December 27, 2022

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Outsourcing by Investment Advisers (Investment Advisers Act Release No. 6176) [File Number S7-25-22]

Submitted Electronically

Dear Ms. Countryman:

AssetMark Financial Holdings, Inc. appreciates the opportunity to provide comments to the Securities and Exchange Commission ("Commission") in response to the Commission's proposed rules under the Investment Advisers Act of 1940 ("Advisers Act") governing investment adviser outsourcing arrangements and related amendments to Form ADV ("Proposal").[1]

AssetMark is a financial holding company comprised of, among other companies, two SEC-registered investment advisers (AssetMark, Inc. and Atria Investments, Inc. (DBA Adhesion Wealth)) that serve as fee-based investment advisory platforms for independent investment advisers, as well as a non-licensed entity (Voyant, Inc.) that provides financial planning software to various independent and institutional financial services providers. (Collectively, AssetMark, Inc., Adhesion Wealth and Voyant are referred to as "AssetMark" herein.)

Between its various entities, AssetMark works with well over 10,000 independent investment advisers, including small advisers with less than five employees, as well as large institutional advisers, money managers and investment strategists. As a leading provider of extensive wealth management and technology solutions that power independent investment advisers and their hundreds of thousands of end-investor clients, AssetMark sits at the crossroads of adviser and vendor relationships and is well positioned to understand the impact of this proposed rule on the investment adviser community, particularly those smaller advisers that leverage platforms like AssetMark to expand their own access to products and services on behalf of their end-investor clients.

AssetMark's mission is centered around helping advisers make a difference in the lives of their clients by offering advisers access to investment and advisory products, services and other

[1] *Outsourcing by Investment Advisers*, Investment Advisers Act Release No. 6176, 87 Fed. Reg. 68,816 (Proposed Oct. 26, 2022) (to be codified at 17 C.F.R. Pts. 275 and 279) ("Proposing Release").

resources in order to enable them to provide the highest level of investment services possible, while also freeing their advisers to spend more time meeting their clients' individual needs. AssetMark offers fully integrated technology, personalized and scalable service, and curated investment platform solutions through AssetMark, Inc.'s and Adhesion Wealth's platforms, as well as leading financial planning capabilities through Voyant, all designed to make a difference in the lives of investment advisers and their clients.

As a member of both the Money Management Institute ("MMI") and the Investment Adviser Association ("IAA"), we support these organizations' comments to the Proposal expressed in their respective letters. We appreciate MMI's and IAA's important public advocacy on this topic, which we see as raising significant issues for AssetMark and our clients. Many of our clients are smaller investment advisers that will experience significant strain in complying with various aspects of the Proposal with little or no corresponding benefits to their investment advisory clients. We believe the Commission has not fully considered the impact of the Proposal in this regard.

With no intentions of diminishing any of the other issues raised by the IAA or MMI, we focus our opposition on four specific points: (1) the Proposal does not account for the challenges that investment advisers, and especially smaller investment advisers, encounter when contracting with service providers; (2) the Proposal disregards important distinctions between affiliates and third parties, and regulated versus unregulated service providers; (3) the Proposal disregards the thoughtful architecture of managed-account and wrap-fee programs and would result in unnecessary and significant redundancies and added costs to investment advisers and their clients; and (4) the Proposal's requirement to publicly disclose service provider arrangements on Form ADV imposes significant competitive and cybersecurity risks.

Below, we discuss each point in detail.

1. The Proposal does not account for the challenges that investment advisers, and especially smaller investment advisers, encounter when contracting with service providers.

We believe the Commission has not given adequate consideration to how difficult it will be for investment advisers, particularly smaller investment advisers, to negotiate terms with their service providers in order to comply with the Proposal's requirements. Certain service providers may be unwilling to renegotiate current arrangements, or negotiate new arrangements, to address elements of the Proposal those service providers consider undesirable. In particular, large service providers may be unwilling to incorporate certain required contractual elements with any investment adviser, or at least be willing only with their largest clients. Smaller investment advisers often have little negotiating leverage with service providers and may be unable to negotiate required terms into service provider arrangements, especially given the dozens or hundreds of service providers that even smaller investment advisers are likely to have pursuant to the broad definition of "covered functions." As a result, smaller investment advisers will be left with fewer options in providing services to their clients, placing them at a further competitive disadvantage.

While it may not be the intent of the Commission, one of the outcomes of this Proposal, if adopted, will be to advantage and encourage a centralized, captive investment advisory model due to the practical difficulties smaller advisers will face in obtaining services at a competitive price and cost effectively performing due diligence and overseeing such relationships over time. This limits the choice for consumers and ultimately harms the industry by favoring one business model over another.

We also have concerns with the Proposal's approach to subcontracting by an investment adviser's service providers. In particular, including subcontracting could expand the scope of covered functions beyond the capabilities of smaller investment advisers to comply with the Proposal. Many smaller advisers rely heavily on their relationships with other regulated entities to provide negotiating power, due diligence and oversight over their own subcontractors which may include dozens, or even hundreds, of distinct relationships. To require each adviser to independently conduct and be responsible for the review of such subcontractors assumes service providers would be willing to provide details of their own subcontractors (which many service providers would deem to be proprietary and confidential information), and also creates a cascade of obligations, cost and complexity that does not provide any additional benefit to the end client. It would also create crushing cost and time commitments for those small advisers, forcing them to spend inordinate time and resources that is better spent on the needs of their individual clients and inevitably provides only a competitive advantage to those firms with the size and scale as well as the leverage to perform such extensive due diligence and impose such requirements onto the service providers available to the industry.

2. The Proposal disregards important distinctions between affiliates and third parties and regulated versus unregulated service providers.

There are important differences between third-party service providers and affiliated service providers, and we disagree with the Commission's assertion that they present the same risks.[2] The Commission disregards the fact that an investment adviser, or any other company, will typically have a far greater ability and facility to evaluate an affiliated service provider both when conducting due diligence and in monitoring its services. Given existing regulations and disclosure requirements related to conflicts of interest, an extensive disclosure regime is already in place to address the concerns related to affiliated service providers.[3] This difference should be recognized when evaluating the reasonability of any steps that an investment adviser takes in this regard.

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[2] *See* Proposing Release at 68,823 ("The Commission acknowledges that "[t]he proposed rule does not . . . make a distinction between third-party providers and affiliated service providers because the risks that the proposed rule are designed to address exist whether the service provider is affiliated or unaffiliated, and the service provider is not necessarily already being overseen by the adviser.").

[3] Indeed, as the Commission made clear in the instructions to Form ADV Part 2A, an adviser's fiduciary obligations can require it to "disclose to clients information not specifically required by Part 2 of Form ADV or in more detail than the brochure items might otherwise require." *See* General Instructions for Part 2 of Form ADV Item 3.

Further, we disagree with the Proposal's approach of disregarding important differences between regulated service providers, subject to the Advisers Act or other parallel bodies of regulation,[4] and unregulated ones.[5] It is the case that many software tools available to the marketplace may serve many purposes, some of which involve regulated activity and some of which do not. Those unregulated entities should be subject to the Advisers Act only where their activities involve acting as an "investment adviser" as defined in the Advisers Act, not merely because their services are being used for any purpose by an adviser. This is an unnecessary and extremely broad expansion of the scope of the Advisers Act and does not properly recognize the broad range of services available and activities conducted by advisers on behalf of their clients today, only some of which may constitute investment advice.

3. The Proposal disregards the thoughtful architecture of managed-account and wrap-fee programs and would result in significant redundancies and added costs to investment advisers and their clients.

We fundamentally disagree with the Commission's proposed approach with managed-account or wrap-fee programs to the extent that it would have the effect of forcing each participating investment adviser that retains the same service provider to separately, and redundantly, evaluate each service provider involved in providing services under the particular arrangement. In this regard, the Commission stated:

> The proposed rule could also have provided an exception for separately managed accounts and other wrap fee programs. As proposed, an adviser in such a program would be subject to the proposed rule if they retain a service provider for its provision of advisory services. As such, multiple advisers that retain the same service provider may need to conduct due diligence and monitoring on that service provider, depending on whether such services are [sic] covered function. As an alternative, the proposed rule could provide an exclusion for advisers that engage service providers to perform covered functions as part of a larger program or arrangement, such as the sponsor of a wrap fee program or other separately managed account program in which the sponsor is subject to the proposed rule with respect to the participation of the service providers in the program. One advantage of such an exception could be reducing the potential for redundancy in the due diligence and monitoring of service providers conducted in wrap fee programs. However, we believe that sub-advisers that retain service providers are best positioned to conduct appropriate due diligence and monitoring of a service provider in connection with its particular sub-advisory role. For instance, while a sub-

[4] Such parallel bodies of regulation could include, for example, state laws governing investment advisers, federal or state banking laws, federal or state law governing broker-dealers and Financial Industry Regulatory Authority rules, and federal or state commodity laws, and National Futures Association rules.

[5] *See* Proposing Release at 68,823 ("The proposed rule would not include an exception for service providers that are subject to other provisions of the Advisers Act, including Commission-registered advisers, or other Federal securities laws. An adviser remains liable for its legal and contractual obligations and should be overseeing outsourced functions to ensure the adviser meets its legal and contractual obligations, regardless of whether the service provider has its own legal obligations under the Federal securities laws.").

adviser overseeing fixed-income portfolio strategies and a sub-adviser overseeing equity portfolio strategies may retain the same service provider, there may be different operational risks, conflicts of interest, or other problems discovered upon due diligence or monitoring with respect to each of these roles. Therefore, we do not believe that it would be appropriate to provide an exception for such cases.[6]

Managed-account or wrap-fee programs are notable for their sophisticated, well-constructed and coordinated approach to delivering an array of services that tap the expertise of many service providers—including investment advisers. However, each service provider is typically allocated or tasked with performing relatively discrete roles. The fact that an investment adviser participating in a managed-account or wrap-fee program retains and relies on other service providers to perform facets of the overall services in no way should be taken to mean that each investment adviser needs to separately conduct due diligence and monitor the performance of those service providers, especially where the service provider is supervised by another investment adviser or service provider or by the client itself. Indeed, requiring that each participating investment adviser separately be responsible for conducting due diligence and monitoring the activities of program service providers introduces a high level of unnecessary redundancy and corresponding cost that will ultimately be passed on to clients, or is simply not practical for a smaller investment adviser. Instead of providing any additional meaningful protection for end clients, the likely result is instead far fewer options being made available to those investors through their adviser, particularly where that adviser has traditionally looked to leverage wrap fee programs in order to offer a broad range of well-diligenced products and services via an investment platform like those provided by companies like AssetMark.

The Commission should permit investment advisers in managed-account programs that retain the same service provider to designate—and delegate responsibility to—another investment adviser or service provider to conduct due diligence and monitor the service provider. Moreover, an investment adviser should not be deemed to have retained a service provider solely by virtue of the investment adviser being party to an agreement with a service provider or being a third-party beneficiary of any such agreement.

4. The Proposal's requirement to publicly disclose service provider arrangements/relationships on Form ADV imposes significant competitive and cybersecurity risk.

Proposed amendments to Form ADV included in the Proposal will require investment advisers to publicly disclose the names of their service providers that provide covered functions, their addresses, the covered function they provide, and the date when the service providers began providing the covered functions. We strongly disagree with this.

Investment advisers view many of their service provider relationships as proprietary and confidential. Many investment advisers spend significant time and money researching and then

[6] Proposing Release at 68,862.

vetting vendors to solve a specific problem, implement a proprietary investment strategy, or develop a new product or service. Making the identity of those vendors available to competitors undercuts a key competitive advantage in the investment adviser industry. Further, publicly disclosing the identity of investment adviser service providers poses significant cybersecurity risks. Cybercriminals will know which advisers use which vendors and which vendors are utilized most heavily in the industry. Cybercriminals will then be better able to prioritize service provider targets based on potential reach across the industry. This is again an example where the smaller advisers in the industry will be further disadvantaged by requiring those firms to meet a higher standard of competitive threats and cyber threats than those otherwise commensurate with the size of their firm by publicly exposing their relationships.

We believe that the public disclosure that would be required by the Proposal is unnecessary and harmful. Rather, we believe that the Commission's examination authority provides the proper mechanism to gather the information sought.

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Ultimately, we echo the points made in the MMI and IAA letters, and believe that the Commission has not sufficiently highlighted, evaluated, or justified the various issues with the Proposal. We believe that the Proposal does not account for the challenges that investment advisers, especially smaller investment advisers, will encounter when contracting with service providers, nor does it take into account important distinctions as it pertains to regulated versus unregulated entities or affiliates versus third-party providers. Instead, the Proposal creates redundancies for well-developed programs and the potential for competition- and cybersecurity-related issues through Form ADV disclosure. We have highlighted these issues in greater detail above and oppose the enactment of this Proposal without further analysis, research, and justification from the Commission.

We hope that our comments are helpful to the Commission and its staff. We would be glad to answer any questions or provide further assistance. Please feel free to contact me at [redacted].

Very truly yours,

Ted Angus EVP, General Counsel

AssetMark Financial Holdings, Inc.