REGULATORY UPDATE:

The SEC Adopts Amendments to Update Definitions of Small Entity for Funds and Investment Advisers

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INTRODUCTION:

On November 4, 2026, the SEC adopted amendments (the "Amendments") to the rules that define which registered investment companies ("funds"), investment advisers, and business development companies qualify as "small entities" for purposes of the Regulatory Flexibility Act ("RFA"). Specifically, the Amendments:

- Increase the asset-based thresholds under which investment companies, investment advisers, and business development companies are deemed small entities.
- Update the way that related funds' assets are aggregated for purposes of defining small entities.
- Eliminate the investment adviser total assets threshold.
- Provide for inflation adjustments to the asset-based thresholds by order every 10 years.

According to the SEC, the goal of the Amendments is to minimize the impact of federal rulemaking on small entities by capturing a more meaningful population of funds, investment advisers, and business development companies that are considered "small entities."

KEY TAKEAWAYS:

- The Amendments are the first updates the SEC's definition of small entities since 1998 and recognize the substantial growth in the asset management industry since the asset-based thresholds for identifying "small entities" were initially set.
- The Amendments have the potential to help the SEC better tailor its analyses of regulatory challenges faced by smaller investment companies and advisers, be better informed of the regulatory impacts, and adapt its rulemaking accordingly.
- Funds and advisers should determine whether their classification will change due to the Amendments.
- The Amendments will become effective 90 days after the publication of the adopting release in the Federal Register.

THE DETAILS:

One goal of the RFA is to promote regulatory effectiveness and efficiency by, among other things, consideration of alternative regulatory approaches that minimize economic impact on small entities. There has been substantial growth in assets under management and net assets since these thresholds were last updated in 1998. The Amendments are designed to capture the types of investment advisers and investment companies that the SEC now considers to be "small" considering this growth.

Fund Amendments

The SEC amended the definition of "small business" under the Investment Company Act as follows:

- Raising the net asset threshold for funds from $50 million to $10 billion.
- Amending the Fund Group Definition.

Raising the Fund Net Asset Threshold - As proposed, the SEC raised the net asset threshold from $50 million to $10 billion. Although this is a substantial increase, In the adopting release the SEC noted that at the time the original threshold was adopted, 62.4% of funds were deemed "small entities," but by 2024, the share of funds deemed "small entities" had fallen to 0.6%. According to the SEC, Raising the net asset threshold to reflect growth in the investment company industry will improve the utility of RFA analyses by more closely reflecting the population of funds that does not have the same competitive advantages as larger fund families (e.g., economies of scale when larger fund families perform certain compliance and other operational functions in-house). It also will more closely reflect the population of funds that does not have the same negotiating power as larger fund families when retaining service providers to perform compliance and operational functions

The SEC also noted that as of December 2024, fund families at or below the 80th percentile threshold of $10.04 billion in net assets accounted for 22.91% of individual funds and only 2.13% of fund assets. The analysis that formed the basis for the proposed threshold reflects that the assets of the investment company industry are heavily concentrated at the largest fund families, and these largest fund families not only manage a large majority of assets in the industry but also account for most of the individual funds.

Amending the Fund Group Definition – The SEC amended replaced the term "group of related investment companies" with "family of investment companies," as defined in Item B.5 of Form NCEN. While the "small entity" designation applies to individual funds, whether any individual fund is deemed small depends upon the aggregate net assets of all funds within its respective "group of related investment companies." According to the SEC, the change from using the term "group of related investment companies" to using "family of investment companies" in the small entity definition will enable the SEC to rely on information that is already reported on Form N-CEN to identify small entities for purposes of RFA analyses and to more efficiently consider whether future adjustments to the net asset threshold are warranted.

Investment Advisers Amendments

The SEC amended the definition of "small organization" under the Advisers Act for purposes of the RFA as follows:

- Raising the RAUM Threshold from $25 million to $1 billion and making conforming amendments to the control relationship threshold to reflect the increased RAUM threshold.
- Eliminating the $5 million total assets threshold and making conforming amendments to the control relationship threshold to reflect its elimination.

Raising the Adviser RAUM Threshold - The final RAUM threshold is designed to capture the types and numbers of investment advisers that the SEC now considers to be "small" in light of industry growth since the 1998 amendments and the structural changes in the investment management industry since the 1998 amendments, including that in 2010, the Dodd-Frank Act raised the SEC-registration threshold, resulting in fewer smaller advisers registering with the SEC.

Eliminating the Adviser Total Assets Threshold - In a change from the proposal, the SEC eliminated the $5 million total assets threshold and made conforming amendments to the control relationship threshold to reflect its elimination. According to the SEC, it is not necessary to maintain the total assets threshold, because the RAUM threshold and control relationship threshold, as amended, are more reliable indicators of whether an adviser is a small entity for purposes of the RFA. Balance sheet assets, such as leases and equipment, do not reflect the scope of an advisory business as well as regulatory assets under management.

The SEC amended the control relationship threshold, with modifications from the proposal. Currently, the control relationship threshold disqualifies an adviser from being considered small if it is in a control relationship with an affiliated adviser exceeding an assets under management test that mirrors the current RAUM threshold of $25 million. The SEC amended the value of the control relationship threshold to conform it to the revised $1 billion RAUM threshold.

The control relationship threshold will continue to prevent affiliates of large advisers from obtaining potential regulatory benefits under the RFA. Currently and under the final rules, the Control Relationship Threshold precludes advisers from being considered small if they have de minimis RAUM but control, are controlled by, or are under common control with another adviser that has assets under management equal to or greater than the RAUM threshold. Advisers with de minimis RAUM would appropriately continue to be precluded from obtaining potential regulatory benefits under the RFA.

Periodic Inflation Adjustments

The SEC also amended the fund and investment rules to allow the SEC to make subsequent inflation adjustments to the asset thresholds by order every 10 years. The amendments provide that the SEC will issue an order every ten years adjusting:

- The net asset threshold in the investment company small entity definition,
- The investment adviser small entity definition, and
- The RAUM Threshold (which will also now have the effect of adjusting the control relationship threshold).

The adjustment of the asset-based thresholds be calculated by reference to the Personal Consumption Expenditures Chain-Type Price Index. This inflation adjustment mechanism is designed to maintain the thresholds at levels that reflect the buying power of money over time, without the need for SEC action through rulemaking

Conforming Amendments to Form ADV and the Hardship Exemption Rule

The SEC is also making conforming amendments to Form ADV to reflect the Amendments.

About Randy Randall: *Randy Randall is a Senior Partner at Helios and a seasoned compliance executive and securities attorney with more than 35 years of experience advising investment advisers, broker-dealers, and investment companies. Before joining Helios, Randy spent nearly two decades at William Blair, where he served as Chief Compliance Officer and Counsel for the firm's Investment Management business. He counsels and advises clients on SEC and FINRA regulatory matters, compliance program design, governance, and complex legal and regulatory issues affecting the investment management industry.*