



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

Submitted electronically

Re: Safeguarding Advisory Client Assets Proposed Rule [Release No. IA-6240; File No. S7-04-23; RIN 3235-AM32]

Dear Ms. Countryman,

As a financial technology company that for the past 10 years has worked to help Americans retire better, Pontera appreciates the opportunity to submit comments in response to the Securities and Exchange Commission's ("SEC" or "Commission") request for public comment on the proposed new SEC Rule 223-1, the "Safeguarding Advisory Client Assets Proposed Rule" ("Proposed Rule") under the Investment Advisers Act of 1940 ("Advisers Act" or "Act"). The Proposed Rule seeks to address how investment advisers safeguard client assets. The Commission's proposing release ("Release") also proposes to amend certain provisions of the SEC's current custody rule and recordkeeping rule under the Advisers Act, and to Form ADV for investment adviser registration under the Advisers Act ("Proposed Amendments").

As a preliminary matter, Pontera strongly supports and shares the Commission's goals of protecting investors from the misappropriation, loss, misuse, and theft of their assets, including new asset classes. We further believe it is crucial for investors' financial wellbeing to have the continued ability to receive holistic professional advice on all of their assets, including employer-sponsored retirement accounts, which our platform supports.

As the complexity in the retail investment landscape accelerates, financial “illiteracy” is estimated to have cost Americans more than \$436 billion in 2022.¹ Against this backdrop, about one third of American adults seek help from a licensed financial adviser,² evidenced by the industry’s sustained growth over the past decade.³ We are writing to share our perspectives on aspects of the proposed rule that we believe will adversely affect the roughly 35% of working Americans who have 401(k) and 401(k)-like accounts⁴ as they seek professional advice.

For the median American family, retirement accounts represent the majority of their savings.⁵ At the same time, employer-sponsored retirement plan accounts are the only investment vehicles wherein the fund options and custodian are pre-selected for the investor. Additionally, many plans currently offer fee-based professional advisory products, provided by the custodian, such as target date funds and managed account services. While early investors can especially benefit from these options, investors with assets outside of these retirement plans often seek and request a more bespoke approach. To answer this need, financial advisers have been employing comprehensive investment and tax strategies across the full client portfolio while taking measures to comply with the current Rule 206(4)-2 (“Custody Rule”) under the Investment Advisers Act of 1940 and other applicable regulations.

¹ Field, Bill. “Financial Illiteracy Costs: Survey, Causes, Consequences | NFEC.” *National Financial Educators Council*, 22 March 2023, <https://www.financialeducatorsCouncil.org/financial-illiteracy-costs-2>. Accessed 4 May 2023.

² “Nearly 3 in 5 Americans (59%) want financial advice but are not sure where to get it, according to intelliglo survey.” PR Newswire, 2 March 2022, <https://www.prnewswire.com/news-releases/nearly-3-in-5-americans-59-want-financial-advice-but-are-not-sure-where-to-get-it-according-to-intelliglo-survey-301494402.html>. Accessed 4 May 2023.

³ McGinley, Devin. “Custodians tap into a rising tide in the RIA industry.” *InvestmentNews*, 23 August 2021, <https://www.investmentnews.com/custodians-tap-into-a-rising-tide-in-the-ria-industry-210571>. Accessed 4 May 2023.

⁴ Hoffman, Maria G., et al. “Who Has Retirement Accounts?” *Census Bureau*, 31 August 2022, <https://www.census.gov/library/stories/2022/08/who-has-retirement-accounts.html>. Accessed 4 May 2023.

⁵ “The Fed - Chart: Survey of Consumer Finances, 1989 - 2019.” *Federal Reserve Board*, https://www.federalreserve.gov/econres/scf/dataviz/scf/chart/#series:Retirement_Accounts;demographic:all;population:1;units:median. Accessed 5 May 2023.

1. The Proposed Rule Will Negatively Impact Consumer Choice for Holistic Financial Advice

With the investor's best interest in mind, we suggest further consideration of the proposed new requirement that an investment adviser with custody due to discretionary trading authority must maintain assets pursuant to a written agreement with a qualified custodian and obtain certain assurances from the qualified custodian. In practice, should such a requirement ever take effect, investment advisers helping their clients with retirement plan accounts would be required to negotiate and enter written agreements with dozens, if not hundreds, of qualified custodians that have been pre-selected by plan sponsors (and not by plan participants or their financial advisers). This is expected to be burdensome and likely implausible for investment advisers and custodians alike. In the event of such a change, qualified custodians will be heavily conflicted, with little incentive to enter into these agreements with independent investment advisers. We believe these dynamics will result in less choice and higher costs borne by plan participants.

We hope the Commission's final rule will not inadvertently limit or restrict investors from accessing independent, discretionary investment advice with respect to their retirement plan accounts.

2. The Proposed Rule Will Increase Incentives for Suboptimal IRA Rollover Recommendations, Counteracting DOL PTE-2020-2

Prioritizing the investor's best interest, we suggest the Commission further consider the proposed rule's inclusion of discretionary authority in the definition of custody. In practice, we are concerned that the contemplated changes stand to make providing in-plan fiduciary advice much more costly and burdensome. The added cost and burden, in turn, will increase the incentives for investment advisers to recommend or educate clients in a manner that encourages suboptimal retirement account rollovers.

The majority of US workers with self-directed retirement savings are uncomfortable making investment decisions with their accounts⁶; likewise, 62% of investors wish they could completely hand over retirement planning to an expert.⁷ This need is particularly deepened in the case of old retirement plan account management; the US job turnover rate has increased by 253% in the past decade,⁸ and the US worker now holds an average of 12 jobs in their lifetime.⁹

In the period from 2016 to 2021, rollovers from ERISA-covered accounts accounted for \$2.9 trillion in IRA asset growth.¹⁰ This decision to rollover often comes at the expense of better benefits in the prior plan accounts, such as institutional fund access and lower fees.¹¹ The Department of Labor's ("DOL") PTE 2020-02, which is notably being revisited,¹² is designed to promote investment advice that is in the best interest of retirement investors.

To this end, Pontera has been working to further enable advisers to eliminate the conflict of interest associated with rollover recommendations by supporting investment advisers in providing the same level of management services across in-plan and directly-custodied assets. Our hope is that the Commission's policies continue to support the investor's personal choice to receive discretionary advice while not imposing new barriers for investment advisers to provide equitable, quality, and conflict-free investment advice across all investor retirement accounts.

⁶ "Federal Reserve Board Publication." Federal Reserve Board, <https://www.federalreserve.gov/publications/files/2021-report-economic-well-being-us-households-202205.pdf>. Accessed 5 May 2023.

⁷ "2021 Defined contribution plan participant survey findings | J.P. Morgan Asset Management." JP Morgan Asset Management, <https://am.jpmorgan.com/us/en/asset-management/adv/insights/retirement-insights/defined-contribution/plan-participant-survey/>. Accessed 5 May 2023.

⁸ U.S. Bureau of Labor Statistics. "Job Openings and Labor Turnover Survey." BLS.gov, 5 May 2023, <https://data.bls.gov/timeseries/JTS0000000000000000QUR>. Accessed 5 May 2023.

⁹ "Workers set for multiple careers as jobs demand new skills." World Economic Forum, 2 May 2023, <https://www.weforum.org/agenda/2023/05/workers-multiple-careers-jobs-skills/>. Accessed 5 May 2023.

¹⁰ "DC Plan Rollovers Seen as Major Booster to IRA Growth." ASPPA, 25 January 2023, <https://www.asppa.org/news/dc-plan-rollovers-seen-major-booster-ira-growth>. Accessed 5 May 2023.

¹¹ "Small Differences in Mutual Fund Fees Can Cut Billions From Americans' Retirement Savings." The Pew Charitable Trusts, 30 June 2022, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/06/small-differences-in-mutual-fund-fees-can-cut-billions-from-americans-retirement-savings>. Accessed 5 May 2023.

¹² "Definition of the Term "Fiduciary."" DOL/EBSA, vol. RIN: 1210-AC02, no. Spring 2022, 2022. REGINFO.GOV, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=1210-AC02>. Accessed 5



Please do not hesitate to contact Pontera should you have any questions or require any additional information. We appreciate the SEC's efforts in maintaining the integrity and transparency of our financial markets and look forward to working with you to resolve any issues or concerns.

Sincerely,

Mr. Yoav Zurel
Chief Executive Officer
Pontera Solutions Inc.