

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

April 14, 2023

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

Submitted via email to rule-comments@sec.gov

Re: File No. S7-04-23

Dear Ms. Countryman:

The Committee on Private Investment Funds and the Committee on Compliance of the New York City Bar Association (“**Committees**”) submit this letter in response to the request of the Securities and Exchange Commission (“**Commission**”) for comment in connection with Investment Advisers Act Release No. 6240 (February 15, 2023), which proposes new rules and amendments to Rule 206(4)-2 (the “**Custody Rule**”) under the Investment Advisers Act of 1940 (the “**Advisers Act**”) that would expand the current Custody Rule to cover a broader array of client assets and advisory activities and impose new custodial protections on client assets held under the Advisers Act (the “**Custody Rule Proposal**”)¹. The Committees are composed of lawyers with diverse perspectives on investment management issues, including attorneys from law firms, counsel and compliance professionals to financial services firms, investment company complexes and investment advisers.

At the same time, the Committees are concerned that the Custody Rule Proposal, which would have a profound impact on the private fund industry, does not provide relevant stakeholders with sufficient time to analyze and provide meaningful comment to the Commission and its staff. The comment period for the Custody Rule Proposal, which is less than 90 days overall, does not provide a meaningful opportunity to comment. The Committee notes that the Commission reopened comment periods for several Commission rule proposals in 2022 after the expiration of

¹ See Safeguarding Advisory Client Assets, Release No. IA-6240 (Feb. 15, 2023).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has approximately 24,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

the applicable original comment periods.² However, in the Committees' view, an extension of an *ongoing* comment period in advance of its expiration, rather than a reopening of a previously closed comment period, better facilitates the ability of stakeholders to provide thoughtful comment on a sufficient, continuous timeline without the need for stakeholders to prepare comments prior to the close of the original comment period without the benefit (and notice) of a longer timeline.

Given the complexity of the Custody Rule Proposal, the Committees believe that both the Commission and relevant stakeholders would benefit from additional, uninterrupted time for analysis and comment. The Committees therefore respectfully request an extension of the ongoing comment period for the Custody Rule Proposal prior to its expiration by 60 days to July 7, 2023. The Committees believe that this additional time is warranted and consistent with past Commission practice in extending comment periods.³ By extending the comment period prior to its expiration, relevant stakeholders will have additional time to prepare and provide thoughtful analysis that will enable the Commission and its staff to better meet their mission to protect investors and facilitate capital formation.

The Committees appreciate the opportunity to comment on the Custody Rule Proposal. If we can be of any further assistance in this regard, please contact Michael Hong at the contact information provided below.

Respectfully,

Michael S. Hong
Chair, Private Investment Funds Committee

[REDACTED]
[REDACTED]

Patrick T. Campbell
Chair, Compliance Committee

Adam B. Felsenthal
Chair, Compliance Committee

cc: The Honorable Gary Gensler
The Honorable Caroline Crenshaw
The Honorable Jaime Lizárraga
The Honorable Hester Peirce

² See, e.g., Reopening of Comment Periods for “Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews” and “Amendments Regarding the Definition of ‘Exchange’ and Alternative Trading Systems (ATSS) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities”, Release Nos. 3494868; IA-6018 (May 9, 2022) and The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release Nos. 33-11061; 34-94867 (May 9, 2022).

³ See, e.g., Extension of Comment Period for Asset-Backed Securities Release, Release No. 33-9568 (Mar. 28, 2014); Roadmap for the Potential Use of Financial Statements Prepared in Accordance With International Financial Reporting Standards by U.S. Issuers, Release No. 33-9005 (Feb. 3, 2009).

The Honorable Mark Uyeda