



September 6, 2016

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Re: SEC File No. S7-13-16 (RIN 3235-AL62): SBIA Comments on the Proposed Rule Requiring Adviser Business Continuity & Transition Plans

Dear Mr. Fields:

The Small Business Investor Alliance (“SBIA”) appreciates the opportunity to comment on the Securities and Exchange Commission (“SEC” or “Commission”) proposed rule and rule amendments which will require SEC-registered investment advisers to adopt and implement written business continuity and transition plans, and retain them for a specified period of time.¹

SBIA is a national association that develops, supports, and advocates on behalf of policies that benefit investment funds that finance small and mid-size domestic businesses in the middle market and lower middle market, as well as the investors that provide capital to these funds. Our membership consists of advisers to traditional 3(c)(1) and 3(c)(7) private funds, funds and their advisers that have been licensed or are seeking to be licensed by the Small Business Administration as small business investment companies (“SBICs”), funds and external managers electing BDC status under the Investment Company Act of 1940, and the investors that invest in these funds, including, but not limited to, banks, family offices and funds of funds.²

SBIA generally supports the changes made in the Proposed Rule, as it largely codifies what was already required in SEC adviser examinations and formalizes it within SEC regulations. The SEC has previously issued requirements for advisers to establish a business continuity plan as part of the final rule release adopting Rule 206-4(7), stating that the Commission believed the adviser had a “fiduciary obligation” to its clients to plan for “the adviser’s inability to provide advisory services after...a natural disaster, or in the case of some small firms, the death of the

¹ Adviser Business Continuity and Transition Plans, 81 Fed. Reg. 43530-43556, (July 5, 2016) (“Proposed Rule”).

² SBIA currently has over 150 individual fund/investment adviser members and is the primary association of the BDC industry, representing over 40 BDCs.

owner or key personnel.”³ This issue was highlighted again in August 2013, when the SEC stressed in a National Exam Program “Risk Alert” that it was conducting examinations of Adviser business continuity plans in the aftermath of Hurricane Sandy, suggesting that advisers are already informally required to have plans in place.⁴ While we generally support the codification of these requirements into formal rules for advisers, we have concerns about the burden imposed on advisers to private funds in requiring “transition plans” to be adopted by all advisers under the Proposed Rule. Many of the elements in the “transition plan” are not applicable to private fund advisers and are more appropriately suited for retail advisers.

SBIA believes that advisers to private funds should be exempted from the provisions in the Proposed Rule that require a plan for adviser “transition” as opposed to business continuity plans, as transition of clients is rarely applicable in the private fund adviser context. In particular, we propose exempting private fund advisers from the requirements under proposed Sections 275.206(4)-4(b)(1)(ii) and 275.206(4)-4(b)(2)(v).⁵ These requirements regarding the transition of the advisers business are not applicable to private fund advisers, who are specialized and advise a limited number of pooled investment vehicles as opposed to numerous retail clients, while already having set in place thorough contractual arrangements addressing transition and potential liquidation or the partnership within the fund’s legal documents. These advisers rarely, if ever, transition their role as general partner and investment adviser to another private fund adviser, instead liquidating the fund in accordance with the provisions in the partnership agreement. Almost all limited partnership agreements (LPAs), to which private fund advisers are a party, already incorporate investor oversight and governance protections, including establishment of a fund Advisory Board made up of limited partners, “key man” provisions, and generally include liquidation and wind up provisions to address the need for transition or business continuity in respect to the adviser/general partner in the fund. Adding the layer of transition planning in the Proposed Rule may conflict and will add additional complexity to the existing obligations and requirements in these LPAs. As a result, the transition rule may actually be more harmful for investors in the funds due to the uncertainty of what transition plan is required – the requirement under the Proposed Rule or the contractual requirements in the LPA. The Commission should provide an exemption for private fund advisers to the transition planning elements of the rule, if they have adequate “key man” provisions in their LPAs, to avoid producing legal uncertainty between differing regulatory and contractual regimes.

³ U.S. Securities & Exchange Commission, *Final Rule: Compliance Programs of Investment Companies and Investment Advisers*, SEC File No. S7-03-03, f.n. 22 (February 5, 2004).

⁴ U.S. Securities & Exchange Commission, *SEC Examinations of Business Continuity Plans of Certain Advisers Following Operational Disruptions Caused by Weather-Related Events Last Year*, August 27, 2013; available at: <https://www.sec.gov/about/offices/ocie/business-continuity-plans-risk-alert.pdf>

⁵ See Proposed Rule.

Alternatively, the requirements in the Proposed Rule on putting in place sensible business continuity measures to deal with a significant business disruption of the adviser, may make sense for private fund advisers, because they will ensure that services to the funds they advise will be resilient during a significant event, and will ensure the adviser can continue to fulfill its duties as general partner and adviser to the private fund. SBIA encourages the Commission to craft an adjustment to the Proposed Rule to provide for a more targeted approach to advisers to private funds given the unique aspects of their role.

We are happy to meet with the Commission and discuss this issue further. Please contact SBIA's General Counsel, Christopher Hayes, at [REDACTED] or [REDACTED] if we can provide additional assistance on this issue.

Sincerely,

A handwritten signature in dark ink, appearing to read "Brett Palmer". The signature is fluid and cursive, with the first name "Brett" and last name "Palmer" clearly distinguishable.

Brett Palmer
President
Small Business Investor Alliance