By Electronic Delivery

May 8, 2023

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

RE: S7-04-23

Dear Ms. Countryman:

Landmark PLC, Certified Public Accountants (Landmark), appreciates this opportunity to comment on SEC Release No. IA-6240, *Safeguarding Advisor Client Assets*, issued February 15, 2023 (the Release).

Landmark, a regional firm headquartered in Little Rock, Arkansas, began providing audit services to 529 plans in 2008. Over the past fifteen (15) years, our firm has placed emphasis on developing expertise in 529 plans, ABLE plans and state-facilitated retirement plans (SFRP) and being recognized as a leader in providing accounting, auditing and financial reporting services to this unique industry. In fact, Landmark has a team of professionals who dedicate a majority of their chargeable hours to serving our 529 plan, ABLE plan and SFRP clients. Our firm presently performs audits of twenty (20) 529 plans, four (4) ABLE plans, and two (2) SFRPs. We also audit the National ABLE Alliance, which is an investment trust that serves as an investment option for several ABLE plans across the United States. Our knowledge of and history with 529 plans, ABLE plans and SFRP has allowed us to understand the unique risks faced by the plans and their participants, and we have developed a highly tailored, risk-based audit approach for these engagements. In addition to the audits we perform, we provide accounting and financial reporting services for eleven (11) plans that we do not audit (monthly, quarterly or annually, depending on the plan).

Landmark is pleased to offer the following responses to certain questions posed in the Release:

Q203. Should we expand the availability of the audit provision beyond limited partnerships, limited liability companies, or other types of pooled investment vehicle to entities as proposed? If not, explain why. If we expand the availability of the audit provision, in what circumstances would this likely be utilized? Should we impose any limits on the types of entities that can make use of the audit provision? If so, what limits, and why? It is our understanding that a separate account cannot be audited. Is our understanding correct? If not, are separate accounts currently being audited, and if so, for what purpose? To the extent separate accounts can be audited, should the audit provision be available for separate account clients in addition to entities?

As a public accounting firm, Landmark shares the SEC's belief that audits have great value. An audit of a 529 plan or ABLE plan involves important audit tests, such as the verification of the existence and valuation of investments, confirmation of assets held in separate accounts and investment contracts, verification that participant transactions are executed in accordance with participant instructions and the program description, and recalculation of asset-based fees.

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If audit provisions were to be expanded to include 529 plans and ABLE plans, Landmark believes that the SEC should take into consideration the structure of these entities. Under section 529 of the Internal Revenue Code, a qualified tuition program or a qualified ABLE program is a program established and maintained by a state or agency or instrumentality thereof (for purposes of this letter, we will refer to "the State"). Assets of 529 plans and ABLE plans are held in trusts, which may take different form depending on the State's implementing legislation. The State or elected officials of the State serve as trustee, also depending on the implementing legislation. In exchange for contributions, participants receive trust interests in 529 plans and ABLE plans. Such interests are considered municipal securities under federal securities laws, and these interests are deemed municipal fund securities under the rules of the Municipal Securities Rulemaking Board.

Each program or plan offers several investment options from which participants may choose, depending on their risk tolerance and time horizon. The State, working with its program manager and investment advisor, decides what the investment line up will be, and the State may direct that the investment offerings be changed at any time. Such investment options generally include one or more mutual funds, exchange-traded funds, money market mutual funds, and bank deposit products. Some investment options may include separate accounts that hold common stock or investment contracts in their asset holdings. It is important to point out that the participants are not investing directly in the underlying assets, rather they are investing in units of participation of the trust. The participants may not direct the selection of assets that comprise the investment option.

Many 529 plans and some ABLE plans are included in the annual comprehensive financial report (ACFR) of the sponsoring State because they meet the definition of a "fiduciary activity" under Statement No. 84, *Fiduciary Activities*, of the Governmental Accounting Standards Board (GASB), as amended. Accordingly, these plans follow accounting principles generally accepted in the United States (U.S. GAAP) prescribed by the GASB applicable to fiduciary funds. Our experience with plans that are not included in their sponsoring State's ACFR, but that do produce annual audit reports, is that they also tend to follow GASB accounting and reporting standards.

It is our belief that most (if not all) of the existing 529 plans are currently being audited, as such audits are required by the State due to the significance of assets held in the related State trust and that the plan rolls up into the State's financial reporting entity. Different states have different audit and financial reporting requirements for their respective plans. Many of these audit engagements are performed in accordance with auditing standards generally accepted in the United States (U.S. GAAS) and *Government Auditing Standards*, issued by the Comptroller General of the United States, as that is a requirement of the State. *Government Auditing Standards* have a more strict definition of independence than U.S. GAAS and require audit procedures to consider compliance with laws and regulations that could have a direct and material impact on the auditee and reporting on internal control over financial reporting, on compliance with laws and regulations and other matters.

In contrast to 529 plans, primarily due to the cost involved in obtaining an audit and the relative insignificance of ABLE plan assets in relation to the State's other fiduciary funds, we believe that many ABLE plans may not be audited. The National ABLE Alliance, which is a partnership of eighteen (18) states dedicated to offering low cost investment options through state ABLE programs, produces an annual financial report and is audited, and we believe that many of the States participating in the National ABLE Alliance may opt to rely on the audit work done in connection with that audit, rather than incur the cost to procure an audit of their separate ABLE program.

Given the matters discussed above and specifically considering that each 529 plan or ABLE plan is already subject to accounting, financial reporting and audit requirements imposed by their sponsoring State, Landmark believes that these entities should not be added to the expanded audit provision, and furthermore, Landmark believes that doing so may result in confusion and inconsistent practice.

Q204. Do commenters agree that expanding the scope of entities eligible for the audit provision, as proposed, is likely to result in a greater percentage of audit clients?

Landmark does not believe that expanding the scope of entities eligible for the audit provision, as proposed, will result in a greater percentage of audit clients. First of all, as stated above, most existing 529 plans are already audited. It is unlikely that expanding the audit provision will compel audits of ABLE plans due to the cost of obtaining an audit. In addition, if the audit provision requires that the audit be performed by a firm that is registered with and subject to regular inspection by the PCAOB, the number of audits may decrease due to the inevitable significant increase in audit costs that will occur, which is ultimately borne by plan participants.

Q210. Should the rule require accountants performing audits under the rule to be registered with the PCAOB as proposed? Should the rule require accountants to be subject to regular inspection by the PCAOB as proposed? Do accounting firms registered with and subject to regular inspection by the PCAOB implement their quality control systems throughout the accounting firm related to their assurance engagements? Why or why not?

Landmark does not audit any public companies or SEC-registered brokers or dealers, and we are not registered with the PCAOB. We have implemented a firm-wide quality control system consistent with the requirements of the AICPA's *Statements on Quality Control Standards* (SQCS), and we participate in a peer review program. We are also members of the AICPA Government Audit Quality Center, which imposes additional quality control requirements beyond those prescribed by the SQCS. Our understanding from previous consultations with the PCAOB is that we could register with the PCAOB, but we would not be subject to "regular inspection." We believe our quality control system, combined with our expertise in the industry, is more than sufficient to ensure that we perform effective audits of 529 plans and ABLE plans.

In our opinion, requiring 529 plans and ABLE plans to be audited by firms that are registered with and subject to regular inspection by the PCAOB would drive the cost of these audits up significantly (due to higher billing rates associated with the larger firms and the limited number of professionals who have expertise in this industry), and this increased cost would ultimately trickle down to negatively impact plan participants, reducing returns on their investments in the plans. In addition, registration with and inspection by the PCAOB does not ensure that an engagement team performing an audit of a 529 plan or ABLE plan will have sufficient industry knowledge and experience to design and execute an appropriate risk-based audit plan, resulting in increased risk of audit failure, which ultimately impacts the participant. Registration with the PCAOB in no way ensures that audit quality will improve. For firms that do not audit public companies, brokers or dealers, registration with the PCAOB changes nothing. It is not likely that a firm registering with the PCAOB just to satisfy an SEC rule will change their system of quality control from one that is prescribed by the AICPA to that which is prescribed by the PCAOB.

Q211. If the rule did not include these requirements, should the rule impose any additional licensing, examination, or inspection requirements on such accountants? If so, describe these additional requirements and explain why they are necessary? For example, should the rule require accountants to have a CPA license in good standing?

If it is determined that 529 plans and ABLE plans should remain in the expanded audit provision, our recommendation would be that these plans be audited by firms who are registered with the AICPA, have implemented the AICPA's quality control standards and participate in an acceptable peer review program. Ultimately, State law will dictate accounting standards and audit requirements, e.g., if the audit is performed in accordance with U.S. GAAS or also *Government Auditing Standard*s.

There are several other avenues the SEC could consider to ensure audit quality with respect to 529 plans and ABLE plans in addition to the ones mentioned in the preceding paragraph, such as requiring the plan to include supplementary information related to investment options offered by the plan and requiring the auditor to issue an "In relation to" opinion on that information, requiring plan auditors to complete certain continuing education courses that are relevant to the industry, requiring participation in 529-related industry professional groups or delineating specific compliance requirements that must be tested each time a plan is audited.

Q212. The PCAOB has specific rules governing regular and special inspections under its inspection program. We understand, however, that sometimes advisers may be unsure whether a registered public accounting firm is "subject to regular inspection" by the PCAOB. Rather than require the accountant to be "subject to regular inspection. should we instead require the accountant to be a registered public accounting firm with either an issuer or broker dealer audit client (or play a substantial role in the audit of an issuer or broker dealer) as of the start of the engagement period and as of each calendar year end? If we were to take this approach, would it significantly diminish the number of accountants available to perform audits? How would this approach affect the cost of audits? Would this have any potential unintended consequences, including, for example, adversely affecting smaller public accounting firms compared to larger public accounting firms?

Just because a firm is registered with the PCAOB and subject to regular inspection does not mean that firm has the knowledge, skills or experience to plan and conduct an effective audit of a 529 plan or an ABLE plan. There have been several instances over the past fifteen (15) years where we have been requested by a State or program manager to assist engagement teams of other firms that only perform one or two 529 plans or ABLE plan audit engagements, to help them understand the nuances of this industry and how to plan appropriate audit procedures. In some instances, these were engagement teams of PCAOB registered firms.

Additionally, a firm with experience in auditing broker dealers may not have sufficient experience auditing clients that follow GASB accounting or financial reporting standards, because broker dealers follow accounting and financial reporting standards prescribed by the Financial Accounting Standards Board (FASB). While both FASB and GASB standards are considered U.S. GAAP, they are significantly different from each other in many respects. Also, broker dealers do not have audits performed in accordance with *Government Auditing Standards,* which, as already explained above, may be required by the sponsoring State. We believe that this approach does not make sense with respect to 529 plans and ABLE plans.

Q215. Do commenters agree that the availability of accountants to perform services for purposes of the proposed rule is sufficient? If not, please describe how the proposed rule could provide greater availability.

The availability of accountants to perform audit services for 529 plans and ABLE plans – i.e., accountants with knowledge of and experience with the 529 plan and ABLE plan industry, as well as GASB standards and *Government Auditing Standards*, would be extremely limited under the proposed rule. The proposed rule does not provide greater availability.

Q220. Should the safeguarding rule require audited financial statements of an entity to be distributed to all the entity's investors within 120 days (or 180 days in the case of a fund of funds or 260 days in the case of a fund of funds of funds) as proposed? Would a longer or shorter period be appropriate (e.g., 180 days or 90 days)? Should the rule expressly allow the statements to be distributed beyond the prescribed period of 120 (or 180 or 260) days if a reasonably unforeseeable circumstance necessitates a longer period? If so, should such a longer period have an outer limit? If so, should other conditions apply such as requiring the adviser to retain documentation supporting the reasons for the delay? Should it require advisers to notify investors of the delay and, if so, what information should be included in the notice and by when should it be distributed?

Landmark does not agree that there should be a requirement to distribute 529 plan and ABLE plan audit reports to investors. That would likely be a massive undertaking on the part of the plan's program manager, and the content of these documents is not suited for those who do not have a basic understanding of accounting and financial reporting related to governmental entity fiduciary funds. Many ABLE plan participants have disabilities or are blind, and this would require special consideration.

Q223. For entities, we understand that audited financial statements are posted to the entity's website, e.g., a 529 plan's website, along with a written notification sent to accountholders of the availability of the financial statements. The entity also provides a hardcopy of the financial statements by mail within three business days upon an account holder's request. Should we continue to allow this type of electronic delivery to meet the distribution requirement? Should we expand the availability of electronic delivery of audited financial statements? If so, how?

This statement is not true for a majority of the plans that Landmark audits.

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We appreciate the opportunity to provide our comments, and we hope that they are of use to the SEC as the provisions of the proposed rule are deliberated. If you have any questions or require additional information from Landmark, please do not hesitate to contact Randy Milligan, Managing Principal via email – rmilligan@landmarkcpas.com or by calling 501-375-2025. Thank you for your consideration.

Sincerely,

Little Rock, Arkansas
May 8, 2023