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LEGAL SERVICES

December 24, 2022

**Sent via SEC Comment Submission Portal**

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

**Re: File Number S7-25-22 - Outsourcing by Investment Advisers**

Dear Secretary Countryman:

This letter is in response to the Securities and Exchange Commission's request for public comment re: Is the proposed definition of "service provider" clear? Why or why not? In what ways, if any, could the proposed definition be made clearer?

Proposed rule 206(4)-11(b) defines a "service provider" as a person or entity that: (1) performs one or more covered functions; *and* (2) is not a supervised person<sup>1</sup> of the adviser. We note the use of "and" in the proposed rule 206(4)-11(b). Given this conjunction, one could meet the requirements of (1) under 206(4)-11(b) – in that the individual performs one or more covered functions – and be a supervised person under (2) of the same. In other words, as written, it appears that a supervised person could provide covered functions to the investment adviser through an unaffiliated<sup>2</sup> entity of the investment adviser, but because of his or her status as a supervised person they would *not* trigger the 206(4)-11(b) definition. For example, a supervised person could provide an investment adviser with IT services (assuming that this is a covered function) through an entity that is owned by the supervised person but that is unaffiliated with the investment adviser and not meet the service provider definition. This does not appear to be the intention of the proposed rule and we respectfully suggest that the definition of service provider under proposed rule 206(4)-11(b) be rewritten to ensure the inclusion of supervised persons who are offering covered functions through activities not otherwise affiliated with the supervising investment adviser firm.

Sincerely,

*Michael Rasmussen*

Michael Rasmussen, Founder  
mrasmussen@unitedatlanticls.com

<sup>1</sup> The proposed rule release also notes that a "supervised person" is defined in section 2(a)(25) of the Advisers Act as any partner, officer, director, (or other person occupying a similar status or performing similar functions), or employee of an adviser, or other person who provides investment advice on behalf of the adviser and is subject to the supervision and control of the adviser.

<sup>2</sup> We do not believe that lapse is solved by the discussion around affiliated service providers. Affiliated typically means under common control or ownership as the investment adviser. As such, an employee of the investment adviser could provide a covered function to the investment adviser through an unaffiliated entity.