CAPITAL GROUP℠

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August 30, 2016

Via Electronic Mail (rule-comments@sec.gov)

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

Re: File No. S7-13-16: Adviser Business Continuity and Transition Plans Rule Proposal

Dear Mr. Fields:

We appreciate the opportunity to comment on the Securities and Exchange Commission's above-referenced release on adviser business continuity and transition plans (the "Release").[1] The Capital Group Companies is one of the oldest asset managers in the nation. We, through our investment advisory subsidiaries, actively manage assets in various collective investment vehicles and separate accounts. These assets include the American Funds family of mutual funds, which are distributed through financial intermediaries and held by individuals and institutions across different types of accounts. We support the Commission's efforts to protect investors' interests from being placed at risk as a result of an adviser's inability to continue providing advisory services in the event of business interruptions. We particularly appreciate the Commission's principle-based approach in the Release, which would allow advisers to tailor their business continuity and transition plans to their particular business models. We also appreciate the Commission's emphasis on an adviser's duty to mitigate, as opposed to completely eliminate, risks of disruptions in their operations. We generally support the comments provided by the Investment Company Institute in its letter filed on August 23, 2016 and offer our specific views on certain aspects of the Release.

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[1] *Adviser Business Continuity and Transition Plans*, SEC Release No. IA-4439, 81 Fed. Reg. 43530 (July 5, 2016), available at www.gpo.gov/fdsys/pkg/FR-2016-07-05/pdf/2016-15675.pdf.

1. **We believe that business continuity and transition planning is more appropriately addressed through guidance under the existing framework of Rule 206(4)-7 of the Investment Advisers Act of 1940 (the "Compliance Program Rule") rather than as a separate new anti-fraud rule.**

The Commission has requested comment on whether it should issue guidance under the Compliance Program Rule rather than adopt proposed new Rule 206(4)-4 under the Investment Advisers Act of 1940 (the "Advisers Act"). We believe that business continuity and transition planning is more appropriately addressed through guidance rather than as a separate new anti-fraud rule. Business continuity planning is already effectively required under the Compliance Program Rule, pursuant to which advisers must adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act.[2] The Compliance Program Rule's adopting release clearly indicates that as part of its compliance program, an adviser must establish business continuity plans to protect clients' interests from being placed at risk as a result of the adviser's inability to provide advisory services after a significant business disruption.[3] While there is no specific guidance regarding transition planning, the Commission has noted that the list of policies and procedures in the adopting release is not exhaustive and may be expanded as needed. Additional guidance under the Compliance Program Rule would address the Commission's concerns regarding the inconsistency or lack of robust business continuity planning among advisers, making a new anti-fraud rule unnecessary. Furthermore, this approach would be consistent with the Commission's stated intent in the Release to preserve each adviser's flexibility to tailor its plans to its business, as well as allow the Commission to more easily modify its expectations to adapt to constantly evolving risk factors.

We are concerned by the Commission's statement in the Release that it "would be fraudulent and deceptive for an adviser to hold itself out as providing advisory services unless it has taken steps to protect clients' interests from being placed at risk as a result of the adviser's inability (whether temporary or permanent) to provide those services."[4] We believe that a deficiency in an adviser's business continuity or transition plan is better characterized as a violation of the Compliance Program Rule instead of fraud. Under the current regulatory framework, failures in connection with business continuity procedures can result in a deficiency finding or violation of the Compliance Program Rule. In contrast, the proposed rule, interpreted within the context provided by the Release, would impute fraud for a contingency planning failure in the absence of any substantive violation of the Advisers Act that caused actual harm to investors. The adoption of the proposed rule could also cause confusion about whether advisers have separate obligations under both the Compliance Program Rule and proposed Rule 206(4)-4, potentially resulting in enforcement actions that treat the same conduct as violating two distinct rules.

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[2] *Compliance Programs of Investment Companies and Investment Advisers*, SEC Release No. IA-2204, 68 FR 74714, 74716 (Dec. 24, 2003), available at www.sec.gov/rules/final/ia-2204.pdf.

[3] Ibid at footnote 22.

[4] Release at 10.

Should the Commission however decide to adopt a new rule instead of guidance, then we encourage the Commission to follow its existing approach for the Compliance Program Rule, which imposes only general obligations by rule while the Commission's more specific expectations are outlined by guidance. We also recommend that the Commission clarify in any adopting release that any fraud claim under the new rule would require more than a technical determination that an adviser's business continuity or transition plan was insufficient. In addition, we request that compliance with the new rule be sufficient for purposes of fulfilling any business continuity planning obligations under the Compliance Program Rule.

2. **We support the Commission's decision to take a principles-based approach to transition plans in lieu of a more prescriptive rule that calls for a more specific transition plan similar to the "living wills" required by the Federal Reserve Board and the FDIC for large banks and systemically important non-bank entities.**

As we have stated in the past, the mutual fund industry is very competitive, funds are highly substitutable and the asset management business is easily transferable because of the agency nature of the business.[5] In their response to the Financial Stability Oversight Council's 2015 Notice Seeking Comment on Asset Management Products and Activities, the Investment Company Institute discussed the topic of "resolution" and provided a detailed explanation for why funds and their advisers do not "fail" in the same way as banks and insurance companies.[6] Accordingly, we do not believe it necessary for the Commission to adopt a more prescriptive rule with respect to advisers' transition plans. Indeed, as already discussed above, we believe that the Commission's concerns about client protection in this regard can be addressed through guidance under the Compliance Program Rule, as part of the business continuity plan requirements, without the need for either a new rule or a distinct transition plan.

However, to the extent the Commission decides to adopt a new rule, we recommend that it remain general and principles-based similar to the Compliance Program Rule, supplemented by guidance as necessary. We agree with the Investment Company Institute's comments relating to the proposed rule and echo their expectation that it would be sufficient for compliance purposes to have a generally applicable "playbook", which consolidates key information and identifies important considerations, rather than attempt to draft a comprehensive and detailed plan covering every single contingency. We also ask that the Commission clarify that the proposed rule text regarding the "identification of any material financial resources available to the adviser" is interpreted as only requiring the identification of such resources but not an assessment of their

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[5] Letter to the Financial Stability Oversight Council ("FSOC") from James Rothenberg, then Chairman of The Capital Group Companies, in response to FSOC Notice Seeking Comment on Asset Management Products and Activities ("FSOC Notice"), dated March 25, 2015.
[6] Letter to FSOC from Paul Schotts Stevens, President & CEO, Investment Company Institute, in response to FSOC Notice, dated March 25, 2015, at www.ici.org/pdf/15_ici_fsoc_ltr.pdf.

availability or amounts in stressed conditions. Finally, since formal transition plans would be new for most advisers, we recommend that the Commission provide at least one (1) year from rule adoption to give advisers a reasonable amount of time to comply.

3. **We believe that an adviser's business continuity and transition plan is its proprietary information and should not be subject to public disclosure or regulatory filing requirements. We also believe that advisers should not be required to report to the Commission or clients any incidents where they rely on their business continuity and transition plans**

The Release includes several questions focused on whether business continuity and transition plans should be publicly disclosed or filed with the Commission, or whether advisers should be required to report any incidents where they rely on their plans. We support the Commission's decision to exclude these requirements from their current proposal. We believe that business continuity and transition plans are the proprietary information of the advisers and any broad disclosure of an adviser's contingency plans could make them more vulnerable to attacks from third parties, such as cybersecurity attacks. Current due diligence practices already afford clients the opportunity to request and receive information regarding an adviser's business continuity plans without requiring advisers to disclose sensitive information. With respect to a new regulatory filing requirement, we believe this to be unnecessary given the proposed amendments to the recordkeeping rule outlined in the Release, which would already provide the Commission access to the plans.

Similarly, we believe that advisers should not be required to report to the Commission or disclose to their clients every incident where they rely on their business continuity or transition plan. If these plans function as intended, advisers will experience such events without any disruption to the adviser's operations or impact to clients. On the other hand, mandatory client disclosures and regulatory reporting on such incidents might cause unnecessary concern and panic. In addition, such disclosure and reporting requirements might even discourage some advisers from activating their business continuity and transition plans, potentially causing clients more harm.

4. **We recommend that the Commission acknowledge in any adopting release that there are certain limits on advisers' ability to oversee third party service providers.**

We support the proposed rule text requiring advisers to identify and assess third party services critical to its business operations. However, we would ask that the Commission clarify in any adopting release that it be sufficient for compliance purposes for an adviser to obtain a reasonable belief, through due diligence, that critical service providers are appropriately prepared for business continuity events. Any adopting release should acknowledge that advisers generally do not receive their service providers' complete business continuity plans for the same reason we are recommending against any public disclosure requirement – these plans are proprietary and include sensitive information that could expose service providers to additional business continuity risks if compromised. Therefore, an adviser cannot be expected to know its service providers' business continuity plans to the same extent it knows its own. In addition, the Commission should acknowledge that in some cases, there are practical limits on an adviser's ability to select or change service providers. For example, certain services are provided by a limited pool of vendors, maintaining redundant service providers can be cost-prohibitive, or in times of stress, a change in service providers might actually be more disruptive and cause more harm to the client. There are also situations where an adviser is required to work with a critical service provider chosen by the client (for example, custodians). Accordingly, we believe it is important that the Commission clarify that the rule should not be interpreted to hold advisers liable for, or provide guarantees against, the activities of their service providers.

Finally, we note that a number of key industry service providers are regulated entities, including transfer agents, certain pricing vendors and custodian banks. For these vendors, while advisers might be able to perform some due diligence, regulators are in a better position to influence industry practices around vendor business continuity. Therefore, we encourage the Commission to use its examination program and other regulatory tools to the extent possible to motivate these service providers to implement and maintain robust business continuity plans, particularly given the critical nature of their activities.

We appreciate the opportunity to provide our comments on the Release. If you have any questions regarding our comments, please feel free to contact Maria Manotok at [redacted]

Sincerely,

James P. R

James P. Ryan
Senior Vice President

cc: The Honorable Mary Jo White
The Honorable Kara M. Stein
The Honorable Michael S. Piwowar

David W. Grim, Director
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