

COMMENT LETTER

January 16, 2018

ICI Files Letter in Support of the Alleviating Stress Test Burdens to Help Investors Act as Amended (pdf)

January 16, 2018 The Honorable Jeb Hensarling The Honorable Maxine Waters Chairman Ranking Member Financial Services Committee Financial Services Committee US House of Representatives US House of Representatives 2129 Rayburn House Office Building 2129 Rayburn House Office Building Washington, DC 20515 Washington, DC 20515 Re: Support for H.R. 4566, the “Alleviating Stress Test Burdens to Help Investors Act” as Amended Dear Chairman Hensarling and Ranking Member Waters: I am writing on behalf of the Investment Company Institute* to express support for H.R. 4566 as amended, the “Alleviating Stress Test Burdens to Help Investors Act,” introduced by Congressman Bruce Poliquin (R-ME). H.R. 4566 as amended would narrow the scope of bank-oriented stress testing requirements under the Dodd- Frank Wall Street Reform and Consumer Protection Act and thus avoid inappropriate application of these requirements to mutual funds and other registered investment companies and to their investment advisers. Registered funds are the investment vehicle of choice for millions of Americans seeking to buy a home, pay for college, or plan for financial security in retirement. Application of ill-suited and unnecessary stress testing requirements to registered funds and advisers would increase costs for these funds (and, hence, fund investors) and advisers without providing any corresponding benefits. And, as noted later in this letter, the Securities and Exchange Commission (SEC) already has adopted fund-specific rules with a similar regulatory objective— namely, helping ensure that registered funds are able to meet investor redemptions, even in stressed market conditions. Why H.R. 4566 As Amended Is Needed The need for this legislation arises because Section 165(i) of the Dodd-Frank Act requires “financial companies” with total consolidated assets of more than \$10 billion (and that have a primary Federal financial regulatory agency) to conduct annual stress tests in accordance with regulations issued by the relevant agency. The statute requires each agency—for registered funds and advisers, the SEC—to adopt regulations that are * The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI’s members manage total assets of US\$21.5 trillion in the United States, serving more than 100 million US shareholders, and US\$7.1 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC. Letter re: H.R. 4566 January 16, 2018

Page 2 “consistent and comparable” with those that the Federal Reserve Board and other banking regulators have adopted for banking organizations. This result simply does not make sense for registered funds and their advisers. The reasons why relate to the fundamental differences between banking and asset management. In the banking context, requirements to test for “capital adequacy” in stressed conditions are entirely appropriate. If a bank does not have adequate capital, it risks being unable to meet its obligations to depositors, absent government support. And in times of market stress, inadequate bank capital could have broader implications for financial stability. By contrast, the notion of “capital adequacy” is at odds with the distinct, defining attributes of registered funds and advisers. For example, unlike banks, registered funds do not guarantee any return to investors or even promise that investors will get their principal back. Fund investors know that any gains or losses belong to them on a pro rata basis. And unlike banks, registered investment advisers act as agents in managing investments for registered funds and other clients. The adviser does not own and has no claim on fund assets, which are held in custody by an eligible custodian. Fund assets are not on the adviser’s balance sheet. Gains or losses are borne solely by funds or other client accounts and do not flow through to the adviser. These characteristics of registered funds and advisers hold true in both normal and stress periods. The SEC has deep expertise in regulating registered funds and their advisers. Since the financial crisis, the SEC has acted to bolster the ability of registered funds to meet investor redemptions, including in stressed conditions—in particular, by requiring liquidity risk management programs for mutual funds and exchange-traded funds, and by imposing targeted stress testing requirements for money market funds. Notably, the SEC has not proposed any regulations to implement the bank-oriented stress testing requirements contemplated by the Dodd-Frank Act.† How H.R. 4566 As Amended Would Alleviate Inappropriate Stress Testing Burdens We believe that H.R. 4566 as amended tailors the Dodd-Frank Act stress testing requirements in a sensible manner. It focuses the annual company-run stress testing requirement on financial companies with more than \$10 billion in assets whose primary federal regulator is a federal banking agency or the Federal Housing Finance Agency (FHFA). As a result, banking organizations regulated by the federal banking agencies and the government sponsored enterprises supervised by FHFA would continue to have company-run stress-testing obligations (if they meet the \$10 billion in assets threshold). Registered funds and advisers no longer would fall within the scope of the Dodd-Frank Act’s bank-oriented, annual company-run stress testing requirement. But H.R. 4566 as amended would not constrain the SEC’s ability to use its existing authorities to require stress testing as it deems appropriate—as it already has done in † In public comments last year, the SEC’s former chief economist and director of the Division of Economic and Risk Analysis raised concerns about implementing this mandate. Rob Tricchinelli, SEC Vexed by Asset Manager Stress Test Rule, Bloomberg BNA (Feb. 8, 2016), available at: <https://www.bna.com/sec-vexed-asset-n57982067065/>. Letter re: H.R. 4566 January 16, 2018 Page 3 the case of money market funds. Nor would the amended bill limit the authority of the Financial Stability Oversight Council under Section 120 of the Dodd-Frank Act to recommend that the SEC adopt appropriate stress testing requirements for registered funds and advisers. Accordingly, we urge you to vote for H.R. 4566 as amended. Thank you for considering our views. With very best regards. Sincerely, Paul Schott Stevens President & CEO Investment Company Institute cc: Members of the House Financial Services Committee