



September 6, 2016

VIA E-MAIL ONLY

Mr. Brent J. Fields, Secretary
U. S. Securities & Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

RE: File No. S7-13-16 Proposed Rule requiring business continuity and transition plan for investment advisers

Dear Mr. Fields,

Please accept our comments to the U.S. Securities and Exchange Commission's ("Commission's") proposed rule regarding business continuity and transition plans for registered investment advisers (the "Proposed Rule"). MarketCounsel has prepared these abridged comments to the Proposed Rule that solely address the most critical needs of entrepreneurial, closely-held registered investment advisers, a group whose interests seem to have been overlooked by many of the other commenters.

MarketCounsel supports the Commission's attempt to help ensure that an investment adviser's policies and procedures are reasonably designed to address the risks related to a significant business disruption in its operations. We generally agree with the provisions of the Proposed Rule, but seek the Commission's clarification on a few items that impact independent investment advisers, particularly with respect to transition plan arrangements for such advisers.

For perspective, MarketCounsel is a business and regulatory compliance consulting firm to some of the country's preeminent entrepreneurial investment advisers. MarketCounsel often works with these advisers from their launch and throughout their ongoing operations. In addition, we have been called upon to implement both pre-arranged transition plans and emergency transitions.

INTRODUCTION

In our experience, most independent investment advisers already have a business continuity plan in place that addresses much, if not all, of the Proposed Rule's requirements. Smaller firms, however, uniquely challenged when it comes to planning for a transition due to the loss of their limited key personnel. Therefore, it is with regards to "transition planning" section within the Proposed Rule that we believe more guidance would be helpful to make such a transitions easier for firms and their clients.

While all investment advisers face challenges arising out of the loss of key personnel, the challenges are particularly acute for smaller investment advisers who typically do not have the breadth and depth of resources available to larger financial institutions to address such losses, particularly those that are unexpected. For instance, advisers that lose key personnel may not be able to transition management of

their clients' assets to another advisor within the firm and therefore may be compelled to find external alternatives, such as selling the advisory business to another firm or retaining a transition manager to facilitate the transition of asset management to another firm. It is too often impractical to prepare for an unexpected transition that both meets regulatory obligations, and permits the firm to act consistent with the best interests of its clients.

PRIVACY CONCERNS

External transitions arrangements can create potential regulatory collision for advisers. A rapid transition may require immediate sharing of nonpublic client information with third-party advisers to minimize service disruptions. Yet, Regulation S-P requires an adviser to describe the conditions under which the firm may disclose consumers' nonpublic personal information to nonaffiliated third parties and provide a method for consumers to opt out of the disclosure of nonpublic personal information to certain nonaffiliated third parties. But when transitions are sudden, it may be challenging for an adviser to notify its clients of the need to share nonpublic information with third-party advisers in a timely manner to minimize service disruptions and permit them sufficient time to opt out of such disclosures. Therefore, we would like to see the Commission provide relief from Regulation S-P's notification and opt-out provisions during such a rapid transition to facilitate minimal service disruptions in the best interest of their clients.

QUALIFIED PERSONNEL

Where the significant business disruption involves the loss of a firm's only investment adviser representative or the sole investment and business decision-maker of the firm, transition of asset management may involve a period during which the firm has no investment adviser representative who can assist in the management of client assets until the transition to another firm has been consummated. In such situations, another registered investment adviser may be willing to offer advisory services to the affected firm's clients during the transition period. Because the that firms' investment personnel are not actually registered as investment adviser representatives with the affected firm, there are state regulatory issues that make this practice a challenge.

We would like to see the Commission provide relief to allow a duly registered investment adviser representative with one firm to serve the affected firm during a transition period without separately registering with that affected firm. In the alternative, the Commission could permit an affected firm to engage another registered investment adviser to provide temporary advisory services until a permanent solution is determined, regardless of an adviser's contractual authority to do so. It is not in the best interests of clients to make it unnecessarily difficult for an affected firm to receive immediate support.

CLOSING

MarketCounsel hopes that our comments, made on behalf of us and our entrepreneurial, closely held investment adviser clients are beneficial to this process. We support the Commission's attempt to add more guidance to an area that has typically been left to interpretation under an adviser's general fiduciary responsibilities. We hope that, with some additional guidance and accompanying relief, a final rule can help protect clients from business interruptions partially by making it easier for investment advisers to transition investment management services to another firm when necessary.

Of course, should you have any questions or require any additional information regarding any of the foregoing, we remain available at your convenience using any of the methods below.

Best regards,
MARKETCOUNSEL, LLC

By: /s/ Brian S. Hamburger, JD, CRCP
President and Chief Executive Officer

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Chief Regulatory Counsel