INSTITUTE FOR
THE FIDUCIARY STANDARD

December 27, 2021

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

File Number S7-25-22

Dear Ms. Countryman:

The Institute for the Fiduciary Standard appreciates the opportunity to comment on the proposal regarding "Outsourcing by Investment Advisers" (Release Nos. IA-6176; File No. S7-25-22).

The Institute for the Fiduciary Standard formed as a not for profit think tank in 2011 to advance fiduciary duties in investment advice and financial planning. We are honored to have leading experts and advisers speak on our programs. We are especially honored to have Tamar Frankel, Phyllis Borzi and Luis Aguilar serve and advise on our programs. The Institute educates and advocates through our papers and programs and media outreach. Final-IFS-Brochure-September-2022-104.pdf (thefiduciaryinstitute.org) The Institute's Fiduciary September program is the largest annual conversation of investment advisers, financial planners and experts exploring the importance of fiduciary advice. This year 34 professionals spoke on ten panels over three weeks. Fiduciary September 2022 Program - The Institute for the Fiduciary Standard (thefiduciaryinstitute.org)

The Institute comments on this proposal because of its importance to fiduciary duties and the Commission's view that the investment adviser's adherence to its fiduciary duty is, at least in part, currently in jeopardy because of outsourced services. The Commission appropriately notes that when an adviser "holds itself out" as a fiduciary it implies the adviser remains responsible that its outsourced services meet a fiduciary standard of care. Further, outsourcing does not change "an adviser's obligation under the Advisers Act." (See page 13.) This clear duty is repeated throughout the proposal. The word "fiduciary" is cited 36 times.

At the beginning of the proposal four examples are cited where outsourced service providers apparently or allegedly failed to provide fiduciary care. (See pages 11, 12.) From these examples, the proposal states, "These observations illustrate that despite the existing legal framework, regarding the duties and obligations of investment advisers, more needs to be done to protect clients and enhance oversight of advisers outsourced functions."

This conclusion is fair and incomplete. Interestingly, the proposal offers insight into the implications of whether outsourced services are appropriately monitored. The analysis poses a *hypothetical*. The word "could" is cited 202 times. "Clients *could* be significantly harmed … an interruption *could* affect an advisers ability … poor oversight could lead to financial losses." The word "may" is cited 426 times. Hard and fast assumptions and conclusions based on evidence are not provided.

Four apparent or alleged examples of deficiencies are cited as evidence Yet, the characterization of the scope and scale of the issue in the proposal itself diminished these examples. The proposal states:

"While many advisers may be aware of the risks and account for them appropriately when deciding whether and how to engage or continue to use service providers, our staff has observed that ***not all advisers*** (emphasis added) provide a sufficient level of oversight with respect to their service providers, despite the existing fiduciary duty and other legal obligations applicable to advisers." (See page 122.)

This conclusion offers a sense of the scale / scope of deficiencies. It suggests that only a very few -- or a minimal number -- of advisers are deficient. It states the staff has observed "not all advisers" provide appropriate oversight. This means, logically, the staff characterizes the magnitude of the problem as de minimis It appears to be close to zero. That is this fiduciary duty is not complied with 100% of the time.

Conclusion

The Institute for the Fiduciary Standard exists to advance fiduciary duties. The Commission's review of outsourced services and fiduciary duties is important. Based on this review, it is certainly clear that the greater reliance on outsourced services increases the need for additional guidance. Additional enforcement actions may also be called for. However, by the proposal's own reckoning, ongoing deficiencies are de minimis. A new rule is neither necessary nor appropriate.

Notwithstanding, given the growth of outsourced services, the Institute urges the Commission to conduct new research to obtain a better sense of the risks of increased reliance on these services and then bring together investment advisers and interested parties to discuss this new research and what SEC actions can best address outsourced services. The Institute would welcome such an action to further fiduciary duties in investment advice and financial planning. I would welcome discussing this letter and recommendation further.

Sincerely,

Knut A. Rostad
President, Institute for the Fiduciary Standard