



# MUTUAL FUND DIRECTORS FORUM

*The FORUM for FUND INDEPENDENT DIRECTORS*

September 6, 2016

Mr. Brent J. Fields  
Secretary  
United States Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

Re: Adviser Business Continuity and Transition Plans (File No. S7-13-16)

Dear Mr. Fields:

The Mutual Fund Directors Forum (“the Forum”)<sup>1</sup> welcomes the opportunity to comment on the Commission’s recent rule proposals regarding adviser business continuity and transition plans.<sup>2</sup>

The Forum is an independent, non-profit organization for investment company independent directors and is dedicated to improving mutual fund governance by promoting the development of concerned and well-informed independent directors. Through education and other services, the Forum provides its members with opportunities to share ideas, experiences and information concerning critical issues facing investment company independent directors and also serves as an independent vehicle through which Forum members can express their views on matters of concern.

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For investment advisers, as with other financial services firms, business continuity planning – essentially, the identification and management of operational risks – is critical. This is particularly true for advisers to registered investment companies. Investors, particularly individuals saving for retirement, home purchases, their children’s college educations and other significant life events, place significant reliance on the ability of mutual funds to operate effectively on a daily basis. Investors implicitly rely upon a fund’s adviser’s ability to identify and manage risks related to its ability to operate continuously. An adviser that cannot do so,

<sup>1</sup> The Forum’s current membership includes over 887 independent directors, representing 122 mutual fund groups. Each member group selects a representative to serve on the Forum’s Steering Committee. This comment letter has been reviewed by the Steering Committee and approved by the Forum’s Board of Directors, although it does not necessarily represent the views of all members in every respect.

<sup>2</sup> See Adviser Business Continuity and Transition Plans, Release No. IA-4439, 81 Fed. Reg. 43530 (File No. S7-13-16) (July 5, 2016).

whether because of a natural disaster, a technological failure, the inability of a third-party service provider to perform its job or for any other reason is not meeting its investors' needs and expectations. We therefore appreciate the Commission's attention to this important issue.

The Commission's proposed rule 206(4)-4 (the "Proposed Rule") would apply to all registered investment advisers, irrespective of whether they advise registered funds. Our comments, however, are limited to the application of the proposed rule to the advisers of registered investment companies. We recognize that registered advisers with different business models may have substantially different perspectives on the Commission's proposal; however we express no view on the appropriateness of applying the rule to these other advisers or to the impact of the Proposed Rule on other types of advisory clients.

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The Proposed Rule, which the Commission would promulgate pursuant to its antifraud authority under the Advisers Act, would require that all advisers adopt business continuity plans, that those plans address certain specific elements, and that the plans be regularly reviewed. In our experience, fund advisers already recognize the importance of their funds being able to operate without interruption – funds, after all, must implement their investment strategy, value securities, compute their net asset value and transact with their shareholders on a daily basis. Hence, advisers to registered funds typically already engage in business continuity planning.

Moreover, as we have recognized in the past, fund directors are responsible for providing oversight regarding their fund's adviser's risk management processes and procedures, including those addressing operational risks created by the fund's reliance on its adviser and other service providers. Not surprisingly, fund directors generally oversee the adviser's approach to managing these operational risks, including how the adviser attempts to mitigate these risks by engaging in business continuity planning. For most fund directors, the factors the Commission identifies as key to a business continuity plan – factors such as the risk of the failure of technology or the loss of data integrity, the failure of a key service provider or the need to communicate with fund stakeholders and regulators when significant problems arise – will not be a surprise. Indeed, fund directors generally will have been engaged in reviewing the manner in which the adviser identifies and mitigates these risks. Therefore, while the Commission's rule proposal may impose rigidity and additional costs on advisers, we believe that the proposal may not substantially change current practice among advisers to mutual funds.

Given the range of size and complexity in the broader registered adviser industry, we question the value of imposing fairly specific requirements, even given the mandate that each adviser's plan "be based upon the risks associated with [its] operations." We therefore encourage the Commission to reconsider whether the industry would better be served by staff guidance on the importance of managing operational risk and planning for business continuity. Rather than imposing somewhat static requirements on advisers, we believe guidance would permit advisers to respond more effectively and at less cost to the ever-changing risks that underlie business continuity planning in a manner that is responsive to their individual business models. We strongly believe that guidance of this type will be highly effective.

We also urge the Commission to reconsider imposing specific requirements with respect to the wholesale transition of an adviser's business to another entity. Transition planning is certainly appropriate in the adviser industry – indeed, we agree that an adviser should consider how it would transition its business if required to do so, and it is appropriate for fund boards to have at least an awareness of their funds' advisers' transition plans. However, as the Commission itself notes, the need to protect the fund shareholders (as well as other types of adviser clients) that transition planning is intended to address is already covered by the relatively strict custody rules that apply to registered advisers and particularly to fund advisers.<sup>3</sup> These rules tend to insure that customer assets are protected from the risks that would otherwise be inherent in the failure, sudden or otherwise, of the adviser's business.

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We appreciate the opportunity to comment on the Commission's rule proposal and would welcome the opportunity to further discuss our views. Please feel free to contact either Susan Ferris Wyderko, the Forum's President, at [REDACTED] or David Smith, the Forum's General Counsel, at [REDACTED], at any time.

Sincerely,

David B. Smith, Jr.  
Executive Vice President and General Counsel

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<sup>3</sup> We certainly do not believe that mandating the "living wills" required for certain banks and other systemically-important financial services entities for registered advisers would be appropriate. These requirements are rooted in the risks posed by banks, which leverage customer deposits and rely on federal deposit insurance, and other entities deemed systemically important, would pose for the broader financial and economic system were they to fail in a sudden and uncontrolled manner. Advisers, which manage money for others and typically hold their customers' assets in segregated accounts at third-party custodians, simply do not pose the types of risks that would warrant such treatment.