December 27, 2022

Ms. Vanessa Countryman
Secretary, Office of the Secretary
US Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: Comments on SEC Release Nos. IA-6176; File No. S7-25-22 Outsourcing by Investment Advisers

Dear Ms. Countryman:

On October 26, 2022, the US Securities and Exchange Commission (SEC or Commission) proposed new rule 206(4)-11, amendments to rule 204-2 under the Investment Advisers Act of 1940 and amendments to Form ADV which would prohibit registered investment advisers from outsourcing certain services and functions without conducting due diligence and monitoring of service providers. COMPLY appreciates the opportunity to comment on this important proposal.

BACKGROUND ON COMPLY AND OUR CLIENTS

COMPLY prides ourselves on being the champion for compliance professionals. Merging technology, consulting and education, we help clients navigate the ever-changing regulatory environment. Our portfolio of firms includes ComplySci, RIA in a Box, National Regulatory Services (NRS) and illumis, whose more than 7,000 clients include some of the world's largest financial institutions. Clients throughout our portfolio of firms enjoy access to our full suite of industry-leading governance, risk and compliance (GRC) consulting, technology, managed services, analytics, outsourcing solutions and education programs that include the Investment Adviser Certified Compliance Professional (IACCP®) designation.

OVERVIEW

COMPLY is dedicated to helping investment advisers of all sizes navigate the ever-changing regulatory environment. It has been our experience that advisers are generally well aware of the fiduciary duty owed to clients; in fact, many advisers chose to become registered investment advisers instead of other financial professionals in large part because of an abiding and fundamental belief in the sanctity of the adviser-client relationship as exemplified by the fiduciary relationship. Adding burdensome prescriptive requirements ostensibly intended to address a problem that does not clearly exist would not only disregard the efforts and commitment demonstrated by most advisers but would also lead to the perverse result of

impeding the very advisory services they purport to promote. Further, the prohibitive costs of compliance with the proposed rule will fall disproportionately on small and mid-sized advisers, who will then be compelled to make a Faustian bargain between committing the additional staffing and resources necessary to outsource tasks they are not well-equipped to perform in-house or committing additional staffing and resources to develop their own in-house expertise; either path would appear to increase the risks to clients and increase barriers to entry in a profession historically well-served by the diversity of advisers in the industry. Therefore, COMPLY does not believe that the proposed rule is necessary for several reasons.

First, the Commission already has examination and enforcement powers to identify and call attention to the need for advisers to conduct regular and meaningful reviews of service providers. In our experience, advisers are not only well aware of risk alerts and enforcement cases involving poor oversight of service providers, but actively take appropriate steps to bring their own reviews in line with SEC expectations, based on each adviser's specific practices. The only benefit listed in the Release that is currently not being met by these examination and enforcement powers is the ability to evaluate a service provider's potential impact on a market event. This could be accomplished by including a census on Form ADV Part 1A (please see comments on, Question 2, below).

Next, it is unclear how the proposed rule will mitigate perceived problems with service provider oversight. An adviser whose oversight is insufficient to meet its fiduciary duty can already be detected through the examination process. Violations of the proposed rule, like violations of fiduciary duty, will only be discovered when an adviser is examined. The rule simply burdens advisers with new requirements to address issues that are already reviewed during an examination.

Next, COMPLY disagrees with the Commission's determination that the use of an outsourced service provider is in and of itself a conflict of interest. In providing examples of why this situation presents a conflict, the Release states:

> *Outsourcing a service also presents a conflict of interest between an adviser providing a sufficient amount of oversight versus the costs of providing that oversight or the cost of the adviser providing the function itself.*

That conflict exists for every function in an adviser's business, whether outsourced or not. For example, an adviser must weigh the costs of using its own employees and staff to collect and review personal securities transactions versus outsourcing this function. The presumption that hiring an outside service provider to provide these services and providing appropriate oversight of that service provider is a material conflict, but providing and supervising these services in-house is not, seems arbitrary at best.

Next, the proposed rule adds direct costs to advisers' compliance programs, as advisers would be required to go beyond meeting their fiduciary duties in order to meet the many requirements

of the rule. Moreover, as advisers will need their service providers to work with them to provide information required by the rule, the service providers will incur costs that will be passed along to advisers in the form of higher prices. These additional direct and indirect costs will likely force some smaller advisers to bring outsourced functions back in house, with a potential loss of quality and expertise. This will have the greatest impact on smaller advisers, and while the Commission has asked for ideas on how to lessen the burden on smaller advisers, the fact remains that the size of the adviser does not often materially impact the risk that the rule is trying to address.

Finally, the reports, articles, and cases[1] cited in the Release (which go back as far as 2013) to demonstrate the need for the rule show the potential for abuse but, in our opinion, fail to show that investment advisers are neglecting their fiduciary duties to an extent that would indicate the need for such a sweeping rule.

We urge the Commission to consider whether advisory clients and the industry overall are best served by the adoption of this proposed rule, or whether a more measured and targeted approach could more effectively serve the interests of all stakeholders.

That said, if the Commission decides to adopt the proposed rule, COMPLY offers the following responses to specific questions included in the Release below, and we appreciate the opportunity to comment on the Commission's proposed rule 206(4)-11 and amendments to rule 206(4)-2 of the Investment Advisers Act of 1940 and Form ADV.

SECTION II. A. SCOPE

1. *Is the proposed scope of the rule appropriate? Why or why not? In what ways, if any, could the proposed scope of the rule or the proposed definition of covered function better match our policy goals? Does it need to be made clearer?*

   Whether by expanding the definition of "covered function" or "service provider", or by adding a definition of "outsourcing", COMPLY recommends narrowing the scope of the rule.

   First, the services to be covered by the rule should be those that are:

   (a) Regular and continuous; or
   (b) Do not require the review and approval of the final product by the adviser.

   Services that are regular and continuous typically take place outside of the adviser's direct supervision, and so a regular review of the provider would make sense. An example of this type of service would be a third party's creation and maintenance of an algorithm used by an adviser to manage client accounts. As it would be unreasonable

[1] See footnotes 11-18 in the Release

and unwieldy to constantly review the algorithm, periodic review of the service provider is needed for the adviser to meet its fiduciary duty.

Services that require the adviser's review and approval of the final work product receive a thorough review by the adviser whenever the work product is delivered and accepted. For example, when a compliance consultant prepares an annual updating amendment for an adviser, the adviser must review it and verify that the information in it is complete and correct. This should be outside the scope of the proposed rule. By contrast, a periodic vulnerability assessment of an adviser's information technology systems conducted by a third party necessarily includes the conclusions and opinions of that third party, and so would not be subject to the adviser's review and approval and should therefore be covered by the rule.

2. *Instead of oversight requirements when an adviser outsources a covered function, should we only require Form ADV disclosure to clients and potential clients of any outsourcing of certain functions? Would it be sufficient for an adviser to disclose that it would outsource these services and not oversee them and would any reasonable investor agree to this approach? Or would a more limited approach to the oversight of service providers be appropriate instead of the proposed requirements? If so, what should that limited approach be?*

   COMPLY fundamentally disagrees with the Commission's presumption that an investment adviser's use of outside service providers to provide covered functions is necessarily a material conflict of interest. In fact, the Commission would be incenting those advisers without the volume of covered work to support hiring expert staff to accept lesser quality covered work simply to avoid a phantom conflict of interest.

   Moreover, COMPLY believes that requiring disclosures about service providers are not needed, are not wanted by investors, and would make clients and prospective clients even less likely to actually read the Form ADV Part 2. The Release summarizes the purpose of Part 2 as follows:

   > *To allow clients and prospective clients to evaluate the risks associated with a particular investment adviser, its business practices, and its investment strategies, it is essential that clients and prospective clients have clear disclosure* ***that they are likely to read and understand****. IA-3060 (emphasis added).*

   Institutional clients, who may actually have an interest in this information, can obtain it through interviews with the adviser, DDQs, and other means. Adding what would inevitably be several pages of additional disclosure that, even with the scrupulous use of plain English, would veer into the technical and more esoteric aspects of the advisory

business, would only serve to make the Part 2A less welcoming (and therefore less helpful) to clients and prospective clients.

Moreover, disclosure would be burdensome for advisers. If, as the Release implies, the hiring and firing of a covered service provider is material to advisory clients, the Part 2A would not only have to be amended but the revised disclosure would need to be provided to current clients whenever the firm changed covered providers.

As noted in the Overview section of this letter (above), COMPLY has concluded that the only benefit listed in the Release that is currently not being met by the Commission's examination and enforcement powers is the ability to evaluate a service provider's potential impact on a market event. This could be accomplished by including a census on Form ADV Part 1A. That said, however, publicly providing this information could provide a covered service provider's competitors with the means to specifically target that firm's clients. COMPLY, therefore, recommends that the responses to this census be available only to the Commission or state securities regulators.

Finally, regardless of intent, COMPLY is concerned that the net effect of the rule as proposed would be to effectively exercise regulatory authority over service providers not under the Commission's regulatory purview. It would be inappropriate for the Commission to do indirectly what it lacks the authority to do directly, and COMPLY encourages the Commission to avoid the repercussions of exceeding its authority in this way.

3. *In addition to the proposed oversight requirements when an adviser outsources a covered function, should the rule include an express provision that prohibits an adviser from disclaiming liability when it is not performing a covered function itself?*

   No. In COMPLY's experience, investment advisers are fully aware of their fiduciary duty and inability to relinquish it. Moreover, contracts between advisers and service providers include provisions regarding indemnification and limitations of liability. Therefore, this provision is not necessary

4. *Is the proposed definition of "covered function" clear? Why or why not? In what ways, if any, could the proposed definition be made clearer?*

   Please refer to our response in the "Overview" section of these comments, above.

9. *What would be the advantages and disadvantages of explicitly identifying the types of functions or providers that would trigger the rule? For instance, is there a risk of being over-inclusive and under-inclusive if we take such an approach? Are there certain services or functions that should be considered "core" for all advisers, or does what constitutes a "core" advisory function vary from one adviser to the next? Should what is considered "core" correlate to a certain percentage of clients who receive (and*

presumably can therefore be affected by) the service provider's services? That is, would a service provider's functions be considered "core" to an adviser if they could have an impact on a certain minimum percentage of the adviser's clients? Should it correlate to a certain percentage of regulatory assets under management that receive (and, again, presumably can be affected by) the service provider's services? That is, would a service provider's functions be considered "core" to an adviser if they could have an impact on a certain minimum percentage of the adviser's regulatory assets under management? What would be a percentage of either such measurement that should trigger application of the rule? 5%? 10%? 15%? 20%? Please explain your answer.

COMPLY has always supported the Commission's efforts to move towards risk-based (or "principles-based") compliance requirements. Explicit identification of functions and providers would undermine this goal and would require the Commission to either regularly update the rule (or issue no-action letters) whenever new functions or new technologies emerge.

COMPLY further notes that basing any such requirements on RAUM would discount those clients that receive services from advisers that either fall below an explicit RUAM threshold or do not provide portfolio management services at all. For example, many pension consultants do not report significant RAUM, but provide important services for many pension plans and their participants. Moreover, requiring advisers to determine the percentage of clients affected by each "core" function would be burdensome, particularly for smaller advisers, and would potentially overlook those clients in the minority percentage who might be highly impacted by a covered function.

Please also see our comments on questions 18 and 19, below.

16. *Is the proposed definition of "service provider" clear? Why or why not? In what ways, if any, could the proposed definition be made clearer?*

    Please refer to our response in the "Overview" section, above.

18. *Should the rule define what it means to retain a service provider to perform a covered function? If so, how? Should we explicitly state that outsourcing would include affiliated entities of an adviser, including parent organizations?*

    In our opinion, the existence of a contractual relationship between the adviser and the service provider clearly determines whether or not a service provider has been "retained." That said, COMPLY agrees with the Commission that explicitly stating that "service providers" includes affiliates will help advisers understand the full scope of the rule.

19. *Should we define when an adviser would retain a service provider for purposes of the proposed rule? Are there specific factors that should be relevant in determining whether*

a service provider arrangement should be subject to the rule? For example, should the rule apply where the adviser recommends the service provider to some or all of its clients? Would a relevant factor be the extent to which the adviser makes arrangements for the client to engage the service provider? Should the approach differ depending on whether the client is a fund (registered or not) or a separately managed account and the extent to which the adviser is a control person of the fund or has some control over the fund's contracting arrangements? Or should the proposed rule only include service providers that contract directly with the adviser? If so, why? Should we provide an explicit exclusion for all 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?

Form ADV Part 2A requires investment advisers to "describe any relationship or arrangement that is material to your advisory business or to your clients" with a list of affiliates. As noted in our comments to question 2, COMPLY does not agree with the Commission's assumption that all relationships with service providers for covered functions are material to clients or prospective clients. Moreover, any material conflicts inherent in any recommendation to advisory clients (whether with an affiliate or not) must already be disclosed as part of an adviser's fiduciary duty and reviewed by each adviser on an annual basis under rule 206(4)-7. Therefore, COMPLY believes that enumerating specific factors is unnecessary and burdensome.

If recommending a service provider to a client is a specific factor that the Commission elects to adopt, COMPLY suggests that this only apply to service providers that are recommended to the client for compensation.

COMPLY agrees that service providers that are engaged to perform covered functions as part of a larger program or arrangement (such as a wrap fee program) should be explicitly excluded. The concept of a wrap fee sponsor has worked well for these programs and can serve as a model for other programs or arrangements that would otherwise be covered under the proposed rule.

23. *Should we include subadvisers within the scope of the rule, as proposed? Why or why not? Should this differ based on whether the subadviser for a fund is engaged by the adviser or the fund itself?*

Advisers are already required to disclose the use of subadvisers to their clients. Moreover, subadvisers engaged to manage accounts of the introducing adviser's clients are required to provide their own disclosure documents to these clients. While subadvisers should be included in any census of covered service providers on Form

ADV Part 1A, including subadvisers under the proposed rule would be redundant and burdensome.

Moreover, COMPLY is concerned that including subadvisers in the proposed rule (and the new, formal requirements for documenting and disclosing the process by which subadvisers are selected) could lead those advisers using subadvisers to conclude that the SEC is scrutinizing their investment decision-making processes, rather than simply attempting to ascertain whether these advisers are meeting their fiduciary duties to their clients. Advisers reaching this conclusion may believe that they have to justify (rather than simply document) their investment selection process to SEC examiners, and that the examiners will be second-guessing the investment decisions behind the selection of subadvisers. This could, in turn, lead advisers to downplay or ignore their own investment philosophies and select subadvisers based only on the most recent performance or the lowest available subadvisory fees in a misguided attempt to avoid SEC scrutiny of its investment selection process. COMPLY believes that clients are best served when advisers are able to focus on meeting their fiduciary duties to clients rather than feeling obliged to engage in regulatory defensive maneuvers that are not in the best interests of clients.

25. *Would it be duplicative or otherwise unnecessary to apply the rule in the context of an adviser's affiliates, as proposed? If so, please explain.*

    As noted in the Overview section of this response, COMPLY does not think the rule should be adopted. However, if it is adopted, it should apply to affiliates as well as third-party service providers, as the risk of inadequate oversight is the same regardless of the ownership of the covered service provider.

26. *Should the proposed rule provide an exception for firms that are dually registered broker-dealers? For example, should we provide an exception for firms that comply with existing broker-dealer provisions such as FINRA Rule 3110 (Supervision) to meet a dual registrant's obligation under these rules? Should there be an exception for outsourcing to SEC-registered advisers or other service providers that are themselves subject to regulation under the Federal securities laws? Should such an exception be limited to outsourcing to another adviser or manager (including banks and trust companies) when the other adviser or manager treats the client as its own client (as may be evidenced, for example, by the client's entry into documentation appointing the adviser or manager, the inclusion of the client as a client on the books and records of the adviser or manager, or the delivery of disclosure documents of the adviser or manager to the client)?*

    COMPLY does not believe that firms already subject to relevant regulations should be required to comply with additional, overlapping regulations, absent a compelling reason to believe that currently applicable regulations are ineffective or insufficient. For regulation to remain meaningful, the benefits conveyed must clearly eclipse the burdens;

in the case of entities already subject to relevant regulation, the burdens of additional and prescriptive regulations are clear, while the benefits are not. In the case of dually registered broker-dealers subject to both FINRA and SEC rules, the interests of firms and clients would appear to be best served by better aligning regulations so that firms in compliance with the relevant rules of one regulator would also fulfill the requirements of the other. COMPLY notes the recently amended Electronic Recordkeeping Requirements for Broker-Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants (Release No. 34-96034)[2] as an example of the opportunity to increase the regulatory harmonization and rule alignment that ostensibly increases investor protection without the concomitant risk of increased fees and reduced service levels that can result from duplicative regulation.

27. *To what extent do advisers already take the steps that would be required by the proposed rule? Do commenters believe that the proposed rule is necessary? Why or why not? To the extent that commenters believe that the proposed rule is already covered by the general fiduciary duty enforceable under Section 206 of the Advisers Act, do commenters believe there is sufficient clarity in the industry as to the obligations for an adviser in the context of retaining service providers? And if so, how do those obligations differ from what is outlined in this proposed rule?*

    Please refer to our response in the "Overview" section of these comments, above.

28. *Are the proposed changes to the books and records rule appropriate? Are there alternative or additional recordkeeping requirements we should impose? For example, should we require that the record include specific information or be memorialized in a written memo or report? Should we require advisers to update the list of covered functions within prescribed time periods such as monthly, quarterly or annually?*

    If a census of covered service providers is added to Form ADV Part 1A, updating the census as part of the annual updating amendment process will be sufficient to help the Commission meet its stated goal of evaluating a service provider's potential impact on a market event. If the immediate impact of a problem with a service provider is so extensive that advisers who have hired that service provider are at risk, the Commission will need to publicly announce the problem, so that all advisers who hired the service provider between prescribed reporting periods can be notified. Beyond that, COMPLY does not believe any additional recordkeeping is required, as all services provided by covered service providers are described in the contracts between the service providers and the advisers.

30. *Do commenters believe it would be overly burdensome to require a record of factors that led the adviser to list each covered function, as proposed? Why or why not? Should we*

[2] https://www.sec.gov/rules/final/2022/34-96034.pdf

instead only require the list of covered functions without requiring the record of factors for each covered function?

COMPLY believes requiring this record of factors that led the adviser to list a particular function as a covered function would be overly burdensome and would be of limited value. A list of functions already appears in the adviser's agreement with the service provider and this list along with other relevant contractual terms provides sufficient information to ascertain not only the rationale for engaging a vendor but also considerations for performing due diligence and ongoing oversight. Requiring a separate document describing why covered functions were deemed to be so would consume time and resources that could be better spent elsewhere, particularly since it appears that an adviser's determination that a function should not be deemed a covered function would provide more insight.

In COMPLY's experience, various departments in investment adviser firms can and do find new uses for existing services. This rule would effectively require every supervised person in every department responsible for a covered function to notify its compliance department whenever a new use for an existing product or service was found. This is burdensome and unnecessary.

SECTION II. DISCUSSION B. DUE DILIGENCE

32. *Should we require advisers to obtain third-party experts, audits, and/or other assistance to oversee a service provider when the adviser is outsourcing a function that is highly technical, or the oversight requires expertise or data the adviser lacks? For example, if an adviser is outsourcing to a service provider that provides valuation or pricing of complex or private securities, or a service provider that incorporates artificial intelligence into its services, should that adviser be required to confirm it has sufficient internal expertise to effectively oversee the service provider, and if not, obtain a third-party expert to provide such oversight?*

While COMPLY recognizes the importance of conducting reasonable due diligence on third-party service providers, we favor an approach that provides flexibility for advisers to determine the extent of the due diligence based on the risk and scope of the outsourcing arrangement over more prescriptive, and often costly, requirements such as these. Requiring advisers to obtain third-party experts, audits, and/or other assistance to oversee third-party services providers that the adviser has already vetted would be burdensome and expensive, and it brings about questions as to where the layers of oversight might end (i.e., will the adviser need to hire someone to oversee the overseer). For small firms, these additional layers would likely be cost prohibitive; thus, chilling the use of third-party service providers and incentivizing advisers to perform complex tasks in-house instead of obtaining assistance from those who are more knowledgeable, experienced, or larger staffed.

33. *Advisers are currently required under rule 206(4)-7 to have policies and procedures reasonably designed to prevent violations of the Advisers Act and rules under the Act, and this requirement would apply to the proposed rule. The proposed rule does not require additional explicit written policies and procedures related to service provider oversight. Should the rule require specific policies and procedures in addition to or instead of the requirements in the proposed rule? And if so, what specific provisions should be required? Should we also include changes to rule 38a-1 under the Investment Company Act?*

    COMPLY believes the current requirements under rule 206(4)-7 are sufficient to ensure advisers maintain written policies and procedures related to oversight of service providers. In fact, many advisers have already adopted policies and procedures regarding service provider oversight; often as an extension of their customer data protection and/or business continuity policies. Should the rule be adopted, COMPLY does not believe additional explicit written policies and procedures would be necessary, as rule 206(4)-7 provides sufficient flexibility to allow advisers to develop risk-based policies and procedures and to direct resources as appropriate given the scope of the outsourced function. Should the Commission decide to include an explicit requirement for written policies and procedures, a similar risk-based approach rather than prescriptive requirements would be preferable, but given rule 206(4)-7, COMPLY does not believe adding an explicit requirement is necessary.

34. *Should we exempt certain service providers or covered functions from some or all of the due diligence requirements? If so, which service providers should we exempt, which due diligence requirements should we exempt, and why?*

    Taking a less prescriptive approach would likely make categorical exclusion of certain service providers or covered functions unnecessary. A risk-based approach, such as that already used by many advisers, allows the adviser to rank service providers and to direct its resources to those who present the most risk to the firm and/or its clients. As referenced in our response to Question 18, the degree to which advisers outsource covered functions varies greatly even at individual service providers, and certain functions, such as those that require review and approval by the adviser, do not necessarily require the same degree of oversight as, for example, those that the adviser delegates completely. Allowing advisers to determine which providers need more or less attention at any given time based on the facts and circumstances of the outsourcing arrangement, including the potentially changing scope of services and any third-party oversight, helps ensure the most efficient use of resources and management of risk.

35. *Should we exempt certain categories of advisers or service providers from the due diligence requirements, such as smaller (e.g., a small business or small organization as defined in 17 CFR 275.0-7 or a small business as defined by the U.S. Small Business Administration) advisers or service providers or newly registered advisers? If so, which ones and why? Alternatively, should we provide scaled due diligence requirements, and*

if so, how? Would the proposed due diligence requirements raise any particular challenges for smaller or different types of advisers? If so, what could we do to help mitigate these challenges?

All advisers, regardless of their size, face some risk when using third-party service providers to perform covered functions; however, the degree of such risk differs, is fluid, and is not necessarily correlated to the size of the adviser or service provider. Rather than exempting certain categories of advisers or service providers from due diligence requirements, allowing advisers to continue to make risk-based decisions regarding service provider oversight will help ensure advisers of all sizes allocate resources appropriately. However, should the Commission move forward with more prescriptive requirements, it should take into consideration the resource challenges small firms will face, and consider giving them more flexibility in areas where cost will be a significant factor, such as when it becomes necessary to replace a service provider.

36. *The proposed rule requires that the due diligence be conducted before the service provider is engaged. Are there reasons that due diligence cannot be completed prior to engaging a service provider? If so, please explain and provide examples. For example, should there be an exception for emergencies? How would we define emergency? Should an exception for emergencies be time-limited (e.g., one month) or permitted for the duration of the emergency?*

    As there is no way to foretell all possible scenarios that might delay initial due diligence on a service provider, COMPLY believes giving advisers flexibility to conduct reviews in a timeframe commensurate with risk would allow advisers to effectively address such scenarios. In most cases, it would be appropriate from a risk perspective to conduct due diligence before the service provider is engaged, but in those cases where the risks of not obtaining assistance outweigh the risks of conducting due diligence at a later date, the adviser should have the flexibility to make that decision. Furthermore, requiring advisers to conduct due diligence before the service provider is engaged could potentially discourage advisers from changing under-performing service providers due to the burden of conducting an additional due diligence review.

39. *The proposed rule is intended to provide flexibility to investment advisers in the methods they use to identify outsourcing risks. Should we dictate a specific method by which risks are identified? For example, should we require that investment advisers prioritize the identified risks and create a record of that prioritization?*

    Contrary to the stated intention of providing flexibility to investment advisers, COMPLY believes that the proposed rule is too prescriptive; dictating a specific method by which advisers would be required to identify risks would appear to further undermine the Commission's stated intention of providing flexibility to investment advisers and is contrary to the principles-based regulatory framework that seems to have served clients

and the industry well for many years. While not formally codified, the obligation of investment advisers to conduct and document an assessment of risk based upon its business model has been inferred from the Adopting Release IA-2204 of rule 206(4)-7 and has been underscored by the Commission's requests for such information during examinations. In addition, the SEC's proposed Cybersecurity Risk Management rule 206(4)-9 requires investment advisers to assess and document cybersecurity risks *based on the nature and scope of their business* and their specific cybersecurity risks. Given these existing precedents, it would appear that the most effective and flexible approach to risk assessment would be to allow investment advisers to continue to conduct risk assessments based on each firm's business model and avoid mandating any specific method on all investment advisers.

42. *Should the proposed rule require advisers to make determinations about the service provider's competence, capacity and resources as proposed? Should the Commission take a different approach instead? For example, should we require advisers to make reasonable assessments instead? How much independent research would advisers be able to accomplish to comply with this requirement?*

    Although it is impossible to know how much independent research investment advisers would be able to accomplish, COMPLY believes that a reasonable assessment of a service provider's competence, capacity and resources is an appropriate approach to fulfill an investment adviser's due diligence obligation. Fiduciary duty arguably already compels investment advisers to conduct due diligence on third-party service providers, which would naturally include a review of the service provider's competence, capacity and resources deemed necessary to complete the outsourced services. A determination of what constitutes *reasonable* due diligence is based on the facts and circumstances specific to each investment adviser and the services to be outsourced to the service provider.

49. *Should the Commission adopt the related recordkeeping provisions as proposed or should they be changed? For example, should the time period of retention be changed to five years after the entry was made or three years after the relationship between the adviser and service provider has been terminated?*

    Consistent with existing recordkeeping obligations, COMPLY believes that the requirement to maintain applicable books and records throughout the time period during which the investment adviser has outsourced a covered function to a service provider and for a period of five years thereafter is appropriate as proposed.

SECTION II. DISCUSSION C. MONITORING

50. *Should we adopt the monitoring requirements as proposed? Are there other aspects of monitoring that should be required under the rule? Conversely, should we exclude any of the proposed monitoring requirements from the rule?*

    As noted with regard to the due diligence requirements, advisers are arguably already required to monitor third-party service providers as part of their fiduciary duty. Consistent with this understanding, many advisers already conduct risk-based oversight of service providers. COMPLY believes such a risk-based approach, which gives advisers the flexibility to allocate resources based on the facts and circumstances of the outsourcing arrangement, including the scope of services, encourages advisers of all sizes to allocate resources in an efficient manner. If the monitoring requirements are too prescriptive, small advisers in particular may have to redirect or reallocate resources in such a way that the adviser's overall risk profile could increase.

SECTION II. DISCUSSION D. FORM ADV

56. *Are the proposed requirements to disclose service providers that perform a covered function as defined in rule 206(4)-11 appropriate? Should we instead require all registered advisers that outsource any services to provide the specified information and then mark each service to indicate whether it is a covered function within rule 206(4)-11 or not? Or should we include a broader Form ADV reporting requirement, such as requiring all advisers (e.g., exempt reporting advisers and advisers registering with state securities authorities) to provide the specified information regarding any outsourced service or function or only those that are subject to rule 206(4)-11 or any substantially similar regulation?*

    COMPLY understands the SEC's need for enhanced information in order to effectively oversee the use of service providers by investment advisers and agrees with the proposed addition of relevant census-type information to facilitate such oversight, with the caveat that the states should be able to make their own determinations as to whether they would find the information useful or necessary. However, COMPLY believes that the Commission could accomplish its goal of assessing investment adviser reliance on service providers with more limited information, such as the name and location of each service provider, the date the adviser first engaged them, and whether or not they are related persons of the adviser. COMPLY does not believe that requiring advisers to report the covered functions or services actively engaged in by the service provider would add value or provide information the Commission would find helpful in conducting investment adviser examinations. The proposed covered function categories will almost certainly be interpreted differently among investment advisers, thus leading to inconsistent and inaccurate information across Form ADV filings. For example, the category comprising "regulatory compliance" is deemed to include "outsourced CCO and

other compliance functions," which could be rendered meaningless as a result of the lack of industry-wide definitions and the tendency to interpret compliance functions quite broadly. It is difficult to imagine how the resulting skewed and statistically invalid findings would provide any beneficial or actionable information.

COMPLY applauds the Commission's efforts to increase the amount and quality of information available to investors. If an intention of the proposed Form ADV, Part 1A, Item 7 amendment is to make service provider information available to investors, including this information in a filing that is not required to be delivered to clients and that is not required to be updated between annual updating amendments even if materially inaccurate, would not appear to increase the likelihood that clients would be exposed to this additional information. Further, since the information is unlikely to be of help to clients it would appear that it would more likely be used by advisers seeking information about vendors being used by other advisers for competitive purposes. Finally, given the importance of privacy protection, it is unclear whether it would be necessary or appropriate for either the Commission or advisers to obtain permission from service providers before making this information publicly available. As it is crucially important that advisers have access to service providers qualified to assist them with covered functions, the risk that some service providers may be unwilling to work with adviser clients who must expose them publicly, could unnecessarily increase risk. COMPLY recommends that this census information be used by the Commission for its intended purpose and not be made publicly available through IAPD.

62. *Would any additional or other information be material to an adviser's clients or prospective clients regarding outsourcing that is not included in the proposal and is not currently disclosed to investors through Form ADV or elsewhere (e.g., whether the service provider arrangement is subject to a written agreement or information about passed-through fees)? Should we add any other service provider information to the Form ADV disclosure? If so, what information and why? For example, should Form ADV, Part 2 require information in the adviser's brochure about the use of service providers and related conflicts and other risks? Or is information about outsourced services already adequately being disclosed in connection with disclosures related to conflicts of interest or other risks? For example, should we require disclosure of potential conflicts of interest of the service provider? Should we require that, in addition to or in place of the service provider's principal office, advisers report the principal office where the service provider's services are performed? Alternatively, should we delete any of the service provider information proposed to be disclosed? If so, what information and why?*

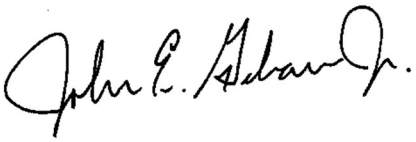
Investment advisers are already obliged to disclose actual and potential conflicts of interest regardless of the relationship or circumstances giving rise to the actual or potential conflict. Service provider conflicts, to the extent the investment adviser has been able to ascertain them based on the information publicly available in addition to that provided by the service provider, should be subject to the same disclosure

requirements as any other actual or potential conflicts of interest. Adding an additional layer of disclosures about service provider conflicts of interest would be redundant and could cause confusion by appearing to emphasize the importance of service provider conflicts over other types of conflicts. In order to maintain the usefulness of ADV 2A as a meaningful and understandable document, it is important to strike an appropriate balance between information a reasonable client would find important in making an informed decision about an investment adviser and providing extraneous or duplicative information that would likely result in client confusion or avoidance, contrary to its purpose.

In addition, although COMPLY agrees with the need to provide meaningful disclosure, including information about the locations of service providers, in this era of geographically dispersed workplaces, it is difficult to imagine how it would be possible or meaningful to fully disclose every location from which service provider services may be performed. For reasons including employee privacy, the likelihood that information could continually be outdated, and the lack of a compelling regulatory purpose, COMPLY feels that disclosure of the primary service provider location is sufficient.

Thank you for your consideration of the comments above. If we may assist further or provide additional information or background on our comments, please let us know. We at COMPLY would certainly look forward to assisting the Commission in this very important area.

Respectfully,



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COMPLY