December 16, 2022

Via Electronic Submission

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposed Rule; Outsourcing by Investment Advisers; Release Nos. IA-6176; File No. S7-25-22

Dear Secretary Countryman,

Synergy RIA Compliance Solutions ("Synergy") appreciates the opportunity to comment on the Securities and Exchange Commission's (the "SEC") proposed rule to prohibit registered investment advisers ("advisers") from outsourcing certain services or functions without first meeting minimum requirements. Synergy operates as a compliance service provider focused on creating compliance solutions for Registered Investment Advisers. This communication aims to initiate discussion on potential negative consequences for investors if Advisers are subjected to overtly broad and ambiguous regulation that inhibits the ability to engage outsourced service providers.

Based on data from Statista, the total assets under management (AUM) of investment advisors registered at the U.S. Security and Exchange Commission ("SEC") has steadily increased from 2000 to 2021.[1] Additional studies conducted by FINRA, through their 2021 Industry snapshot report,[2] have shown a corresponding decrease in the number of Registered Representatives of Broker-Dealers as Financial Advisers have migrated to the Independent Registered Investment Adviser ("RIA") model. The rise in Independent RIAs results in a logical increase in demand for experienced Chief Compliance Officers, which corresponds with decreased availability of experienced compliance talent available for the growing number of Independent RIAs to hire for compliance program management. This industry migration creates increased importance for the availability of outsourced compliance service providers to ensure compliance programs are reasonably designed to protect clients that represent the growing assets under management across advisers. The proposed rule outlines six specific elements of compliance with the appropriate outsourcing of covered functions.[3] It is the opinion of Synergy

[1] https://www.statista.com/statistics/1251309/total-aum-investment-advisors/
[2] https://www.finra.org/sites/default/files/2022-02/21_0078.1_Industry_Snapshot_v10.pdf [Figure 1.1]
[3] See Proposed Rule Release Nos. IA-6176; File No. S7-25-22 pg. 40

that while these elements of the proposed rule are reasonable and productive for compliance programs, these processes should already be in place under Adviser's responsibilities as outlined in the Investment Advisers Act of 1940 ("The Act"), as currently adopted.

The following commentary is designed to outline Synergy's stance that while the spirit of the proposed rule is to further the goal of investor protection, much of the due diligence required is currently covered by Rule 204-2, the books and records rule.

In this matter, the SEC may forward the initiative of ensuring consumer protection by first narrowing the scope of the definition of "covered function" and creating specific guidelines and best practices for each sub-category of the newly narrowed definition. Ultimately, regulatory statutes that are overtly broad place additional cost-prohibitive burdens on Independent RIAs and are more likely to result in less effective compliance programs. Furthermore and in response to the question posed on proposed form ADV requirements, Synergy views that the proposed requirements to disclose service providers that perform a covered function as defined in rule 206(4)-11 on additional Form ADV filings would represent an undue burden on the Adviser, creating increased compliance costs while leading to inconsistency and inaccuracies across Form ADV filings, resulting from the overly broad definitions of both newly introduced terms "covered functions," and "service providers."

More specifically, the proposed rule states, "The second element of the proposed definition of covered function limits the definition to those functions or services that, if not performed or performed negligently, would be reasonably likely to cause a material negative impact on the adviser's clients or on the adviser's ability to provide investment advisory services."[4] It is our opinion that, in a facts and circumstances compliance program evaluation, essentially all functions and services may potentially fall within the parameters of this definition. Along the same lines, the proposed rule defines "service provider" as follows:

"Service Provider means a person or entity that:

(i) Performs one or more Covered Functions; and
(ii) Is not a supervised person, as defined in 15 U.S.C. 80b-2(a)(25), of the investment adviser."[5]

If indeed, the Division accepts the potential merits of the opinion that the definition of covered function is too broad, then the logical consequence of this recognition is that any subsequent definitions that rely upon elements of the covered function description are also overtly broad and unclear. Ideally, the Division will consider not only narrowing the scope of the definitions but also creating sub-categories to be specific on due diligence requirements for each category of "service provider." For example, the current rule, as stated, does not provide sufficient guidance as to variations in due diligence requirements for technology-based platforms such as robo-advisors, as opposed to outsourced consultants that rely on human work product to provide compliance services. In our opinion, the due diligence requirements should, in these two

[4] See Proposed Rule Release Nos. IA-6176; File No. S7-25-22 pg. 41
[5] See Proposed Rule Release Nos. IA-6176; File No. S7-25-22 pg. 227

instances, be materially different due to the unique risks associated with each type of service provider.

Once the definitions have been more clearly stated and service providers have been categorized effectively, then the task of having service providers provide the adviser with "reasonable assurance that the service provider is able to, and will, coordinate with the adviser for purposes of the adviser's compliance with the Federal securities laws, as applicable to the covered function," becomes more effectively executed.[6]

In conclusion, perhaps the most relevant excerpt from the proposed rule that presupposes that the obligations proposed are already covered in existing regulations is the assertion that "The proposed rule does not require additional explicit written policies and procedures related to service provider oversight."[7] It is here that we believe the Division recognizes the significant overlap between adviser responsibilities under the Act as currently stated and the additional responsibilities being proposed in this release. Primarily, RIAs engage outsourced service providers to provide efficiency of business processes, which results in lower costs for the firm, which then translates to affordable investment management solutions for consumers. Additionally, outsourced service providers improve the ability of RIAs to maintain books and records requirements by providing access to systems and processes that the service providers have created based on the broader needs of the industry. Many of these systems and processes are not those which individual RIAs have the financial means, knowledge, or expertise to build themselves. In summary, any regulatory action that inhibits the process of leveraging outsourced service providers inevitably harms consumers. The adoption of overtly broad regulatory guidelines, therefore, is not in the best interest of the consumers that we seek to protect.

Yours truly,

Scott P. Gill
CEO, Senior Compliance Consultant
Synergy RIA Compliance Solutions

[6] See Proposed Rule Release Nos. IA-6176; File No. S7-25-22 pg. 57
[7] See Proposed Rule Release Nos. IA-6176; File No. S7-25-22 pg. 62