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December 20, 2013

Ms. Elizabeth Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment (File No. S7-08-13)

Dear Ms. Murphy:

The Investment Company Institute<sup>1</sup> appreciates the opportunity to comment on the proposed interagency policy statement on standards for assessing the diversity policies of financial services firms.<sup>2</sup> In general, we support the proposed statement and the assessment standards that it sets forth. As the Agencies recognize, greater diversity and inclusion can promote stronger, more effective, and more innovative businesses, as well as create opportunities for firms to serve a wider range of customers. The standards will provide investment companies and investment advisers, along with other financial services firms, useful guidance on the types of issues to consider when assessing their diversity and inclusion practices.

In particular, we commend the Agencies for their measured approach to the development of these standards, which is consistent with Congress's intent. As explained in the Release, "the assessment envisioned by the Agencies is not one of a traditional examination or other supervisory assessment. Thus, the Agencies will not use the examination or supervision process in connection with

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<sup>1</sup> The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$16.1 trillion and serve over 90 million shareholders.

<sup>2</sup> *Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment*, Release No. 34-70731 (Oct. 22, 2013) (the "Release"), available at <http://www.sec.gov/rules/policy/2013/34-70731.pdf>. This proposal was mandated by section 342(b)(2)(C) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), which requires the SEC, along with the OCC, Board of Governors of the Federal Reserve System, FDIC, NCUA, and CFPB (together "the Agencies") to jointly prescribe standards for assessing the diversity policies and practices of the entities they regulate.

these proposed standards.” Instead, a “model assessment” would include a voluntary self-assessment utilizing the proposed standards, voluntary reporting of the results to the appropriate Agency,<sup>3</sup> and voluntary disclosure on diversity to the public. This volitional approach reflects the intent of section 342(b)(4) of the Dodd-Frank Act, which provides a rule of construction that nothing in the enabling statute “may be construed to mandate any requirement on...any regulated entity, or to require any specific action based on the findings of the assessment.”

Moreover, the proposed volitional approach is essential to avoid placing the Agencies in the position of policing compliance with matters outside their regulatory expertise.<sup>4</sup> Financial services firms comply with a broad array of employment laws and regulations, enforced by the Department of Labor at the federal level and numerous other agencies at the state and local levels. While diversity and inclusion are laudable goals, it would be inappropriate for securities and banking regulators to step into the shoes of the DOL, state, or local agencies and attempt to oversee financial services firms’ labor and employment issues. Rather, the Agencies should focus their limited resources on advancing their core missions. For the SEC, that means protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

SEC Chair Mary Jo White recently expressed similar concerns over the use of federal securities laws to promote even worthy social policies matters. She noted that certain recent laws that invoke the SEC’s mandatory disclosure powers:

...seem more directed at exerting societal pressure on companies to change behavior, rather than to disclose financial information that primarily informs investment decisions. That is not to say that the goals of such mandates are not laudable. Indeed, most are....But, as the Chair of the SEC, I must question, as a policy matter, using the federal securities laws and the SEC’s powers of mandatory disclosure to accomplish these goals.<sup>5</sup>

Calls for mandatory disclosure of self-assessments on diversity fall into this category—laudable ideas that simply should not be the focus of the Agencies’ disclosure rules—and we are pleased that the Agencies did not take such an approach. We support the Agencies’ proposal in this regard, which

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<sup>3</sup> We recommend that the Agencies treat diversity self-assessment information voluntarily reported by firms with at least the same level of confidentiality and protection from FOIA requests as EEO-1 Reports.

<sup>4</sup> We note, further, that a mandatory approach may be unnecessary as firms face increasing scrutiny from their clients and counterparties, many of whom demand to see the firm’s commitment to diversity and inclusion as a matter of business practice.

<sup>5</sup> *The Importance of Independence*, Chair Mary Jo White, Securities and Exchange Commission, 14th Annual A.A. Sommer, Jr. Corporate Securities and Financial Law Lecture, Fordham Law School (Oct. 3, 2013), available at <http://www.sec.gov/News/Speech/Detail/Speech/1370539864016#.UqXxmCf0-Ck>.

Ms. Elizabeth Murphy  
December 20, 2013  
Page 3 of 3

would provide firms the flexibility to decide whether and how to publicly communicate information regarding diversity policies.

As noted above, in general, we support the proposed statement and the assessment standards that it sets forth. We have one recommendation, however, that relates to a specific assessment standard. We recommend that the Agencies delete the proposed standard under “Workforce Profile and Employment Practices” that states “the entity holds management accountable for diversity and inclusion efforts.” This standard is unclear both with respect to who it is intended to cover (*i.e.*, the scope of “management”) and what conduct would be considered for purposes of an assessment on “accountability.” More importantly, this standard is unnecessary given the other standards in the proposed statement. These other standards specifically cover whether the firm has policies and practices that foster a diverse and inclusive workforce, whether those policies and practices are supported by senior management and the board of directors, and whether regular progress reports are provided to the board and/or senior management. Together, those more precise standards sufficiently address management’s diversity and inclusion efforts. For these reasons, we recommend that the Agencies delete this particular proposed standard.

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We appreciate your consideration of our views on this important topic. If you have any questions or need additional information, please contact Dorothy Donohue at (202) 218-3563, Bob Grohowski at (202) 371-5430, or me at (202) 326-5815.

Sincerely,

/s/ Karrie McMillan

Karrie McMillan  
General Counsel

cc: The Honorable Mary Jo White  
The Honorable Luis A. Aguilar  
The Honorable Daniel M. Gallagher  
The Honorable Kara M. Stein  
The Honorable Michael S. Piwowar

Norman Champ, Director, Division of Investment Management  
Pamela A. Gibbs, Director, Office of Minority and Women Inclusion  
Tracey L. McNeil, Counsel, Office of Minority and Women Inclusion