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

Re: Outsourcing by Investment Advisers (Release No. IA-6176; File No. S7-25-22)

Dear Ms. Countryman:

The American Securities Association[1] ("ASA") submits these comments regarding the Securities and Exchange Commission ("SEC" or "Commission") proposed rule on Outsourcing by Investment Advisers ("Proposal"). While we understand the Commission's desire to ensure investment advisers undertake proper oversight when outsourcing certain functions to third party service providers, the Proposal does not properly consider existing regulatory obligations and will impose substantial costs upon investment advisers and their clients without any measurable benefit.

We remind the Commission that the obligation to oversee third party service providers has long been understood to be part of an adviser's fiduciary obligation[2], and it is a responsibility that advisers do not take lightly. We are concerned this Proposal will replace the existing principles-based approach to third party oversight with an overly prescriptive, "one-size-fits-all" regime that will not improve the existing level of due diligence conducted by investment advisers.

As a result, we urge the SEC to drop this Proposal until the costs and impact of the Proposal on registered entities can be fully understood. The ASA's views on some of the specific shortcomings of the Proposal are discussed in further detail below.

The Definition of a "Covered Function" is Too Broad

[1] The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership of almost one hundred members that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.

[2] The Proposal acknowledges this fact, stating on page 13: "Outsourcing a particular function or service does not change an adviser's obligations under the Advisers Act and the other Federal securities laws. In addition, the adviser is typically responsible for the advisory services through an agreement with the client that represents or implies the adviser is performing all the functions necessary to provide the advisory services. An adviser remains liable for its obligations, including under the Advisers Act, the other Federal securities laws and any contract entered into with the client, even if the adviser outsources functions."

While we understand the Commission's desire to require registered investment advisors (RIAs) to perform due diligence on covered functions, the proposed definition of a "covered function" is extremely broad. Compliance with the Proposal would include a wide array of third-party service providers and vendors who assist with certain functions, including functions that are required by federal securities regulations, but do not provide true outsourced advisory functions.

Service providers that could be subject to the proposed diligence requirements include paper delivery vendors, software providers, broker-dealers, clearing agencies and more. These providers and vendors are not making investment advisory decisions; rather, they are key enablers that allow the financial adviser to focus on providing investment advice.

We do not believe the Commission intends the definition of a "covered function" to be interpreted broadly, particularly because the economic analysis accompanying the Proposal estimates that advisers will have five or six covered functions. However, when considering the overly broad definition, it is more likely that some RIAs will have more than a *thousand* covered functions. This discrepancy suggests that the Commission did not intend for the definition to be so broad, and points to the compliance challenges and costs that could result from a final rule that tracks the Proposal.

Further, if any final rule is approved, the SEC must exempt registrants and affiliates from this rule. Many of the vendors who provide third-party services to RIAs are themselves registrants or affiliates of a registrant, and already subject to oversight by the SEC and other federal regulatory regimes. Meaning, the Commission currently has access to the information that needs to be disclosed during the due diligence process, so new requirements set forth in the Proposal could lead to an unnecessary duplication of work and an overly burdensome reporting process for Commission staff.

The Rule Could Lead to Unnecessary Industry Consolidation

The Proposal sets out significant due diligence requirements for both the RIA and the third-party service provider. Currently, RIAs can choose a vendor through a thoughtful and competitive process, often selecting the vendor that simultaneously meets their needs and regulatory requirements.

The Proposal would lead to consolidation in the industry because third-party service providers will have to determine if the cost of complying with the diligence requirements is worth the business. For many smaller service providers, they could make the decision to stop offering services to RIAs even though this diligence is required. With more RIAs relying on a small

number of service providers to perform certain functions, costs will go up and service providers will be emboldened by the arbitrariness of this rulemaking.

Not only will this mean less competition and increased prices, but it can also lead to unnecessary stress on the system if one service provider has a disruption or cybersecurity event and is unable to operate for a significant period of time. We do not understand why the SEC is introducing this type of centralized risk into a system that already functions well.

The list of service providers should be not be made public

ASA also believes the list of service providers used by an RIA should not be listed on Form ADV or accessible to the public. While we understand the Commission is seeking to increase transparency, it would be easy for bad actors to review Form ADV and target firms to try to exploit any known vulnerabilities. Individual vendors and firms could become targets for cybersecurity attacks because these disclosures would be readily accessible to the public.

Additionally, if the service provider industry does consolidate because of these onerous proposed requirements, the risk of cybersecurity attacks becoming systemic issues is unnecessarily amplified. This is particularly problematic for foreign actors, including China and Russia, who are known to launch cybersecurity attacks on U.S.-based companies as well as the U.S. government. On October 22, 2022, the National Security Agency (NSA), Cybersecurity and Infrastructure Security Agency (CISA), and Federal Bureau of Investigations (FBI) released an update reminding the public about the cyberthreats posed by China, noting that *"People's Republic of China state-sponsored cyber actors continue to exploit known vulnerabilities to actively target U.S. and allied networks as well as software and hardware companies to steal intellectual property and develop access into sensitive networks."*[3] Yet the Proposal largely ignores the cyberthreats from state actors that it would create.

Over the past two years, the Commission has proposed a number of rules that would amend public facing documents for RIAs including Form ADV. If all of these rules are finalized, including this Proposal, consumers will be faced with navigating a document that is unnecessarily long and difficult to understand.

We believe that Form ADV should be easy for investors to read and understand. They should not be forced to read through long lists of vendors and disclosures that do not truly provide insight into adviser's background, business, and important information an investor would seek when deciding whether to establish a relationship with an adviser. By opting for a private filing of service providers, the SEC will make it easier for investors to read Form ADV while protecting

[3] https://www.cisa.gov/uscert/ncas/alerts/aa22-279a

service providers and firms from unnecessary risk by bad actors, hackers, and state sponsors of cyberattacks.

Conclusion

The ASA urges the SEC to drop this Proposal because new rules regarding investment adviser outsourcing are not necessary. There is no market failure or problem the Commission has identified that would legally justify imposing the requirements in this Proposal on the industry. Moreover, if this Proposal is finalized, then it will reduce choice for investment advisors, harm investment advisors by raising their costs without producing any tangible benefit, and confuse investors by needlessly complicating and lengthening the disclosure on Form ADV.

We look forward to serving as a resource for commissioners and staff on this and other issues related to the SEC's expansive regulatory agenda.

Sincerely,

Christopher A. Iacovella

Christopher A. Iacovella
Chief Executive Officer
American Securities Association