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29 December 2023

Vanessa Countryman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington D.C. 20549

Re: Safeguarding Rule for Registered Investment Advisers

Dear Ms Countryman,

At the Standards Board for Alternative Investments ("SBAI"), we would like to add our comment to the responses on the U.S. Securities and Exchange Commission's ("SEC") Proposed Rule on Safeguarding Advisory Client Assets.[1]

At the SBAI, we are an active alliance of over 150 asset managers and over 90 institutional investors dedicated to advancing responsible practices, partnership and knowledge. Our community includes asset managers with over $2 trillion in AUM and institutional investors responsible for over $6 trillion in assets, with a large proportion of them based in the U.S. or invested with investment managers in the U.S. We aim to improve industry outcomes through our Alternative Investment Standards[2], practical industry guidance[3] and engagement with the global regulatory community[4]. Our mission is to bring asset managers and investors together to achieve new best practices and improve industry outcomes. We support efforts to facilitate fair, orderly, and efficient markets, reduce systemic risk, and enable investors to make well informed investment decisions. SBAI is an Affiliate Member of the International Organization of Securities Commissions (IOSCO).

In our response to your request for input, we do not answer the specific questions raised, but highlight key positions and their rationale that we view as important when developing rules in the area of Safeguarding. Not answering the detailed questions should not be considered an endorsement of any or all the suggestions contained in that question.

Key Positions on the Proposal

1. **The proposal would disrupt a wide range of non-securities markets.**
    a. The Commission proposes to expand the scope of the Investment Advisers Act custody framework from "funds and securities" to all "assets" defined as "funds, securities, or other positions held in the client's account."
    b. In expanding the scope of instruments subject to the custody rule, the Commission failed to consider how the proposed safekeeping requirements would apply to various asset classes.
    c. If the Commission had analysed the proper scope of its proposal, it would have recognized that the proposed rules are incompatible with a wide range of markets, both foreign and domestic, that involve instruments that cannot be custodied in accordance with the rule (including futures, cleared

1 https://www.sec.gov/files/rules/proposed/2023/ia-6240.pdf
2 https://www.sbai.org/standards.html
3 https://www.sbai.org/toolbox.html
4 https://www.sbai.org/regulatory-engagement.html

swaps, OTC derivatives, repurchase agreement/reverse repurchase agreements, certificates of deposit, among many others).

   d. This expansion of the safekeeping requirements will have significant unintended consequences, including disrupting trading in markets where it is not clear how a qualified custodian could provide the assurances and services required under the rule.

2. **The proposed alternative framework for "physical assets and privately offered securities" is overly narrow and unworkable.**
   a. The Commission proposed an alternative safeguarding framework for "physical assets" and "privately offered securities."
   b. As stated above, there are numerous instruments that cannot reasonably be custodied by traditional custodian beyond physical assets and privately offered securities, including, among others, real-estate, renewable energy credits, and bilateral contracts.
   c. However, even if the Commission were to expand its proposed alternative safeguarding framework for physical assets and privately offered securities to other assets, the proposal is still unworkable.
   d. The alternative framework would require an auditor to be involved in, and promptly verify, "each purchase, sale or transfer."
   e. This requirement would result in exorbitant costs and outstrip auditor firms' capacity, in many cases for no corresponding customer protection benefits.
3. **We are also concerned that the segregation requirement will affect prime brokers' ability to provide margin finance through rehypothecation (where the broker has the consent to do so).**
4. **The Commission should not require advisers to renegotiate all custody and trading agreements.**
   a. The proposal would require that advisers obtain "reasonable assurances" in writing from each qualified custodian that the custodian will comply with certain requirements, and advisers would be required to "maintain an ongoing reasonable belief" that the custodian is complying with these requirements.
   b. This requirement would require the renegotiation of all trading and custody agreements across the asset management industry with no clear benefit to advisory clients. Clients already receive contractual protections from their custodians directly, and the Commission provides no reasonable basis for advisers to extract their own assurances from custodians.
   c. Moreover, the written representations the Commission proposes to require (including the requirement to indemnify the client (and have insurance arrangements in place) against the risk of loss of the client's assets maintained with the qualified custodian), are not consistent with market practices, and would significantly increase the costs of custodial services.

Finally, we would ask the SEC to consider slowing down the pace of proposing and implementing complex new proposals to enable industry stakeholders to engage properly, and to arrive at effective rules for the industry that support sound public policy.

Thank you for the opportunity to provide comments on the Proposal beyond the response deadline. If you have any questions on our comment letter, please feel free to contact Thomas Deinet at +44 203 405 9043.

Respectfully Submitted

Thomas Deinet
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