SUBMITTED ELECTRONICALLY

September 6, 2016

Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090
Attention: Brent J. Fields

RE: Adviser Business Continuity and Transition Plans, SEC Release No. IA-4439, File No. S7-13-16 (Jun. 28, 2016)

Dear Mr. Fields:

The American Investment Council (the "AIC") is submitting this letter in response to Release No. IA-4439, in which the Securities and Exchange Commission (the "Commission") has requested comments on proposed rule 206(4)-4 (the "Proposed Rule") under the Investment Advisers Act of 1940, as amended (the "Advisers Act").[1] The Proposed Rule would require registered investment advisers to, among other things, adopt and implement a written business continuity plan and a transition plan. However, we believe that private equity fund advisers present few of the business continuity and transition risks underlying the Proposed Rule, given the nature of their businesses.[2] Consequently, and for the reasons stated below, we do not think the Proposed Rule is necessary or appropriate given the Commission's existing authority under Rule 206(4)-7 and the nature and structure of private equity funds and their advisers. Indeed, we strongly believe that the Commission should address this topic by issuing guidance in lieu of adopting the Proposed Rule. If, however, the Proposed Rule is adopted, we believe it should expressly permit private equity fund investment advisers greater flexibility in how they structure and implement their business continuity and transition plans.

The AIC is an advocacy, communications and research organization established to advance access to capital, job creation, retirement security, innovation and economic growth by promoting responsible long-term investment. In this effort, the AIC develops, analyzes and distributes information about the private equity and growth capital industry and its contributions to the U.S. and global economy. Established in 2007 and formerly known as

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[1] Adviser Business Continuity and Transition Plans, SEC Release No. IA-4439 (Jun. 28, 2016) (the "Proposing Release").

[2] For example, private equity funds generally do not engage in daily trading of securities, they hold mostly illiquid privately-offered securities, and they do not offer fund investors the opportunity to redeem their interests in the ordinary course of business.

the Private Equity Growth Capital Council, the AIC is based in Washington, D.C. The AIC's members are the world's leading private equity and growth capital firms united by their commitment to growing and strengthening the businesses in which they invest. For further information about the AIC and its members, please visit our website at http://www.investmentcouncil.org.

I. Private Equity Fund Advisers Do Not Present Significant Business Continuity Risks

In general, the business model of a private equity fund adviser presents few business continuity risks. The typical investment strategy of private equity funds makes them (and the funds' advisers) resilient to most business disruptions contemplated by the Proposed Rule.

Private equity funds are long-term investors that do not (with rare exceptions)[3] engage in trading on the public markets or make use of the types of technology-driven trading systems that appear to animate the Proposed Rule. Indeed, private equity funds principally invest in privately offered securities that, as such, do not trade on stock exchanges or the over-the-counter markets. Even in situations where private equity funds hold publicly traded securities (such as after the initial public offering of a portfolio company), these securities are often subject to lock-up periods that prevent them from being sold for an extended period. In particular, the strategies of private equity funds do not rely on the short-term buying and selling of publicly traded securities, technology-driven or high-frequency trading activity (or even access to time-sensitive business data), complex computer algorithms or access to electronic trading platforms. Rather, most material transactions of private equity funds involve months (or sometimes even years) of due diligence, analysis, discussion, negotiations and planning, where the modes of communication and documentation vary and are flexible. Therefore, private equity fund advisers are less reliant than other types of investment firms on particular systems, data feeds, service providers, communications methods or office locations. A temporary disruption in the ability of a private equity fund to engage in trading activity is highly unlikely to have any material effect on the ability of the fund to execute its investment strategy.

The securities held by private equity funds are either recorded on the books of the issuer or its transfer agent or maintained with a custodian.[4] Also, since the portfolio companies of a private equity fund are generally geographically distributed throughout the country and, frequently, across the globe, business disruptions of the private equity fund adviser are

[3] For example, private equity funds may sell small amounts of public shares for a short period of time after the lock-up period for a portfolio company that has had an initial public offering.

[4] See Rule 206(4)-2 under the Advisers Act.

often uncorrelated with disruption of the operations of their portfolio companies. In addition, copies of many of the books and records of a private equity fund are also often maintained (and, in some cases, maintained primarily) by the auditing firms who audit of the funds and at the law firms that assist in the formation of the funds and the execution of the transactions.

In addition, private equity funds lock up investor capital for several years and do not allow redemptions in the ordinary course of business. Investors do not rely on private equity funds for daily or even weekly or monthly liquidity. The long-term strategy of private equity funds and the fact that the transactions can develop over months mean that such funds' sophisticated investors do not expect (and, therefore, do not rely on) the distribution of proceeds on any particular date. For this reason, in the unlikely event that a distribution of proceeds coincides with a disruption in business, investors would not likely suffer any material harm from a temporary delay in the receipt of the proceeds. Moreover, investors in private equity funds do not expect (and are not provided) daily updates on the holdings and transactions of the fund; rather, investors are typically provided such information on a quarterly or annual basis. As a result, private equity fund investors would not suffer harm from any delay in reporting that might result from a business disruption. Similarly, the absence of regular liquidity, along with the fact that the funds are holding illiquid securities, means that private equity funds are not reliant on daily valuation, either developed internally or externally from a service provider.

II. The Proposed Rule Is Unnecessary Given the Existing Commission Authority

We do not believe that the Proposed Rule is necessary because existing Rule 206(4)-7 already requires an investment adviser to have policies and procedures reasonably designed to prevent violations of the Advisers Act, including Section 206 of the Advisers Act. As the Commission noted in the Proposing Release, the release adopting Rule 206(4)-7 indicates that "an adviser's compliance policies and procedures should address [business continuity plans] to the extent that they are relevant to an adviser."[5] If the Commission is concerned that these business continuity plans are inadequate, then the Commission staff should issue guidance discussing best practices for advisers needing to bolster such plans, rather than enact an entirely new anti-fraud rule. Interestingly, the Commission staff used this "guidance update" approach with respect to business continuity planning for registered investment companies under Rule 38a-1 under the Investment Company Act of 1940,[6] issuing this guidance on the same day that it published the Proposed Rule.[7] In addition, the Commission staff has issued guidance for investment

[5] Proposing Release at p. 14 – 15.

[6] Business Continuity Planning for Registered Investment Companies, IM Guidance Update, No. 2016-04 (June 2016).

advisers before in 2013.[8] Such guidance updates are an effective way for the Commission staff to identify potential weaknesses that it identifies with respect to investment advisers, and set forth best practices and lessons learned. We believe that issuing guidance would allow for a more flexible approach that will reduce the costs imposed on investment advisers while providing the same or even greater benefits to investors, since the Commission staff will have the ability to provide additional guidance or update the existing guidance to address business continuity issues as they arise.

We are also concerned that the Commission is proposing the Proposed Rule under the anti-fraud provisions of the Advisers Act based on expansive and speculative statements about an adviser's fiduciary duty set forth in the Proposing Release. The Commission has proposed to adopt the Proposed Rule under Section 206(4) of the Advisers Act, which authorizes the Commission to adopt rules and regulations that "define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative." The Commission states that it believes that "clients are entitled to assume that advisers have taken steps necessary to protect [their] interests in times of stress" and 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."[9]

We do not believe that potential issues in connection with business disruption or transition, or the failure to have a business continuity plan or a transition plan amount to fraudulent or deceptive practices under the anti-fraud provisions of the Advisers Act. The Commission assumes without explanation or evidence that clients and investors expect investment advisers to have business continuity plans or transition plans, let alone plans containing the specificity required by the Proposed Rule. As discussed further below, in the private equity context, the limited partnership agreements (or other documents) governing fund operations contain specific, negotiated provisions concerning changes in management and ownership and the liquidation of the fund, which we believe accurately reflect what investors expect to happen in times of stress or transition. While we certainly agree that an investment adviser should be mindful of its duties to clients in navigating business

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7 We further note that registered investment companies may present more significant business continuity risks than private equity funds given that the securities of registered investment companies (and, in particular, mutual funds) are generally broadly held by the public and these funds generally engage in daily trading on public markets and are required to value their portfolios and be prepared to redeem their shares daily, among other differences.

8 Office of Compliance Inspections and Examinations, SEC Examinations of Business Continuity Plans of Certain Advisers Following Operational Disruptions Caused by Weather-Related Events Last Year, National Exam Program Risk Alert, Volume II, Issue 3 (August 27, 2013).

9 Proposing Release at p. 10.

disruptions and transitions, we do not believe that this warrants burdening private equity fund advisers (and other investment advisers) with the expense of creating such a plan and the exposure to regulatory liability under a new antifraud rule. In other words, the Commission has not produced sufficient evidence demonstrating how the failure to adopt a detailed business continuity plan and a transition plan would prevent an investment adviser from fulfilling its duties to its clients, to the extent that the "duty" referred to in the Proposing Release exists. In the private equity fund context, the Commission's "fiduciary duty" analysis is further complicated by the fact that the private equity fund adviser's client is the fund and not the investors in the fund. In short, we are concerned the Commission is using the Proposed Rule to expand an investment adviser's fiduciary duty beyond the scope commonly understood to be imposed on investment advisers under Section 206 of the Advisers Act or applicable law.

III. The Cost-Benefit Analysis Is Inadequate Due to the Absence of Data on the Benefits and the Flawed Cost Analysis

We also have significant concerns with the inadequacy of the cost-benefit analysis in the Proposed Rule. We note that the Commission did not attempt to estimate the total benefits because "we lack data on certain factors relevant to such an analysis, such as investor preferences and the likelihood of business disruptions." The absence of data on these two critical points goes to the core issues with this Proposed Rule: the Commission lacks information on what investors expect, or even want, from investment advisers with respect to business continuity and transition plans, and the Commission has not performed any detailed analysis on business disruptions that could be used to tailor any appropriate rule or guidance on business continuity and transition plans. This may be due to the paucity of evidence that business disruptions or transitions have had a material or sustained adverse effect on advisory clients.

The Proposing Release does contain some analysis of the anticipated costs that may be imposed by the Proposed Rule—but this analysis suffers from a number of flaws. First, the cost estimates do not reflect any serious analysis of the costs of the transition plan separate from the business continuity plan, other than to dismiss the costs associated with the transition plan as likely to be lower than the business continuity plan portion.[10] This assumption is misguided because the Commission is underestimating the complexity of developing a transition plan along the lines contemplated by the Proposed Rule. Moreover, the fact that most investment advisers have existing business continuity plans to build on, whereas we understand that most investment advisers do not have the type of transition plans envisioned in the Proposed Rule. (The fact that developing such a plan would be complicated does not mean that a transition plan is necessary; it simply means that the costs associated with developing such a plan far outweigh its illusory benefits.) Similarly, the analysis should consider disaggregating the cost-benefit analysis for each component of

[10] Proposing Release at fn. 121.

business continuity and transition plans. For example, even using the Commission's estimates, the percentage of the cost associated with an alternative office location (around 18 – 33%) appears completely disproportionate with the potential benefit for many investment advisers and, in particular, as discussed below, private equity advisers. To this end, we are disappointed the Commission did not engage in a more quantitative analysis of the anticipated costs of developing the required components of business continuity and transition plans.[11] We believe that such an analysis would conclude that development of business continuity and transition plans meeting the proposed requirements would result in significant costs to advisers and would not benefit investors. Such analysis also could provide more information to the Commission to allow it to better tailor any forthcoming guidance or rule addressing business continuity and transition planning.

IV. The Requirements with Respect to Business Continuity Plans Should Be Less Detailed and Permit Greater Flexibility for Advisers with Lower Business Continuity Risks, Including Private Equity Fund Advisers

We believe that most private equity advisers have adopted business continuity plans that are tailored to the unique risks of their businesses in accordance with Rule 206(4)-7. The Prosed Rule, however, would mandate numerous specific requirements that we believe should not apply to private equity fund advisers, who, as discussed above, do not have significant business continuity risks.

The Proposed Rule requires that a business continuity plan address (other than the transition plan, discussed below) (i) maintenance of critical operations and systems, and the protection, backup and recovery of data, including client records; (ii) pre-arranged alternate physical location(s) of the adviser's office(s) and/or employees; (iii) communications with clients, employees, service providers and regulators; and (iv) identification and assessment of third-party services critical to the operation of the adviser.

As suggested in one of the questions in the Proposing Release, we believe that any business continuity rule (or guidance) should focus on only a subset of investment advisers.[12] While some of these elements may make sense for some investment advisers, we do not believe that all of these elements are necessary for all investment advisers. As discussed above, private equity fund advisers present few business continuity risks and, therefore, at a minimum, at least some of these elements are not necessary. For example, we do not believe that investor protection would be furthered by requiring a private equity fund adviser with a single office location pre-arrange for an alternative physical location. A private equity fund adviser whose clients are primarily invested in illiquid securities (and

[11] Proposing Release at p. 72 – 73.

[12] Proposing Release at p. 46.

who, therefore, is not generally engaged in daily trading) should be able to adequately meet its clients' needs by having advisers' employees work remotely and only finding an alternative location if the disruption persists or circumstances require.

Furthermore, we have concerns with some of the guidance in the Proposing Release that goes well beyond the requirements of the Proposed Rule and appears to require a number of specific items that are not necessary, particularly for private equity fund advisers which, again, not face the same type of business continuity risks as other investment advisers. For example, with respect to the maintenance of critical operations and systems, the Proposing Release states that an investment adviser must identify key personnel who either provide critical functions to the adviser or support critical operations or systems of the adviser such that the temporary or permanent loss of those individuals would disrupt the adviser's ability to provide services to its clients, and identify specific individuals who would satisfy the role(s) of key personnel when unavailable and long-term arrangements regarding succession planning and how an adviser will replace key personnel. Similarly, the Proposing Release states that an investment adviser should maintain a list of the adviser's service provider relationships that are necessary to maintaining functional operations. We believe that for many investment advisers and, in particular, private equity advisers, developing and updating such lists would be costly and burdensome with no real clear benefit. In most situations, the adviser will be able to adequately address the identification of key personnel and service providers who are affected by the specific disruption or transition in a timely fashion at that moment. Among other things, the absence of either daily trading or liquidity gives private equity fund advisers, in particular, a longer time horizon to address any absence or unavailability of key individuals.

V. Pre-Existing Transition Plans Are Costly and Unnecessary for Vast Majority of Investment Advisers, Including Private Equity Fund Advisers

We are particularly concerned with the requirement that all investment advisers adopt detailed, pre-existing transition plans. As the Commission has acknowledged, investment advisers of all different sizes have transitioned their client accounts in both normal and stressed market conditions. In fact, the Proposing Release contains a detailed discussion of investment adviser transitions that have occurred without disruptions. The Commission appears to justify the need for this element of the Proposed Rule by pointing to a few rare circumstances where this may not have been true.[13] None of the examples provided by the Commission involved any private equity fund or adviser.

[13] The most recent concrete example provided by the Proposing Release is the wind-down of a registered money market fund. We respectfully submit that this involved issues that went far beyond business continuity and transition planning and that were unique to money market funds—issues that the Commission addressed in its money market reform initiatives. *See* Money Market Fund Reform, SEC Release No. 33-9616 (Jun. 23, 2014); Money Market Fund Reform, SEC Release No. IC-29132 (Feb. 23, 2010). Furthermore, we note that this was a registered investment company for which the Commission decided to issue guidance and did not propose a rule. *See supra* 6 and the accompany text

A better approach to any transition planning requirement would be to identify the types of investment advisers that present meaningful transition risks for their clients. We believe, as discussed above, that any such analysis would conclude that a private equity fund adviser would not present significant transition risks due to, among other things, the infrequency of the trading activity of the funds, the illiquid securities held by funds and the fact that the funds do not allow redemptions in the ordinary course of business.[14] This approach is consistent with the Commission's reference to the "living wills" requirements under Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which is limited to only a small subset of financial institutions that present significant systemic risks.[15]

In addition, and importantly, we do not believe that the Commission has adequately considered the unnecessary expense associated with developing detailed transition plans that are likely to be of limited utility because the facts and circumstances are likely to be constantly changing and the event causing the transition may cause a change in the circumstances that would be impossible to predict. While one could point to the difficulty of developing transition plans as a reason to prepare one in advance, this argument ignores the fact that a large percentage of the uncertainties one needs to consider in a pre-developed transition plan will be resolved by the event causing the transition. For example, for an investment adviser with global operations, the complexity and cost of "an assessment of the applicable law and contractual obligations governing the adviser and its clients" would be significantly less if (i) the investment adviser did not constantly have to monitor changes in the law in a range of jurisdictions and (ii) the Proposed Rule did not require the investment adviser to constantly update its analysis of a range of possible transition scenarios. It would be significantly more cost-effective for both the investment adviser

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(discussing the recent Commission guidance on business continuity planning for registered investment companies).

14 We note that we do not believe that private equity funds and their advisers present any systemic risks. *See, e.g.*, PEGCC Letter to the Financial Stability Oversight Council ("FSOC") (Mar. 25, 2015) (commenting on the Notice Seeking Comment on Asset Management Products and Activities – Docket No. FSOC-2014-001); PEGCC Letter to the FSOC (Dec. 16, 2011) (commenting on the Second Notice of Proposed Rulemaking Regarding Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies – Docket No. FSOC 2011-0001); *see also* PEGCC Letter to the Federal Reserve Board (March 30, 2011) (commenting on Proposed Rule for Definitions of "Predominantly Engaged in Financial Activities" and "Significant" Nonbank Financial Company and Bank Holding Company – Docket No. R-1405); PEGCC Letter to the FSOC (Feb. 25, 2011) (commenting on the Notice of Proposed Rulemaking Regarding Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies – Docket No. FSOC 2011-0001); PEGCC Letter to the FSOC (Nov. 5, 2010) (commenting on the Advance Notice of Proposed Rulemaking Regarding Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies – Docket No. FSOC 2010-0001).

15 *See* Board of Governors of the Federal Reserve System and Federal Deposit Insurance Corporation, Resolution Plans Required, 76 Fed. Reg. 211 (Nov. 1, 2011).

(and its clients) to present to a non-U.S. law firm a single situation based on actual facts rather than an unknown range of scenarios based on hypothetical facts.

Based on the long history of successful transitions without predetermined transition plans, we believe that the Commission should issue guidance on best practices or permit an investment adviser to have a "plan for a transition plan"—*i.e.*, a plan to develop a more specific plan immediately prior to transition that would also identify any critical items that may interfere with a normal transition.

Finally, we note that most limited partnership agreements for private equity funds include provisions covering a range of transition situations, including provisions covering "key man" events, dissolution of the partnership, transfer of the general partnership interest and the "assignment" of the advisory contract (including a change in control of the investment adviser). These provisions are extensively negotiated by sophisticated investors. These provisions provide significant protection and disclosure to investors in private equity funds as to how the investment adviser will handle these transition situations, which would limit any hypothetical additional investor protection that the Proposed Rule might provide. The details of these provisions vary by the private equity fund. These provisions, however, may incorporate a level of flexibility in transition planning that would potentially conflict with requirements set forth in the Proposed Rule, which appear to require many of the transition decisions to be predetermined.

VI. Reporting and Filing of Business Continuity Plans and Transition Plans Are Unnecessary and Could Require Disclosure of Proprietary Information

We do not believe that the Proposed Rule should incorporate a reporting requirement either to clients (or investors) or regulators, such as the Commission. Investment advisers are already subject to extensive reporting obligations to their clients. As fiduciaries, investment advisers are required to make full disclosure of all material facts relating to the advisory relationship.

In addition, we do not believe that the Proposed Rule should require the filing with the Commission of business continuity plans and transition plans. We believe that it is likely that such business continuity plans and transition plans would contain confidential and proprietary information and it would present an additional layer of legal and administrative burden to review such plans to ensure that they may be safely disclosed. In particular, the Proposed Rule may require information regarding succession planning for senior management that is typically considered highly confidential, even within the private equity firm itself. Furthermore, disclosure in certain circumstances may increase the risks, including, for example, the disclosure of cybersecurity plans may permit someone to more efficiently identify and exploit the adviser's systems' weaknesses. The Commission has more than adequate examination authority that it has used effectively to review the policies and procedures of investment advisers. We do not see any compelling reason why all investment advisers should bear an additional burden of filing the plans (and reviewing the

plans to be filed) when the Commission is unlikely to review (or even need to review) anything but a small subset of the plans. This disproportionate cost-benefit balance is even greater for private equity fund advisers who do not present significant business continuity risks.

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The AIC appreciates the opportunity to comment on the Proposed Rule and would be pleased to answer any questions you might have regarding our comments, or regarding the private equity and growth capital industry more generally.

Respectfully submitted,

Jason Mulvihill
General Counsel

Annex: Selected Responses to Requests for Comment

Should we require all SEC-registered advisers to adopt and implement business continuity and transition plans? Or should we identify only a subset of SEC-registered advisers that must implement such plans? Which advisers should be in such a subset (e.g., large advisers with assets under management over a specific threshold, advisers affiliated with financial institutions, etc.) and why?

As discussed more fully above, we believe that the Proposed Rule is not necessary; however, if it is adopted, we believe that it should only apply to a subset of SEC-registered investment advisers or provide more flexibility that would permit an investment adviser to adopt an appropriate business continuity and transition plan that is tailored to their business. While we take no position on what subset of investment advisers should be included, we believe that private equity fund advisers should be excluded given the nature of their business model, including the fact that the private equity funds do not engage in daily trading, hold illiquid securities and do not offer redemptions in the ordinary course of business.

Rather than adopting the proposed rule, should the Commission issue guidance under rule 206(4)-7 under the Advisers Act addressing business continuity and transition plans? If so, should that guidance set forth possible elements of such a plan?

As discussed more fully above, we strongly believe that the Commission should issue guidance under Rule 206(4)-7 rather than adopting a new rule. Any guidance, however, should still permit sufficient flexibility to permit investment advisers with different business continuity and transition risks to tailor their plans appropriately.

Should we require business continuity and transition plans to include each of the proposed components? Alternatively, should the rule require advisers to have a business continuity and transition plan, and specify certain components of a plan in the form of a safe harbor provision? Or, should the rule not specify required components of a plan and instead allow advisers to determine the appropriate components of their plans? Are there any components we should remove from the proposed list of required components? Are there any components we should add or expand upon? For example, with respect to a pre-arranged alternate physical location(s) of the adviser's office(s) and/or employees, should we require that an adviser's business continuity and transition plan include an alternate location at a specified distance away from its primary location? Should we require an adviser's communication plan to extend to investors in certain types of pooled investment vehicles? If so, which specific types of pooled investment vehicles and how should the term "investors" be defined for each type of pooled investment vehicle?

As discussed more fully above, we do not believe that there should be required components for the business continuity and transition plans. The business models of investment advisers and the business continuity and transition risks associated with those models are

too diverse for the Commission to adopt a single set of required components. Rather, investment advisers should be permitted to adopt plans that they determine are appropriately tailored to address their specific facts and circumstances.

Should all advisers be required to include each of the proposed components in a business continuity and transition plan or should certain advisers be exempt from including certain components? If certain advisers should be exempt, why? For example, should only certain advisers be required to adopt and implement the transition plan component of the proposed rule or is there a subset of investment advisers with operations so limited that the adoption and implementation of a transition plan (or certain components of the transition plan requirement) would not be beneficial? If so, what criteria could be used to identify this subset of advisers? Are there alternative or streamlined measures that these advisers could take to facilitate an orderly transition in the event of a significant disruption to the adviser's operations? If these advisers did not have transition plans, should they be required to disclose the absence of such plan?

As discussed more fully above, we believe that private equity advisers should be exempt from the requirement to develop transition plans. The characteristics of private equity funds are such that the development of a transition plan can more effectively conducted at the moment of transition rather than before, since the number of uncertainties are substantially lower. Furthermore, as discussed above, the contractual provisions in the fund documents (including any "key man", dissolution, and anti-assignment provisions) provide significant disclosure and protection to clients and investors concerning transitions and limit any hypothetical marginal benefit of the Proposed Rule to investor protection.

With respect to each of the proposed components of a business continuity and transition plan, we have provided information as to the items and/or actions that we believe generally should be encompassed within a particular component. Is there additional information that we should provide, or any information that we should exclude or modify, regarding any of the proposed components of a plan? Alternatively, instead of permitting advisers the flexibility to draft their plans based on the complexity of their businesses, should we require advisers to address each component in a prescriptive manner by requiring specific mechanisms for addressing particular risks?

As discussed more fully above, we believe that the guidance in the Proposing Release is too prescriptive and, rather, the Commission should more fully emphasize that an investment adviser should tailor the plans to address their specific business continuity and transition risks.

Should we adopt 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? If so why, and what specifically should the rule require?

We do not believe that a more prescriptive rule is appropriate. We note that the "Living Wills" rules addressed a much smaller set of financial institutions that had less variability in their business models than the entire universe of registered investment advisers.

As part of the proposed rule, should we require advisers to provide disclosure to their clients about their business continuity and transition plans? If so, what should be the format of such disclosure (e.g., summary of plan, copy of plan)? When or how frequently should this disclosure be provided? Should we require advisers to disclose to their clients incidents where they relied on or activated their business continuity and transition plans? If so, what should be the format of such disclosure? What types of incidents should be disclosed or not disclosed?

As discussed more fully above, we do not believe that the Proposed Rule should require advisers to make disclosures of plans or incidents to clients or investors. As fiduciaries, investment advisers are already subject to disclosure requirements to clients and it is not necessary to impose additional requirements.

Should we require advisers to file their business continuity and transition plans, or a summary thereof, with the Commission? Should these filings be made available to the public? Why or why not? Are business continuity and transition plans considered proprietary to an adviser such that disclosing its plan to the public (either through a Commission filing or through disclosure to a client) creates additional risk exposure to the adviser?

As discussed more fully above, investment advisers should not be required to file their business continuity and transition plans (and any updates thereto) since they will often include substantial confidential information, including with respect to succession planning. In addition, a filing requirement would substantially increase the cost of developing the plans, since they would need to be vetted prior to disclosure.

Should we require that business continuity and transition plans be reviewed at least annually, as proposed? Should we expressly require reviews of business continuity and transition plans to be documented in writing? Should we require more frequent or less frequent review of business continuity and transition plans? In addition to annual review, should we require that advisers review their plans when specific events occur? For example, should we require plans be reviewed when an adviser has an event that causes it to rely on its plan? Should we require plans be reviewed based on changes to the adviser's operations or processes, changes in the ownership or business structure of the adviser,

compliance or audit recommendations, lessons learned from testing or disruption events, and/or regulatory developments?

There should be no requirement to review the plans annually that is separate and apart from the normal annual review as part of the Rule 206(4)-7 process. Investment advisers should be permitted to review their compliance policies and procedures according to their own risk assessment processes.

Should we specifically require advisers to periodically test their business continuity and transition plans or certain material components thereof to assess whether the plans are adequate and effective? If so, how should such testing be conducted? What should be included in the scope of such review? How often should such testing be required?

There should be no additional requirement to test business continuity and transition plans. Investment advisers may incorporate testing as part of their review of the effectiveness of their compliance policies and procedures, but they should be permitted to tailor that testing in accordance with their own risk assessment procedures.

Would advisers, and their clients and investors, benefit more from requiring plans to address certain risks in a specified manner, rather than providing for flexibility as in the proposed rule?

As discussed more fully above, we do not believe that the Proposed Rule should be more prescriptive and, in fact, we are concerned that it does not permit sufficient flexibility.