**") to each such product. Federal regulation in the United States requires the manufacturer to affix to each aircraft fuselage, engine, or propeller component a fireproof identification plate bearing certain information, including the MSN.[2] It is universal commercial practice for airframes and aircraft engines to have MSNs, in part because an MSN is required for registration as described below.

- Mandatory registration of owner and/or operator. Under the Chicago Convention,[3] the seminal treaty establishing international standards and practices for civil aviation, every commercial aircraft in the world must be registered with the aviation authority of an appropriate jurisdiction in order to operate. Dual registration is not permitted.[4] Many national and sub-national registries, including the U.S. Federal Aviation Administration ("**FAA**") Registry, are owner registries, which record aircraft in the name of the owner. Others are operator registries, which record aircraft in the name of the operator. In addition to those registries, there is an electronic International Registry established under the Cape Town Convention to record financial interests in aircraft that are registered with aviation authorities in participating jurisdictions.[5] The FAA Registry and the International Registry, among others, require an MSN for registration of aircraft.[6]

  To register aircraft with the FAA, the owner must submit the original bill of sale or other evidence of ownership authorized by federal regulation.[7] The bill of sale includes the registration number, the MSN, and information identifying both the purchaser and the seller.[8]

- Mandatory location tracking. Additionally, FAA rules require all manned aircraft operating in U.S. airspace to be equipped with a radar transponder system that complies with FAA

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[2] 14 C.F.R. §§ 45.11(a)–(c); 45.13(a).

[3] Convention on International Civil Aviation (the "Chicago Convention"), art. 29(a). "As of April 2022, 193 countries are Members of [the International Civil Aviation Organization]. The only non-Contracting States are the Holy See and Liechtenstein." https://applications.icao.int/postalhistory/the_contracting_states.htm. *See also* 14 U.S.C. § 47.3(b).

[4] Chicago Convention, art. 18.

[5] The State Parties to the Convention on International Interests in Mobile Equipment (the "Cape Town Convention"), which established the International Registry of Mobile Assets, are "conscious of the need to establish a legal framework for international interests in [mobile equipment of high value or particular economic significance] and for that purpose to create an international registration system for their protection." Preamble. There are 86 signatories to the Cape Town Convention, including the United States.

[6] 14 C.F.R. § 47.15(a); Regulations and Procedures for the International Registry § 5.4(c)(iv).

[7] 14 C.F.R. § 47.31(a)(2).

[8] Aircraft Bill of Sale, AC Form 8050–2.

specifications.[9] Comparable requirements apply in other jurisdictions that observe the standard practices established by the International Civil Aviation Organization.[10] Mandatory on-board transponders enable aircraft in operation to be tracked at all times by a global network of air traffic controllers. Numerous commercially available apps also display real-time location data for aircraft using the registration number, GPS position, and altitude information transmitted by on-board transponders.

- Conditions for secondary transfer of Aircraft Assets. Aircraft RIAs transfer Aircraft Assets frequently, for a variety of reasons including to buy and sell (including to trade among owner/leasing platforms), to facilitate financing, and to accommodate the regulatory requirements of a lessee airline's jurisdiction. Transfers subsequent to the manufacturer's sale may occur in one of two ways. First, a seller may convey an interest in the entity that has title to the aircraft. Aircraft are commonly held by special purpose aircraft-owning entities ("**AOEs**"), and transfers of interests in AOEs would generally occur in the same manner as transfers of securities or interests in other private vehicles. Second, a seller may convey title to the "metal," the physical Aircraft Assets, with an accompanying change in registration as described above.

  Buyers of metal in the secondary market customarily require evidence of title "back to birth" (i.e., of all bills of sale back to the manufacturer's bill of sale). A seller will typically upload the prior bills of sale to a data room for the buyer to review. This is a necessary, but not in itself sufficient, condition of the sale. The bill of sale is a contract and not transferable evidence of title; unlike a deed of title to real property filed with a land records office, there is no dispositive documentary evidence of aircraft title. Inspection of prior bills of sale and other records, as well as inspection of the physical asset itself, are part of the standard diligence a buyer will require in any transfer of Aircraft Assets. In addition to buyer diligence, where a lease or financing is in place with respect to Aircraft Assets, as is frequently the case, the transfer requires the consent of the lessee and/or financing parties. Transfers of Aircraft Assets also customarily require updates to insurance certificates.

- Safeguards applicable to Aircraft Assets in operation. An extensive framework of regulatory and contractual requirements governs the manner in which Aircraft Assets are maintained and protected while in operation. For example:

  - Agreements between airlines and airport authorities govern the terms for airport use. In order to land at virtually any airport, among other requirements, an aircraft must be covered by insurance that satisfies the specifications of the applicable agreement and airport authority.[11] Insurers in turn require that airlines (while aircraft is on lease) and lessors (for aircraft not on lease) observe a standard set of requirements addressing the assets' safety, maintenance, and condition. This is in addition to a robust set of commercial practices in the aircraft leasing market and reflected in lease terms, which typically specify physical maintenance and condition requirements in considerable detail.

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[9] 14 C.F.R. § 91.215(b).

[10] *See generally* Annex 10 to the Chicago Convention.

[11] *See generally* ACI-NA Airport Operating/Use Agreement Insurance Requirements – Benchmarking Survey, AIRPORTS COUNCIL INT'L (2007), https://airportscouncil.org/wp-content/uploads/2018/11/AOA-Requirements.pdf.

- Civil aircraft operated in U.S. airspace must meet extensive airworthiness and safety requirements under federal statute and FAA rules. Operated aircraft must have a current airworthiness certificate[12] issued by the FAA following inspection and testing and must be inspected annually in accordance with FAA rules.[13]

II. The Proposed Rule is generally unnecessary and potentially unworkable as applied to Aircraft Assets.

A. Requirements of the Proposed Rule as applied to Aircraft Assets

We assume for purposes of this comment letter that Aircraft Assets would generally qualify for the paragraph (b)(2) exception in the Proposed Rule for certain privately offered securities and physical assets unable to maintained with a qualified custodian. Aircraft Assets can be, and sometimes are, held in the name of a qualified custodian for the benefit of a private fund or other beneficial owner, as in the case of aircraft owner trusts in which a bank serves as owner trustee. However, we expect that a bank (or broker-dealer) trustee or custodian would be unwilling, and possibly unable under its own regulatory constraints, to assume responsibility for safeguarding Aircraft Assets from loss or misuse or to indemnify clients for, and insure against, loss or misuse of Aircraft Assets, as they would need to do under proposed paragraph (a)(1).

Assuming, therefore, that the (b)(2) exception would apply, the Proposed Rule would impose the following requirements and obligations on an Aircraft RIA with deemed custody of client Aircraft Assets:

- Segregation requirements (paragraph (a)(3) of the Proposed Rule), including the requirement that Aircraft Assets not be "commingled" with any assets of the Aircraft RIA or its related persons;
- Required annual verification (paragraph (a)(4)) or audit (paragraph (b)(4)) by a qualifying independent public accountant; and
- The requirements of paragraph (b)(2) for assets not maintained by a qualified custodian, including:
  - Safeguarding duty (paragraph (b)(2)(ii)). The adviser must "reasonably safeguard the assets from loss, theft, misuse, misappropriation, or [its] financial reverses" (the "**RIA Safeguarding Duty**"); and
  - Transaction-by-transaction notification and verification requirements under an agreement with an independent public accountant (paragraph (b)(2)(iii)) (the "**Accountant Requirements**").

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[12] 14 C.F.R. § 91.203(a)(1).
[13] 14 C.F.R. §§ 91.409(a); 91.7(a); Part 21 Subpart H.

B. Beyond annual audit or verification requirements, the proposed requirements are generally unnecessary as applied to Aircraft Assets

The annual verification or audit requirements under paragraphs (a)(3) and (b)(4) of the Proposed Rule are not generally problematic as applied to Aircraft Assets. Our Aircraft RIA clients currently arrange for annual audits of their private funds in compliance with the Custody Rule. Indeed, we believe that an annual audit in compliance with the existing Custody Rule fully protects private funds from the risks the Proposed Rule seeks to address as regards client Aircraft Assets. If, hypothetically, client aircraft were to be lost or stolen without immediate detection, the loss would be detected in the following audit and the asset's location and registration would be traceable at that time; a would-be misappropriator of aircraft cannot cover its tracks. This is one of the reasons why, as applied to Aircraft Assets, we believe the Proposed Rule would be a solution in search of a problem.

We are not aware of any case in which an Aircraft RIA or non-RIA aircraft investment manager misappropriated Aircraft Assets. Theft of commercial aircraft by any person is extraordinarily difficult given the overlapping safeguards described above (unique identifying marks, mandatory registration and tracking, third party involvement in transfers) and is virtually nonexistent, outside incidents of hijacking and governmental confiscation.[14] We do not believe such risks would be reduced by Advisers Act rules imposing requirements such as increased involvement of independent accountants, non-commingling of Aircraft Assets, and an explicit RIA Safeguarding Duty. These requirements would also be problematic for Aircraft RIAs in the respects described in II.C, D, and E below.

C. Elements of the paragraph (a)(3) segregation requirement are unworkable for Aircraft Assets and should not apply to them

Clauses (i) and (iii) of the proposed segregation requirement—requiring that assets be titled in the client's name or otherwise held for the benefit of the client and not subject to liens in favor of the adviser except as authorized by the client—are consistent with existing Aircraft RIA practice. However, clause (ii) of paragraph (a)(3) would require in addition that Aircraft Assets not be "commingled" with assets of the adviser or its related persons. It is unclear what this requirement would entail; beyond appropriate titling, a prohibition on commingling would appear to require physical separation of client Aircraft Assets from assets of the adviser or its affiliates. If so, we do not see it as a workable requirement for Aircraft RIAs, or a necessary one, given that Aircraft Assets are uniquely identified and not fungible.

D. The paragraph (b)(2)(ii) RIA Safeguarding Duty should not apply to Aircraft Assets

Existing duties and practices in this asset class are sufficient

The Proposed Rule would require Aircraft RIAs to reasonably safeguard client Aircraft Assets of which they are deemed to have custody. We agree that a RIA's fiduciary duty entails a duty

[14] Russia recently seized hundreds of commercial aircraft worth billions of dollars. *See, e.g.*, *Russia moves to seize hundreds of planes from foreign owners*, CNN (March 17, 2022), https://www.cnn.com/2022/03/16/business/russia-aircraft-seizure/index.html; *Russia holding 400 passenger jets hostage in global sanctions fight*, THE WASH. POST (July 12, 2022), https://www.washingtonpost.com/business/2022/07/12/russia-aircraft-seizure-sri-lanka/.

of care that is not limited to client assets that are securities. We believe Aircraft RIAs generally satisfy this duty by observing the largely mandatory standard industry practices described above, including maintaining insurance and obtaining appropriate undertakings from lessee operators.

Adding an explicit duty creates uncertainty and exposes Aircraft RIAs to second-guessing for events beyond their control

By adding an explicit RIA Safeguarding Duty to the existing duty framework, the Proposed Rule suggests that something additional is required, with the result that the scope of responsibility is uncertain and, as applied to operating assets that are constantly in motion and in use by third parties, potentially vast. Preventing loss or misuse from events such as hijackings, governmental seizures, and crashes is clearly beyond an adviser's ability or resources, yet our clients fear that the proposed RIA Safeguarding Duty would expose them to significant second-guessing should such events occur.

Holding Aircraft RIAs responsible for aircraft in use by third parties goes far beyond the core rationale of preventing RIA misappropriation

Moreover, to the extent the RIA Safeguarding Duty goes beyond misappropriation risk and extends to physical maintenance and safety, we do not see it as an appropriate subject for securities regulation, particularly in an area already subject to extensive industry-specific regulation. Even as applied to misappropriation risk, we would argue the RIA Safeguarding Duty is uncalled for where Aircraft Assets are concerned. The core rationale for prescriptive regulation of RIA custody, we understand, is that a RIA's access to or control over client assets may afford it opportunities for ready misappropriation. An Aircraft RIA's role does not afford it any such opportunities or any greater ability to steal aircraft than any other person, and the primary risks to which aircraft are exposed are unrelated to adviser conduct.

We recognize that the Commission's concerns extend beyond misappropriation by physical theft and include concerns that a RIA may transfer title to client assets into its own name or in an otherwise fraudulent manner. We do not see this as a plausible risk where Aircraft Assets are concerned, given the multiple third-party interactions a bad actor would encounter as a holder of misappropriated ownership. In order to profit by taking title to aircraft, an Aircraft RIA would need to register it for operation, identifying itself or an entity under its control as the owner, and either obtain the consent of the airline lessee (for aircraft under lease) or lease the aircraft to a new lessee. Moreover, once the misappropriation was identified in the annual audit (if not before), the asset's location and the identity of its owner and operator would be traceable as described above.

E. The paragraph (b)(2)(iii) Accountant Requirements should not be applied to Aircraft Assets

The Proposed Rule would require an Aircraft RIA with deemed custody of client physical Aircraft Assets to engage an independent public accountant and notify the accountant within one business day of any transfer of beneficial ownership of physical Aircraft Assets, upon which notice the accountant must promptly verify the transfer and notify the Commission within one business day upon finding any material discrepancies.

The rationale for prompt transaction-by-transaction verification does not apply to Aircraft Assets and is better served by an annual audit

According to the Release, "[t]he notification and verification requirement would benefit investors by reducing the risk that a loss, theft, misuse, or misappropriation of their assets goes undetected for a significant amount of time, which might allow investors or the Commission to mitigate losses associated with such events in a timely manner."[15] For reasons described above, a loss of aircraft would most likely be promptly detected. If, hypothetically, it were not, then any theft or loss that would have been detected by the proposed accountant verification would also be detected by the annual audit or asset verification. There is no need to conduct an immediate verification in order to trace misappropriated assets given that, as noted above, the physical location and operator of Aircraft Assets can be tracked at all times.

Further, we consider an annual audit or "surprise" verification to be a superior safeguard in that, unlike the Accountant Requirements, it does not rely on the good behavior of a hypothetical bad actor. If an adviser intended to misappropriate Aircraft Assets, it would not notify an accountant to begin with.[16]

The Accountant Requirements are unclear and potentially very costly, while providing negligible benefit

It is unclear what the Accountant Requirements require,[17] what benefits they would provide to investors,[18] at what cost accountants would provide the required services,[19] and whether accountants would be willing to provide them at all.[20] It seems likely that the Accountant

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[15] Release at 310.

[16] The Commission anticipates this objection in Question 149 of the Release: "Is there a way to mitigate the risk that an adviser intending to misappropriate client assets does not comply with the notification requirement?" We do not see a way.

[17] *See* Comment Letter of KPMG LLP at 1 (May 8, 2023) ("There is no concept of 'verification' under [the audit, attestation, or consulting] standards.").

[18] *See* Comment Letter of Ernst & Young LLP at 4 (May 8, 2023) ("We do not believe the proposed asset verification procedures would add meaningful additional protections, and we believe they would be costly."); Comment Letter of PricewaterhouseCoopers LLP ("PwC") at 1 (May 8, 2023) ("It is our view, however, that certain of the proposed requirements may be too prescriptive, potentially adding unnecessary costs without commensurate benefits to investors.").

[19] *See id.*

[20] *Cf.* Comment Letter of Deloitte & Touche LLP at 3 (May 3, 2023) ("If verification procedures are expected, we believe it would be helpful if the Commission were to confirm that the independent public accountant may perform testing on a sample basis and may perform such testing either throughout the period or at a point in time. Moreover, because some custodians hold the assets of numerous different entities, performing testing that covers holdings from each entity could result in unnecessarily large sample sizes; we therefore recommend the Commission clarify that verification procedures would not be required to cover assets from each entity whose assets the custodian holds."); Comment Letter of PwC at 2 ("We do not believe that an attest examination engagement as described by the Proposal would be operationally feasible if a similar time period [24 to 72 hours] were expected by the Commission.").

Requirements would place disproportionate burdens on managers of assets such as Aircraft Assets that are not prone to theft or loss.[21]

The Commission notes that its analysis "relies on the assumption that there will be approximately 8,000 purchases, sales, or other transfers of beneficial ownership of assets subject to the exception in proposed rule 223-1(b)(2)."[22] In the aircraft financing and leasing industry alone, there might be hundreds of transfers of physical assets involving RIAs in a year. Accounting for all privately offered securities and physical assets in the custody of RIAs, it seems likely the volume of affected transfers, and accordingly the cost of the proposed requirements, has been greatly underestimated.

III. The Proposed Rule's requirements for physical "indicia of ownership" are unclear and potentially troubling

The Release implies requirements not evident on the face of the Proposed Rule

The Proposed Rule applies to client "assets"—"funds, securities, or other positions held in the client's account";[23] records and transaction documentation relating to client assets may be subject to books and records requirements or duty of care requirements but would not, on the face of the Proposed Rule, be client "assets" subject to the Proposed Rule's requirements. The Release, however, suggests that RIAs with custody of physical assets may have independent safeguarding responsibilities with respect to instruments that evidence ownership of the physical assets, if such instruments can be used to transfer ownership.[24] The Release indicates that such instruments would generally be required to be maintained with a qualified custodian under an agreement that complies with paragraph (a)(1) of the proposed rule.

Our concern is that the discussion in the Release implies requirements that are not evident from the language of the Proposed Rule and, as applied to Aircraft Assets, creates uncertainty as to which of the various documents and records involved in transfers of ownership would be covered. As we interpret the Commission's commentary, documents such as bills of sale that may be needed in order to transfer Aircraft Assets would not be client assets for purposes of the Proposed Rule because they do not constitute definitive evidence of ownership of the underlying physical asset and cannot in themselves be used to convey title to a third party.

Maintaining indicia of ownership of Aircraft Assets with a qualified custodian may be impossible or prohibitively costly

To the extent the Commission were to disagree with this interpretation, Aircraft RIAs would be required under the Proposed Rule to engage a qualified custodian to maintain records such as bills of sale in compliance with proposed paragraph (a)(1), including undertakings by the custodian to

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[21] *See* Comment Letter of PwC at 4 ("We are concerned that the Proposal does not allow for a risk-based approach to audits or examinations and may add costs that outweigh benefits to investors with respect to certain types of investments. For example, the risks of safeguarding from misappropriation of real estate investments would be very different than those associated with physical commodities....").

[22] Release at 388.

[23] Proposed Rule § 223-1(d)(1); *see also* (a).

[24] Release at 135.

appropriately safeguard the assets and indemnify the client against misuse or loss. We are concerned that the Proposed Rule appears to require custodians to monitor the legitimacy of trading instructions and adherence to advisory contracts between RIAs and their clients.[25] Banks and broker-dealers are heavily regulated, are not in the business of performing such functions, and would likely be particularly averse to doing so for a specialized asset class outside their expertise. Were bills of sale or other indicia of aircraft ownership to be subject to the qualified custodian requirement, it is questionable whether banks or broker-dealers would, or legally could, undertake the paragraph (a)(1) duties.[26] If they did, the cost would likely be considerable if not prohibitive.

Such a requirement would not enhance client protection and would unfairly disadvantage a subset of aircraft market participants

The benefit, on the other hand, would be negligible. Banks with custodial responsibilities commonly rely on transfer instructions issued by beneficial owners or their designees, including RIAs acting on their behalf. Banks do not undertake the responsibility to make transfer decisions or investigate the circumstances surrounding an authorized transfer instruction. The Commission has considered the risk "that a custodian may follow an instruction with respect to client assets presuming authority that the adviser does not have under its advisory contract with the client,"[27] but it does not seem to have considered the risk of an adviser misappropriating client assets without breaching its advisory contract with the client. That strikes us as a more likely scenario, and it is a problem that the Proposed Rule does not, and cannot, address.

In any event, if every transfer directed by an Aircraft RIA required the substantive involvement of a bank or broker-dealer, advisers' ability to efficiently manage client Aircraft Assets would be impaired. Aviation market participants actively trade aircraft with one another; if the minority of participants that are RIAs were saddled by requirements to involve third parties, they would be disadvantaged in the market and their clients would suffer the consequences, including bearing the considerable costs.

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In summary, as applied to client Aircraft Assets, we believe the Proposed Rule is:

- Unneeded; existing protections—including Custody Rule-compliant fund audits and extensive regulatory and commercial protections inherent in the Aircraft Asset class—have worked well to protect clients and investors against the risks the Proposed Rule seeks to address, and we know of no instance in which a client suffered harm through an adviser's loss or misappropriation of Aircraft Assets; and

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[25] *See* Proposed Rule § 223-1(a)(1)(ii)(A) ("The qualified custodian will exercise due care in accordance with reasonable commercial standards in discharging its duty as custodian and will implement appropriate measures to safeguard client assets from theft, misuse, misappropriation, or other similar type of loss[.]").

[26] *See* Comment Letter of American Bankers Association et al. at 23 (May 8, 2023) ("Custody banks, as a rule, do not become parties to transactions on behalf of their clients. Such an approach would subject the custody bank to counterparty risk that it would be reluctant, if not unwilling, to accept.").

[27] Release at 106.

- Incompatible; Aircraft Assets are operating assets whose value is realized precisely by relinquishing use and control to third parties, whereas the Proposed Rule is primarily a safekeeping regime designed for assets that "stay put" until ownership changes hands. Its requirements would expose Aircraft RIAs (and ultimately their clients) to considerable expense and uncertainty with negligible countervailing benefit.

For these reasons, should the Commission proceed to adopt the Proposed Rule, we would recommend that Aircraft Assets be excluded from its requirements. Should Aircraft Assets not be excluded entirely, we would recommend that the Commission exclude them from all requirements of the Proposed Rule *other than*:

- Paragraph (b)(3)(i), requiring that client assets be titled or registered in the client's name or otherwise held for its benefit;

- Paragraph (b)(3)(iii), prohibiting certain liens on client assets except as otherwise agreed to by the client;

- Paragraph (b)(4), requiring an annual "surprise" verification of client assets and associated filings and notifications by an independent public accountant under a qualifying agreement with the RIA, unless the paragraph (c)(4) "audit exception" applies; and

- Paragraph (c)(4), providing an exception from the (b)(4) surprise verification requirement, provided the client is an entity that undergoes a qualifying audit by a qualifying independent public accountant at least annually and on liquidation and related requirements for distribution of audited financial statements and notifications to the Commission are satisfied.

To impose added requirements beyond the above would, we believe, add expense and disruption, and generate few or no benefits for investors.

Again, on behalf of our clients, we are grateful for the opportunity to share our views, and we hope the information we provide will be helpful to the Commission in reassessing the costs and benefits of the Proposed Rule as applied to this specialized asset class. If we can be of any further assistance, please feel free to contact Catherine Martin (cmartin@milbank.com, 212-530-5189) or Drew Fine (dfine@milbank.com, 212-530-5940).

Respectfully,

Milbank LLP

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