

May 8, 2023

Submitted electronically

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

Re: **File Number S7-04-23, Request for Comment: Safeguarding Advisory Client Assets**

Dear Ms. Countryman:

LPL Financial LLC (“LPL” or “we”) appreciates the opportunity to comment on the Securities and Exchange Commission (“Commission”) Notice of Proposed Rulemaking on the Safeguarding Advisory Client Assets Rule (the “Proposal”). We support the Commission’s intention to protect advisory client assets, but are concerned that, if adopted without modification, the Proposal could significantly impinge on our independent financial professionals’ ability to serve advisory clients and our ability to act as a qualified custodian. We are concerned that the Proposal’s impact will be to inadvertently limit the advisory services available to retail investors and increase their costs, while driving a trend towards industry consolidation in the market for qualified custodian services (and the custodian’s affiliated and preferred products).

The letters the Securities Industry and Financial Markets Association (“SIFMA”) and Money Management Institute (“MMI”) submitted regarding the Proposal on May 8, 2023 identifies a number of operational issues and other concerns for qualified custodians and SEC registered investment advisers. We support both comment letters in their entirety. If the Commission decides to proceed with this rulemaking, it should modify the final rule to mitigate the potential adverse consequences SIFMA, MMI and LPL have identified. We hope the Commission finds our comments helpful, and we are open to providing additional comments or clarifications upon request.

I. Overview of LPL

LPL is a diversified financial services company and is dually registered with the SEC as a broker-dealer and investment adviser. We offer integrated technology solutions; brokerage and advisory platforms; clearing, compliance, business and planning and advice services; consultative practice management programs and training; and in-house research to help our financial professionals run successful businesses. We serve more than 21,000 financial professionals, including professionals at approximately 1,100 enterprises and at approximately 500 registered investment advisers (“RIA”) firms nationwide, providing the front-, middle- and back-office support our financial professionals need.

II. Our Concerns with the Proposal

As a qualified custodian and a registered investment adviser with custody of client assets, LPL would be significantly impacted by the Proposal if it is adopted in its current form. We support the Commission’s stated intent to protect investors by enhancing the current regulatory framework around safeguarding advisory client assets, but also think it is important that any new requirements be adopted in a way that preserves investor choice and access to different investment advice models and the financial services providers of their choosing.

We are concerned that the Proposal will:

1. Limit access to advisory services and investment products, particularly discretionary advisory services.
2. Increase the costs of advisory services that clients will have to pay.
3. Moreover, for assets custodied away from LPL and/or at a custodian chosen and overseen by the client (e.g., retirement plan accounts), the Proposal would vest in the third-party qualified custodian significant market power, driving consolidation for qualified custodial services. These qualified custodians would be able to choose which advisers it permits to have access to such custodied assets by requiring the adviser to have a written agreement with the custodian.

It is not unforeseeable for such firms operating in the plan recordkeeping and custody space, for example, to use such market power to preference their participant-level advice offerings (or the offerings of their affiliates and strategic partners), while shutting out discretionary management by an independent adviser chosen by the plan participant.

We further agree with the SIFMA letter and wish to amplify its views that the Proposal adversely affects independent advisers to the detriment of advisory clients.

- **The written agreement requirement is unworkable.** Qualified custodians could demand substantial compensation to enter in these terms or otherwise refuse to do so, while preferencing their affiliates or strategic business partners. As a result, independent advisers might have to pass along higher costs to clients, or the client's choice of adviser could be reduced.
- **The Proposal preferences non-discretionary advice over discretionary management.** Advisers may choose to decline discretionary authority over assets that trade on a non delivery-versus-payment basis due to significant operational and implementation challenges. As a result, investors could be forced to self-direct these assets, even where they would like the benefits of management services.
- **The Proposal puts SEC-registered advisers at a competitive disadvantage.** SEC-registered advisers and their clients would be at a competitive disadvantage to other fiduciaries who would not be subject to and encumbered by the Proposal's burdensome requirements.
- **The implementation period is too short.** Any final rule should have at least a three-year implementation period for all advisers and qualified custodians.

In short, we are concerned that the Proposal will ultimately harm investors currently benefiting from discretionary advisory services from independent advisers, and stop a significant and needed trend towards independent discretionary investment advice for retail clients. As the Commission knows, the investment landscape in America has shifted from one in which an individual could depend on professionally managed corporate pension plans to support their retirement, to one in which each person is left on their own to save, invest, and make the important financial decisions needed to ensure they have enough money to retire and to achieve other life goals. These individuals often lack the expertise, time, and discipline to make optimal investment decisions and benefit from discretionary investment management services. The Proposal generally makes the provision of discretionary advice more expensive to deliver and preferences affiliated advisers over independent advice.

We urge the Commission to modify the Proposal consistent with SIFMA's comments, and the comments above.

We appreciate this opportunity to share feedback, and look forward to working with the Commission and other stakeholders on this issue.

If you would like to discuss this letter further or have any questions, please do not hesitate to contact me at Carolyn.Jayne@lplfinancial.com.

Sincerely,



Carolyn Jayne
Senior Vice President
Associate General Counsel

cc: Daniel Kleinman, Morgan Lewis
Lindsay Jackson, Morgan Lewis