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December 27, 2022

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

Re: Proposed Rule on Outsourcing by Investment Advisers (File Number S7-25-22)

Dear Ms. Countryman:

Milbank LLP respectfully submits this letter to the U.S. Securities and Exchange Commission ("SEC" or "Commission") on behalf of its client First Trust Advisors L.P. in response to the SEC's request for comments on the Proposed Rule on Outsourcing by Investment Advisers ("Proposed Rule").[1]

The Proposed Rule Improperly Expands an Adviser's Fiduciary Duties

Although the Commission casts the Proposed Rule 206(4)-11 as applicable to situations in which an investment adviser "outsources" its own "advisory" responsibilities to a third party, the rule would cover a broader set of services. The definition of a "covered function" would include services "necessary" for an adviser to perform its duties, any number of which may fall outside the scope of the advisers' agreed-upon services. In doing so, the Proposed Rule would expand the fiduciary duties of advisers beyond those voluntarily undertaken and deprive clients of the ability to determine the scope of their advisor's responsibilities. Although an adviser may not abdicate its fiduciary duty to oversee persons to whom it outsources its agreed-upon advisory functions, the Commission lacks authority under the antifraud and record-keeping provisions of the Investment Advisers Act (the "Advisers Act") to impose advisory duties beyond those defined by agreements between advisers and clients or to foreclose clients from consenting to limitations on the adviser's responsibilities after receiving full and fair disclosure.

[1] *See Outsourcing by Investment Advisers,* Advisers Act Release No. 6176 (October 26, 2022), *available at* https://www.sec.gov/rules/proposed/2022/ia-6176.pdf ("Proposing Release" or "PR").

As the Commission has acknowledged, an adviser's fiduciary duty "follows the contours of the relationship between the adviser and its client, and the adviser and its client may shape that relationship by agreement, provided that there is full and fair disclosure and informed consent." *See Commission Interpretation Regarding Standard of Conduct for Investment Advisers*, Advisers Act Release No. 5248 (June 5, 2019) ("Fiduciary Interpretation"). "Although all investment advisers owe each of their clients a fiduciary duty under the Advisers Act, that fiduciary duty must be viewed in the context of the agreed-upon scope of the relationship between the adviser and the client. In particular, the specific obligations that flow from the adviser's fiduciary duty depend upon what functions the adviser, as agent, has agreed to assume for the client, its principal." *Id.* at 10.

The Commission has also specifically recognized that the adviser's contractually defined scope of responsibility impacts the adviser's obligations to oversee third-party service providers. For example, the Commission has issued guidance to investment advisers about their fiduciary obligations to oversee third party proxy voting firms. *See, e.g.*, *Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers*, SEC, Release Nos. IA-5325; IC-33605, 17 CFR Parts 271 and 276 (Sept. 10, 2019). There, the Commission noted that the scope of the fiduciary relationship is defined by the fund's advisory agreement with the adviser, and an adviser's responsibility to oversee outsourced proxy voting services depends on whether the adviser has contractually assumed proxy voting responsibilities. *Id.* at 3 ("In the context of [proxy] voting, the specific obligations that flow from the investment adviser's fiduciary duty depend upon the scope of voting authority assumed by the adviser."). Where the client retains proxy voting responsibility, the adviser would not have a fiduciary obligation to oversee any third-party proxy voting firm that the client may retain to assist the client in making proxy voting decisions.

In contrast, the Proposed Rule seeks to impose fiduciary obligations of oversight with respect to any third party that performs a function perceived as "necessary" to provide investment advisory services—referred to as a "covered function"—even if the adviser never contractually assumed that function and made clear in disclosures that it would play no role in performing or overseeing the function.

For example, the Proposed Rule repeatedly notes that index providers provide a "covered function" if they create and publish an index that is tracked by the adviser as part of a passive management strategy. PR at 7, 9, 22, 23, 25. However, while index providers may perform a function that can be said to be "necessary" for an adviser to render management services—there would be nothing for the adviser to track in the absence of the index itself—that does not mean that index providers perform a function assumed by the adviser. Indeed, in many instances, advisers that specialize in tracking indices are not involved in selecting, compiling or maintaining the underlying indices. The client often selects the index, and the adviser may have no authority or discretion to change, modify or "correct" the index. That is true even though the performance of the client's portfolio is unquestionably a function of the index composition and the weighting of individual securities within the index—all decisions made by the index provider.

Consistent with this, it is common practice for fund prospectuses of passively managed index funds to disclose that the funds license the indices from third parties, that the underlying indices

are compiled solely by the index providers (and not controlled by the fund or the adviser), and that the index providers are solely responsible for the management of the day-to-day operations of the indices. In these circumstances, the adviser is not "delegating" or "outsourcing" any of its investment management responsibilities to the index provider. Rather, the adviser is agreeing only to assume the responsibility for constructing a portfolio that closely tracks the performance of the index, which is not the same as responsibility for selecting or maintain the index. In fact, many advisers like First Trust sought exemptive relief for their managed funds based on the express undertaking that the entity that "creates, compiles, sponsors or maintains" the underlying index in the funds would be unaffiliated with First Trust.[2] It is difficult to reconcile the proposed requirement that First Trust assume oversight responsibility for creating or compiling the index with exemptive relief that expressly prohibited First Trust from playing any role in creating, compiling, sponsoring or maintaining that index.[3]

There are many other examples of services relied on by an adviser in performing investment management functions that could be deemed "necessary" despite being outside of the adviser's contractual responsibilities. In fact, in the Proposing Release, the Commission requested comment on third-party functions that may often fall outside the ambit of the adviser's agreed-upon fiduciary responsibilities. For example, the Proposing Release seeks comment on whether covered functions should include "service providers that enter into an agreement directly with the client and not with the investment adviser," (PR at 35-36), and whether "fund administration, transfer agent, underwriting or custody services, [should] be deemed to be 'investment advisory services.'" (PR at 37). These functions would not typically be investment management services, and when provided by a third party pursuant to a separate contract, there likely is no legal basis to impose responsibility for such services on an adviser in the absence of a contractual assumption of such responsibility. That remains true even if these services could potentially impact the adviser's ability to perform its investment advisory function. And without a contractual assumption of those responsibilities by the adviser, the Commission would have no authority under the antifraud provisions of the Advisers Act to impose such responsibilities on an adviser by rule making.

Even where the covered function is within the adviser's fiduciary responsibility, the Proposed Rule may conflict with existing law on the adviser's duty of loyalty in several respects. First, the Proposed Rule would require advisers to police potential conflicts of interest that third

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[2] *See, e.g.*, Exemptive Order Application, *In the Matter of First Trust Exchange-Traded Fund*, File No. 812-13000 (March 26, 2010); *In the Matter of First Trust Exchange-Traded Fund, et al.*, File No. 812-14088, Amendment No. 2 to the Application for an Order (July 11, 2013); *In the Matter of First Trust Exchange-Traded Fund, et al.*, Investment Company Act Release No. 30610 (July 23, 2013) (order).

[3] The Commission subsequently adopted Rule 6c-11 which rescinded prior exemptive relief granted to certain ETF providers. *See Exchange Traded Funds*, Investment Company Act Rel. No. 33646 (Sept. 25, 2019). However, the adopting release for the rule reaffirmed the Commission's concern over information sharing between advisers and index providers and noted that appropriate firewalls were required by other provisions of the securities laws. *Id.* at 24-25 ("Advisers are already required to adopt policies designed to prevent portfolio information from being misappropriated," including a "firewall between the index provider and the asset manager.").

parties may face in performing a covered function. But it is not clear how an adviser's duty of loyalty—which requires an adviser not to place its **own** interests above those of its client in exercising fiduciary authority on behalf of that client—requires an adviser to identify and mitigate unknown conflicts of interest that a large number of third-party service providers may face. Second, the Proposing Release compounds the problem by espousing a blanket position that disclosure can never be sufficient to address the issue. PR at 12-14.

The Commission's position cannot be squared with the antifraud provisions of the Investment Advisers Act. Notably, while *Capital Gains* recognized a federal fiduciary duty of advisers, it also highlighted the ability of a fiduciary to satisfy certain fiduciary duties by agreement or disclosure. For example, the Supreme Court in *Capital Gains* stated that "[a] fundamental purpose, common to these statutes, was to substitute **a philosophy of full disclosure** for the philosophy of caveat emptor and thus to achieve a high standard of business ethics in the securities industry." *Capital Gains,* 375 U.S. at 186 (emphasis added). The Court also noted that the Advisers Act reflects a congressional intent "to eliminate, **or at least to expose**, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested." *Id.* at 191-92 (emphasis added). The Court further stated that the fiduciary duty is an affirmative duty of "full and fair **disclosure of all material facts**," as well as an affirmative obligation "to employ reasonable care to avoid misleading his clients." *Id.* at 195 (emphasis added). The Supreme Court ultimately held that the Advisers Act empowers courts "to require an adviser **to make full and frank disclosure** of his practice of trading on the effect of his recommendations." *Id.* at 197 (emphasis added). If the law permits advisers to satisfy their fiduciary duty through adequate disclosure in some circumstances, it cannot be the case that disclosure concerning potential third party conflicts is always inadequate.

Finally, even in those instances where an adviser does have a fiduciary duty to oversee a third party, the prescriptive due diligence required by the Proposed Rule makes little sense. As the Proposing Release repeatedly recognizes, there are innumerable types of outsourcing relationships given the variety of funds, advisers, outsourced services/providers, and contractual relationships. The Proposed Rule does not limit which functions require oversight and what oversight would be considered reasonable, both of which depend on the facts and circumstances of each situation. Despite this, the Proposed Rule seeks to impose responsibilities on specific service providers and places a number of minimum specific prescriptions as to what oversight must be done. We respectfully submit that advisers are best placed to determine what is reasonable and consistent with their fiduciary obligations and the client's best interest, which allows for the balancing of many factors.[4] The Commission's attempt to create uniform regulation of third-party oversight is ill-suited to outsourcing—an area that is not "one size fits all."[5] The fiduciary duties

[4] *See* Hester M. Peirce, Commissioner, SEC, *Outsourcing Fiduciary Duty to the Commission: Statement on Proposed Outsourcing by Investment Advisers* (Oct. 26, 2022), *available at* https://www.sec.gov/news/statement/peirce-service-providers-oversight-102622 (noting that the Proposed Rule is not protective for investors because it displaces the adviser's judgment on oversight with the SEC's judgment).

[5] *See* Fiduciary Interpretation, at 6-8 ("We believe that this principles-based approach should continue as it expresses broadly the standard to which investment advisers are held while allowing them flexibility to

of advisers are particularly suited to regulation that allows for flexibility in light of the particular facts and circumstances, a preferable approach to a set of brittle and prescriptive rules. That flexibility is particularly apt given the diversity of the investment management industry's outsourcing relationships.

Relatedly, the Proposed Rule's use of specific forms of oversight that must be performed (in lieu of a more flexible approach) risks extending oversight responsibilities to advisers beyond those required by the fiduciary duty of care. These prescriptive requirements may be appropriate in many instances where a fiduciary duty of oversight exists, but likely not all. The duty of care requires the exercise of reasonable care in the selection of an agent to perform delegated duties, and reasonable monitoring of the agent's performance and compliance with the terms of the delegation. Under the law, what is reasonable oversight of an agent depends on the facts and circumstances, including the nature of the services provided, the potential impact of a failure to deliver those services, the risks of inadequate delivery of the service, and the availability of alternatives in the short and long term. The Proposed Rule's imposition of specific forms of oversight, regardless of the circumstances, could extend fiduciary obligations beyond those required under the law and the Commission's authority under the antifraud provisions of the Advisers Act.

<u>The SEC's Rulemaking Authority Under the Antifraud Rules</u>

In recognition that disclosure is at the core of the federal securities laws, the rulemaking authority for the Proposed Rule purports to be based on the antifraud provisions of the Advisers Act. These provisions have formed the basis for many of the Commission's rules, which seek ensure compliance with fiduciary duties under antifraud provisions as defined by *Capital Gains* and its progeny. However, the Proposed Rule is atypical in its reliance on principles that are untethered from the fundamental tenets of those disclosure-based provisions that shape the obligations of investment advisers. Specifically, the Proposing Release posits that it would *always be deceptive* for an adviser to disclose limitations on the amount of oversight performed by the adviser. As the Commission states:

> We also believe it is a deceptive sales practice and contrary to the public interest and investor protection for an investment adviser to hold itself out as an investment adviser, but then outsource its functions that are necessary to its provision of advisory services to its clients without taking *appropriate* steps to ensure that the clients will be provided with the same protections that the adviser must provide under its fiduciary duty and other obligations under the Federal securities laws.

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meet that standard in the context of their specific services."); *see also, e.g.*, Jay Clayton, Chairman, SEC, *Regulation Best Interest and the Investment Adviser Fiduciary Duty*, July 8, 2019 (noting that flexible standards are better than a one-size-fits-all approach).

PR at 14. The Commission goes on to assert that "disclosure cannot address this deception" because "[w]e do not believe any reasonable investor would agree to engage an investment adviser that will not perform functions necessary to provide the advisory services for which it is hired, and instead will outsource those functions to a service provider without effective oversight over the service provider." *Id.* at 14. But the Commission's belief about what a reasonable investor would or would not agree to is irrelevant to the question of whether there has been any deception of an investor.

If disclosure is accurate and complete, there has been no deception and an investor is free to make its own decision about whether to invest or enter into an investment advisory relationship. In defiance of those principles, the Commission is asserting that, regardless of what has been disclosed to an investor and the circumstances in which those disclosures were made, an investor is *not capable* of defining the scope of its investment adviser's duties or agreeing to any limitation of its adviser's oversight of third parties.[6] That is not the law. There is nothing in Section 206 that could support a rule that prevents investors from making decisions—even those regarded as "unreasonable" by the Commission—based on full and fair disclosure.

The Commission's proposal to force upon all investors its own conception of what a reasonable investor would and would not do is dramatically at odds with the basic principles that underlie the antifraud statutes and decades of jurisprudence. Indeed, it is hardly surprising that courts have never addressed a claim that the federal antifraud statutes were violated because, despite the disclosure of all material facts, no reasonable investor would have invested in the face of that disclosure. While many courts have analyzed what a reasonable investor would consider important (and hence material),[7] the analysis is invariably done in the context of assessing what information *should have been disclosed* or the impact of information that was *inaccurately disclosed*. The concept that some information is so material that disclosure of it is *per se* deceptive contradicts the fundamental underpinnings of the statutory disclosure regime. That fiduciary duties are imbedded within Section 206 does not render disclosure irrelevant, as those duties are circumscribed by advanced disclosures made by an adviser to its clients. As discussed above, *Capital Gains* includes extensive discussion of the role of full and fair disclosure of all material facts and the ability of a fiduciary to satisfy certain duties through adequate disclosure. The paternalistic notion that some disclosed limitations on the responsibilities of an investment adviser are always deceptive because the Commission thinks that no reasonable investor would consent to them conflicts with *Capital Gains* and other decisions interpreting the federal disclosure statutes.

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[6] The Proposed Release attempts to dodge the role of disclosure by stating that fiduciary responsibilities over third parties arise when an investment adviser "holds itself out to clients" or "implies" that the adviser is performing these functions. *See, e.g.*, PR at 12-23. Of course, when an adviser expressly discloses it is not performing a particular function, there are no such implicit representations.

[7] To be material, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by a reasonable investor as having significantly altered the "total mix" of information made available. *Basic v. Levinson*, 485 U.S. 224, 231-32 (1988); *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); 17 C.F.R. § 230.405 (2017).

Moreover, the Commission's claim about what a "reasonable investor" would never agree to do is belied by the actions of many sophisticated investor who regularly agree to limitations on the scope of services of their advisers, often in exchange for reduced fees and with full knowledge of the attendant risks. For example, many index funds disclose that: the fund licenses the underlying index from a third party; the adviser has no control over the index and is not responsible for its composition or maintenance; there can be no assurances that the index will not be discontinued; and the adviser cannot guarantee the accuracy and/or the completeness of the index or any data included therein. Index fund prospectuses typically include extensive risk disclosures that highlight the reliance on third party index providers, including the risk of errors by the index provider, interruption or discontinuation of the index. Despite these widely used disclosures, millions of investors (including many sophisticated institutional investors) choose to invest in these passive index funds. There is no support for the Commission's claim that none of these investors are reasonable.[8]

In sum, the position that disclosure can never cure a limited oversight of a covered function is inconsistent with existing law. While an investment adviser's failure to exercise reasonable care in performing its duties may be actionable under Section 206(2), such failure must relate to duties that the adviser has agreed to assume in its advisory agreement, offering documents, and other disclosures to its client. The blanket elimination of disclosure as a means of defining and limiting an adviser's duties and concurrent oversight responsibilities is misplaced. An adviser's lack of oversight of a service provider does not, in and of itself, constitute fraudulent or deceptive conduct. The Proposing Release is wrong in this regard.

The Costs of Compliance with the Proposed Rule Would Be Significant

Section 203(c) of the Advisers Act requires sufficient economic analysis of the Proposed Rule. The Commission's economic analysis lacks rigor and ignores significant costs that will be incurred by advisers and service providers. The obligation to assess the potential burdens that would flow from the Proposed Rule are not excused by unsupported disclaimers that the Commission is in some circumstance "unable to quantify" the resulting costs or that those costs are "difficult to quantify." PR at 99, 147-48. Whether identified with precision or not, the costs and economic impact of the Proposed Rule would be undeniably significant.

For starters, the Proposing Release seeks to minimize the potential impact on advisers by claiming that advisers may already be complying with the rule's requirements. PR at 144. However, that is unlikely to be the case. Proposed Rule 206(4)-11 is not consistent with the manner in which advisers currently oversee their service providers. The rule would expand the number of third parties over which an adviser has oversight obligations and impose additional types of prescriptive due diligence where the particular facts and circumstances do not require it

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[8] The statement that no reasonable investor would invest with an adviser that disclosed a lack of oversight seems to be at odds with other parts of the Proposing Release. *See, e.g.*, PR at 112-13 (recognizing that disclosure about certain risks of outsourcing could affect the price the client is willing to pay in some circumstances).

under existing law. Many advisers and service providers, if not all, would incur substantial costs to come into compliance with the new requirements.

In those areas where the Proposing Release does purport to estimate the costs of compliance with the new rule, the Commission fails to fully recognize the complexity of outsourcing relationships in the fund industry. The ambiguous standards in the Proposed Rule will result in significant costs stemming from the use of outside counsel. For example, by defining a "covered function" to include services that are "necessary" for the adviser to perform its management services, the Proposed Rule would require advisers to perform extensive analysis in assessing when the rule is implicated. There would be considerable judgment and disagreement across the industry as to whether any number of functions qualify as "necessary." Because "certain functions may be covered for one adviser but not for another" (PR at 21), confusion is inevitable. The dozens of questions and requests for comment in the Proposing Release merely scratch the surface of the many issues that would face advisers in coming into compliance.[9] The Commission acknowledges that "advisers may face substantial initial costs in determining their full set of covered functions," (PR at 145), but does not address the costs of outside counsel that will be needed to assist in this determination.

The Proposing Release also does not address the practical considerations that would make it difficult for an adviser to comply with the new rule. The use of index providers by fund managers illustrates just some of these potential implications. For example:

- The Proposed Rule would require forms of oversight that may not be permissible under existing license agreements with index providers. These licenses often do not grant the adviser access to proprietary information about the composition of the index or other types of information that may be needed to perform the required due diligence. Getting access to this proprietary information, which is in some instances closely guarded by the index provider, would likely require renegotiation of existing agreements to provide for additional disclosure to the adviser. It is not clear whether index providers will be willing to provide this information.

- The Proposing Release suggests that advisers secure written representations from service providers that they are aware of the adviser's obligations under the Advisers Act and that the third party will assist the adviser in complying with its fiduciary

[9] For example, the Proposing Release poses several questions on the responsibilities of subadvisers under the Proposed Rule, including whether sudadvisers would be within the scope of the rule, and does the rule's application change when the subadviser is engaged by the adviser or the fund itself. PR at 31, 38.

obligations.[10] Index providers are not subject to the Advisers Act, relying on an express exclusion.[11] It is unlikely index provides will embrace regulatory oversight.

- Even assuming that index providers are willing to renegotiate existing licenses to provide for greater transparency into their proprietary processes or to absorb the liabilities that would potentially flow from acknowledging the adviser's obligations under the Advisers Act, those concessions will come at a cost. It is inevitable that the additional fees that index providers will seek, which could be substantial, will impact investors.[12] Many funds license or sublicense directly with the index provider, so those additional costs will be borne directly by shareholders.

- Some advisers may have difficulty complying with the monitoring of index providers required by the Proposed Rule. The SEC has encouraged ***separation*** of fund managers and index providers, which grew out of concern that affiliation between a manager and an index provider could give rise to conflicts of interest and allow for misuse of nonpublic information concerning changes in an underlying index's methodology or constituent securities. The Commission has noted that information barriers should exist between advisers and index providers.[13] The due diligence required by the Proposed Rule would put some advisers at risk of violating those information barriers.

Three index providers account for over two-thirds of the market for indices.[14] If the Proposed Rule were to become effective, these three index providers presumably would be barraged with new or modified due diligence requests, each tailored to the

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[10] PR at 57. In this regard, the Proposed Rule appears to improperly expand the Commission's regulatory jurisdiction over third parties. Requiring service providers to affirmatively acknowledge the adviser's legal obligations cannot subject those third parties to SEC oversight in the absence of some statutory authority. That authority clearly does not exist in cases where the third parties are expressly exempted from registration under the Advisers Act, as is the case for many index providers.

[11] *See Request for Comment on Certain Information Providers Acting as Investment Advisers*, Investment Advisers Act Release No. 6050 (Jun. 15, 2022) [87 FR 37254 (Jun. 22, 2022)], available at https://www.sec.gov/rules/other/2022/ia-6050.pdf; *Lowe v SEC*, 472 U.S. 181, 208-210 (1985).

[12] These concerns are not limited to index providers. Cloud service providers, for example, typically provide limited transparency into their proprietary operations for a number of legitimate reasons. The most widely used cloud service providers have significant bargaining power, and they will be reluctant to grant access to their proprietary information or to absorb the potential liability associated with inviting regulatory oversight by acknowledging the adviser's obligations under the Advisers Act.

[13] *See* note 3, *supra*.

[14] *See Request for Comment on Certain Information Providers*, *supra* at note 11.

specific indices and licenses used by each adviser. These index providers would likely face significant costs in complying with these requests, and these index providers may attempt to pass on those costs directly to funds (which often license or sublicense the index from the provider). The benefit of requiring *every* adviser to perform the prescribed due diligence on these three index providers is also speculative.

There are less costly and burdensome alternatives to the Proposed Rule. A disclosure-based framework would be far less costly.[15] Alternatively, regular SEC exams often probe the sufficiency of an adviser's third-party oversight for compliance with the federal securities laws. If there are specific areas where inadequate third-party oversight is observed, the SEC can address those specific functions. That is exactly what the Commission has done in the past by promulgating more specific regulations,[16] or issuing guidance on an adviser's oversight responsibilities for certain functions (such as proxy voting, compliance and critical service providers).[17] This more narrowly tailored approach is more appropriate given the complexity and diversity of outsourcing relationships.

The Commission appears to concede that it currently lacks full information about the current state of advisers' relationships with third parties.[18] Consistent with that limited knowledge, the Proposing Release reflects a number of misconceptions about the relationships that exist between advisers, clients and service providers. We respectfully submit that the Commission should collect more information that would allow it to gain a better understanding of these relationships. A closer review would reveal the true economic impact of the Proposed Rule and the significant burdens it would impose.

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We respectfully request that the Commission abandon the Proposed Rule as it is not consistent with the Advisers Act and federal law. At a minimum, the Commission should conduct

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[15] The Proposing Release suggests that the new oversight requirements would be less costly than amending disclosures, but that assumes the adviser is already in full compliance with the Proposed Rule. PR at 172. As discussed above, an assumption that many advisers already comply with the new rule is misplaced.

[16] *See, e.g.*, Proposing Release at 211-15 (citing existing rules that address oversight of third parties).

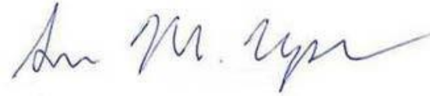
[17] *See, e.g.*, *Proxy Voting by Investment Advisers*, Release No. IA-2106 (Jan. 31, 2003); *Compliance Programs of Investment Companies and Investment Advisers*, Release Nos. IA-2204, IC-26299, File No. S7-03-03; *Business Continuity Planning for Registered Investment Companies*, SEC IM Division, Guidance Update, No. 2016-04 (June 2016) (guidance on policies and procedures covering business continuity planning for critical service providers).

[18] The proposed amendments to Form ADV Part 1A, for example, would require disclosures to "clarify" the third-party services provided in order to provide the Commission with "a better understanding" of those services, the extent of reliance on service providers, and the risks posed by outsourcing. PR at 72.

further analysis to understand the implications of such a rule and reconsider whether it truly promotes efficiencies and is likely to benefit investors.

Thank you for the opportunity to provide these comments. We are available to answer any questions you may have.

Very truly yours,



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