UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 24-2000

YOON DOELGER; PETER DOELGER,
Plaintiffs-Appellants,
v.
JPMORGAN CHASE BANK, N.A.,
CHICKASAW CAPITAL MANAGEMENT, LLC,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, CASE NO. 1:21-CV-11042-AK

BRIEF OF *AMICUS CURIAE* SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION (SIFMA) IN SUPPORT OF DEFENDANTS-APPELLEES FOR AFFIRMANCE

Dated: August 1, 2025

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 29(a)(4)(A) and Fed. R. App. P. 26.1, Securities Industry and Financial Markets Association ("SIFMA") states that it is a non-profit, tax-exempt corporation. It has no parent corporation, and no publicly held corporation has a 10% or greater ownership in SIFMA.

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STATEMENT OF INTEREST AND IDENTITY OF AMICUS CURIAE

Amicus Curiae, SIFMA, is the leading trade association for, and represents the interests of, local, regional, and national securities firms, banks, and asset managers. SIFMA's mission is to support a strong financial industry, while promoting investor opportunity, capital formation, job creation, economic growth, and trust and confidence in the financial markets.

SIFMA has an interest in this case. On behalf of the industry's one million employees, SIFMA advocates on legislation, regulation, and business policy affecting retail and institutional investors, equity and fixed income markets, and related products and services. SIFMA serves as an industry-coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. SIFMA also provides a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the US regional member of the Global Financial Markets Association.

SIFMA files this brief pursuant Fed. R. App. P. 29(a)(2) because all parties have consented to its filing. This brief was not authored by any party's counsel, in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No person—other than SIFMA, its members, or its counsel—contributed money that was intended to fund preparing or submitting this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Appellants contracted with JPMorgan Chase Bank, N.A. ("JPMC") (who, in turn, contracted with Chickasaw Capital Management, LLC ("Chickasaw")) to manage a pre-existing portfolio of a specific type of energy-sector investments pursuant to a pre-existing investment strategy developed by and insisted upon by Appellants. After those investments resulted in losses, Appellants brought suit against JPMC and Chickasaw alleging, among other things, that they each breached their fiduciary duties to Appellants.

SIFMA respectfully submits this brief to clarify the landscape of federal and Massachusetts[1] law applicable to investment management relationships, including the type of relationships at issue here, because Appellants and *Amici*[2] misstate and misapply the applicable legal standards in several critical respects.

First, JPMC is a nationally registered bank, which Congress intentionally excluded from the Investment Advisers Act of 1940 ("IAA") and, by extension, the

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[1] SIFMA analyzes Massachusetts law here in light of the District Court's application of Massachusetts law and observation that other applicable state law is substantively equivalent. ADD46-47,85-88,99-101. SIFMA takes no position on the choice of law analysis. *See* Appellees' Br. at 32-33 (discussing choice of law).

[2] "*Amici*" refers collectively to the (i) Brief of Amicus Curiae Professor James Tierney in Support of Neither Party ("Tierny Br. at [ ]"); (ii) Brief of *Amicus Curiae* PIABA in Support of Plaintiff-Appellant ("PIABA Br. at [ ]"); and (iii) Brief of *Amicus Curiae* Institute for the Fiduciary Standard in Support of Plaintiff-Appellant ("Institute Br. at [ ]").

fiduciary standards imposed by that statute and the regulations promulgated thereunder by the Securities and Exchange Commission ("SEC"). This exclusion reflects a recognition that banks are already subject to a comprehensive and distinct regulatory regime, primarily overseen by the Office of the Comptroller of the Currency ("OCC"). Legislative history and judicial precedent confirm that the SEC's authority does not extend to banks, and any attempt to apply IAA-based fiduciary standards and caselaw to banks like JPMC is contrary to both the unambiguous statutory text and Congressional intent.

Second, under Massachusetts law (and the IAA, assuming it applied), the scope of any fiduciary duty arising from an investment management relationship is defined by the terms of the parties' relationship—including as set forth in a binding contract. In other words, both the IAA and Massachusetts law permit parties to define how and to what a fiduciary's duties will apply. *Amici* nonetheless urge the Court to find that investment professionals have virtually limitless fiduciary duties regardless of the agreed-upon scope of their services. This is contrary to established law and unworkable in practice.

Third, the limitation-of-liability clause in the agreement between JPMC and Appellants is not an impermissible hedge clause. *Amici*'s argument to the contrary misapplies and misunderstands applicable law.

At bottom, the potentially boundless fiduciary standard described by Appellants and *Amici* is contrary to established law and, if endorsed by this Court in this case, would, among other things, undermine the carefully calibrated regulatory framework that governs investment management relationships and erode predictability and contractual freedom in such relationships.

ARGUMENT[3]

I. THE RELATIONSHIPS BETWEEN INVESTMENT PROFESSIONALS AND CLIENTS VARY GREATLY

Investors in the United States often seek the advice of investment professionals to assist with meeting their (and their families') unique financial goals.[4] Indeed, approximately 73% of American adults live in a household that invests in at least one type of investment account. SEC, Off. of the Inv. Advoc., & RAND Corp., *The Retail Market for Investment Advice* 34 (2018) (hereinafter,

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[3] Citations to the Public Brief for Plaintiffs-Appellants are "Appellants' Br. at [ ]." Citations to the Brief of Appellees JPMorgan Chase Bank, N.A. and Chickasaw Capital Management, LLC are "Appellees' Br. at [ ]."

[4] *See Working with an Investment Professional*, Sec. & Exch. Comm'n, https://www.investor.gov/introduction-investing/getting-started/working-investment-professional; Sec. & Exch. Comm'n, *Study on Investment Advisers and Broker-Dealers*, at i (2011), https://www.sec.gov/news/studies/2011/913studyfinal.pdf ("913 Study") ("Retail investors seek guidance from broker-dealers and investment advisers to manage their investments and to meet their own and their families' financial goals."); *see also* Regulation Best Interest: The Broker-Dealer Standard of Conduct, Exchange Act Release No. 86031, 84 Fed. Reg. 33,318, 33,402 n.848, 33,406 n.891 (July 12, 2019) (hereinafter, "Reg BI Release").

"RAND Report").[5] Of those retail investors owning brokerage, advisory, or similar accounts, about 35% use an investment professional. *Id.* at 42, 46.

The type of investors who obtain investment advice varies greatly, "from retail clients with limited assets and investment knowledge and experience to institutional clients with very large portfolios and substantial knowledge, experience, and analytical resources." Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Advisers Act Release No. 5248, 84 Fed. Reg. 33,669, 33,671 (July 12, 2019) ("SEC Fiduciary Guidance"). Studies show that retail investors choose the type of investment professional offering advice that best suits the investor's budget, account size, and trading behavior. *See* NERA Econ. Consulting, *Comment on the Department of Labor Proposal and Regulatory Impact Analysis* 6-7 (2015). For example, only 10% of investors who own brokerage, advisory, or similar accounts have account assets of $500,000 or more, while nearly half—47%—have $50,000 or less. RAND Report at 45.[6]

Because the needs, goals, and level of sophistication varies among investors, so too do the investment management services provided by investment

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5 https://www.sec.gov/files/retail-market-for-investment-advice.pdf.

6 *See* Sarah Holden & Daniel Schrass, *The Role of IRAs in US Households' Saving for Retirement*, 2023, 30 ICI Rsch. Persp. 1(2024), https://www.ici.org/system/files/2024-02/per30-01.pdf (finding that 64% of households with IRAs have balances of less than $100,000, and 36% have less than $25,000)

professionals. The kind of advice or service provided, the duration of the advice or service, the amount of discretion the professional is afforded, and the fee structure, for example, will change depending on the particular client and investment professional.[7]

The primary categories of investment professionals and the services they typically provide include:

- ***Registered investment advisers*** ("RIAs"): investment professionals who meet the definition of an "investment adviser" under the IAA. As described further *infra* Section II, RIAs include any investment professional who, "for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities," and is not expressly exempt. 15 U.S.C. § 80b-2(11). RIAs typically provide ongoing portfolio monitoring and management and generally have full discretion over investment decisions.[8] Because this relationship is ongoing, investment advisers are compensated through a fee-based structure, *i.e.*, they charge a periodic fee, usually calculated as a percentage of the amount of the customer's assets under management. Investment advisers typically require customers to maintain a minimum account balance, which puts

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[7] *Investment Advisers*, Sec. & Exch. Comm'n, https://www.investor.gov/introduction-investing/getting-started/working-investment-professional/investment-advisers ("The services and advice your adviser provides and what fees you pay will ultimately depend on the contract you negotiate with your adviser.").

[8] *See* 913 Study.

the engagement of an investment adviser out of reach for many investors with small- or medium-sized accounts.[9]

- ***Broker-dealers*:** investment professionals who primarily (i) sell and distribute securities and (ii) execute securities trades. Many brokerage firms also offer transaction-specific investment recommendations incidental to their brokerage services. That is, before buying or selling a security, a customer can seek a recommendation about the transaction. Broker-dealers generally are compensated per transaction, with no additional fee for any incidental investment advice they provide. This "pay-as-you-go," transaction-based model allows retail investors with small- to medium-sized account balances to receive investment recommendations on an episodic and cost-effective basis.[10]

- ***Insurance agents*:** investment professionals who mainly sell life, health, and property insurance policies and other insurance products, including annuities. They may represent multiple companies and typically try to find insurance policies that offer the best coverage for the particular investor's circumstances.[11]

- ***Accountants***: investment professionals who typically provide professional assistance with taxes and financial planning, tax reporting, auditing, and management consulting.[12] Accountants may consider the tax implications of financial decisions and assist with other tax-related issues, such as preparing annual tax returns. Some CPAs are also certified as personal financial specialists (PFSs), which means they can provide financial planning services.[13]

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9 *Id*.

10 *Id.*

11 *See* Reg BI Release, *supra*.

12 *Id*.

13 *See Accountants*, Fin. Indus. Reg. Auth., https://www.finra.org/investors/investing/working-with-investment-professional/accountants.

- ***Banks***: investment professionals who may manage portfolios of "publicly traded stocks and bonds" or provide advice for "portfolios that include a broad range of investment alternatives such as financial derivatives, hedge funds, real estate, private equity and debt securities, mineral interests, and art." Banks are usually "paid a percentage of the dollar amount of assets being managed in the client's portfolio" or a "fixed fee" if an account's total assets are below a minimum or particularly complex. Some banks may "base compensation on performance," where the portfolio manager "receives a percentage of the return achieved over a given time period."[14]

Different kinds of investors may select the kind of investment professional that best suits their needs. Indeed, the SEC expressly recommends that, when selecting an investment professional, investors consider, among other things, (i) what services and products they need; (ii) what services and products the professional can provide; and (iii) any limitations on what services and products the professional can provide.[15]

Once an investment professional is selected, the relationship between the investor and their selected investment professional is further defined by the varying nature of the agreed-upon services to be provided, including the discretion afforded to the investment professional. For example, mutual funds and high-net worth

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[14] *See* Comptroller of the Currency Adm'r of Nat'l Banks, *Investment Management Services, Comptroller's Handbook* 2 (2001), https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/investment-management-services/pub-ch-investment-mgmt-services.pdf ("National banks provide investment management services to clients with differing characteristics, investment needs, and risk tolerance.").

[15] *Investment Advisers*, *supra*.

individuals may engage IAA-registered investment advisers to, among other things, provide ongoing portfolio management and monitoring (subject to the adviser's full discretion) as well as operational and administrative services in the case of a mutual fund, in exchange for a "periodic fee based on the value of the portfolio." SEC Fiduciary Guidance at 33,671. Retail investors with small- or medium-sized accounts, however, may utilize a broker-dealer to, for example, sell, distribute, and execute securities trades for a one-time, commission-based fee, and to provide transaction-specific investment recommendations incidental to their brokerage services. *See generally* Reg BI Release at 33,319; *see also* RAND Report at 57-60, 62-69. Similarly, retail investors may seek advice on selecting insurance products, such as annuities, from insurance agents in exchange for a commission-based fee.[16] Investors may also elect to use their chosen bank for certain investment management services as a "one-stop-shop."[17]

Given the diverse and evolving needs of investors, as well as the wide range of services offered by various kinds of investment professionals to address those needs, it is essential to the integrity and effectiveness of the investment management industry that both investors and those advising or servicing them retain the ability to customize and define the terms of their relationship through

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16 *See Working With an Investment Professional*, *supra*.

17 *See* Comptroller of the Currency Adm'r of Nat'l Banks, *supra*.

contractual agreement. Preserving this flexibility ensures that each investment management relationship can be appropriately structured to meet the unique objectives and circumstances of the parties involved.

II. BANKS, LIKE JPMC, ARE EXPRESSLY EXEMPT FROM THE INVESTMENT ADVISERS ACT OF 1940

Recognizing that different types of investment professionals (*e.g.*, IAA-registered investment advisers, broker-dealers, insurance agents, accountants, or banks) offer different services, have a different type of relationship with their clients, and have different compensation models, the law has traditionally imposed different standards of conduct on these professionals when they provide investment services to their clients. *See supra* Section I; *see also Robinhood Fin. LLC v. Sec'y of Commonwealth*, 492 Mass. 696, 699-704 (2023) (describing differences in regulatory regime and standards of conduct applicable to certain investment management relationships).

In this matter, Appellants and *Amici* categorize JPMC as an "investment adviser" to Appellants, and invoke the federal fiduciary standard applicable to investment advisers registered under the IAA (and caselaw decided on the basis of that standard). Appellants' Br. at 31-33. JPMC, however, is not subject to that standard because, as a bank, it is expressly exempt from the IAA's definition of "investment advisers," even when acting as an investment professional (except in limited circumstances not applicable here).

A. Congress Expressly and Intentionally Excluded Banks From The IAA's Definition Of "Investment Advisers"

The IAA and the SEC-promulgated rules thereunder regulate virtually every aspect of the activities and operations of "investment adviser[s]," including by imposing a fiduciary standard of conduct. *See* 15 U.S.C. § 80b-6; SEC Fiduciary Guidance at 33,670.[18]

An "investment adviser" for purposes of the IAA is:

> [A]ny person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities . . . .

15 U.S.C. § 80b-2(11) (hereinafter, "registered investment adviser" or "RIA"). Critical here, Congress expressly added that an RIA does not include "a bank,[19] or any bank holding company, as defined in the Bank Holding Company Act of 1956, which is not an investment company." *Id.* § 80b-2(11)(A).[20]

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[18] https://www.govinfo.gov/content/pkg/FR-2019-07-12/pdf/2019-12208.pdf

[19] A "bank" is defined under the IAA to include any "banking institution organized under the laws of the United States, a member bank of the Federal Reserve, or any other banking institution or trust company engaged in business similar to those permitted by national banks and supervised and examined by state or federal banking authorities." James E. Anderson & Justin L. Browder, *Investment Advisers: Law & Compliance* § 3.03 (2002); *see* 15 U.S.C. § 80b-2(a)(2).

[20] The IAA provides that an RIA does include any bank that acts as an "investment adviser to a registered investment company." 15 U.S.C. § 80b-

(cont'd)

Congress's exclusion of banks from the reach of the IAA was intentional. For decades, Congress has sought to ensure a "consistent congressional policy of keeping oversight of the banking system separate from the SEC's oversight of the securities trading and investment industries," by "repeatedly exempt[ing] banks from the jurisdiction of the SEC." *Am. Bankers Ass'n v. SEC*, 804 F.2d 739, 747 (D.C. Cir. 1986). The Securities Exchange Act of 1934, for example, which brought "nonbank stockbrokers and securities traders" under a nationwide "regime of government supervision and examination," expressly exempted banks because they were *already* "subject to supervision and examination by State and Federal authorities," including through the Banking Act of 1933, as overseen by the OCC. *Id.* at 744-45. Consistent with that policy, "[i]n 1940, when Congress enacted the Investment Company and Investment Advisers Acts, Congress repeated the same bank exemption from the definitions of 'broker' and 'dealer,' and also from the crucial definitions of 'investment company' and 'investment adviser.'" *Id*. at 747.

In 1987, the SEC submitted a proposal to Congress that would have "generally subject[ed] banks engaged in securities activities to the same regulations, enforced by the [SEC], that apply to all other entities engaged in those

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2(11)(A). But that exception is inapplicable here because Appellants are individuals, not a registered investment company.

activities." 54 SEC, *Annual Report* 89-90 (1988).[21] That proposal would have amended the IAA's definition of "investment advisers" to include banks. *Id.* It was expressly rejected by Congress, providing further evidence that Congress's exclusion of banks—even when acting as investment professionals and providing investment management services—from the IAA was intentional.

B. JPMC Is A Bank And, Therefore, Not Subject To The IAA

JPMC is a bank, regulated by the OCC. *See* 12 C.F.R. § 1.1; 15 U.S.C. § 80b-2(a)(2); Appellants' Br. at 9 ("Since at least the 1990s, Plaintiffs banked with JPMC."); SJ Order at 30, n.10 ("The R&R correctly notes that the Advisers Act does not apply to JPMC anyway, as it is a bank."). OCC regulations provide that "a national bank that has investment discretion on behalf of another exercises its 'fiduciary capacity' by investing funds ***'in a manner consistent with applicable law,' which law includes the 'terms of the instrument governing a fiduciary relationship***.'" *Snyder v. Wells Fargo Bank, N.A.*, 594 F. App'x 710, 713 (2d Cir. 2014) (quoting 12 C.F.R. §§ 9.2(b), (e), 9.11) (emphasis added); *see also e.g.*, *Walden v. Bank of New York Mellon Corp.*, No. 2:20-CV-01972, 2021 WL 5605000, at *4 (W.D. Pa. Nov. 30, 2021) (holding that while the plaintiffs "did indeed cede control over their investment decisions to Defendants," an OCC-

[21] https://www.sec.gov/about/annual_report/1988.pdf.

regulated bank, "they did so pursuant to the contract that existed between the parties, not pursuant to an independent fiduciary duty").

Here, state law governs, because Appellants' bring state law claims. As noted above, SIFMA applies Massachusetts law here, without taking a position on the choice of law question, in light of the District Court's application of Massachusetts law and observation that other applicable state law is substantively equivalent. *See supra* note 1. To define the fiduciary duties owed by a party providing investment management services to another, Massachusetts courts look to the contractual scope of the relationship and permit parties to specifically limit certain fiduciary duties. *See Patsos v. First Albany Corp*., 433 Mass. 323, 333-34 (2001).

Nonetheless, *Amicus* Professor James Tierney asserts that the IAA "governs" the fiduciary duties applicable to JPMC here because, "irrespective of formal status or exemption sought," JPMC was "in fact [an] investment adviser[]." Tierney Br. at 5-8. That argument ignores that Congress, itself, established the "formal status" of "investment advisers" that Professor Tierney urges this Court to disregard.

Similarly, Appellants invoke IAA and SEC authorities as bases for non-contractual and non-waivable fiduciary duties that JPMC supposedly owed to Appellants. *See* Appellants Br. at 31-32. In doing so, Appellants, like Professor Tierney, ignore and seek to blur the Congressionally created distinction between

RIAs and banks acting as investment professionals. But Congress's pronouncement that banks be exempt from the IAA (and instead be subject to OCC regulation) is clear, and there is simply no basis for this Court to override that express pronouncement. In any event, and as explained *infra* Section III, Appellants and Professor Tierney ignore that even under the IAA, the scope of the parties' contract necessarily defines the scope of the applicable fiduciary duties.

III. THE SCOPE OF FIDUCIARY DUTIES (UNDER BOTH MASSACHUSETTS AND FEDERAL LAW) ARE DEFINED BY THE SCOPE OF THE GOVERNING CONTRACT

Under either Massachusetts law or the IAA (if it applied), the scope of an investment professional's fiduciary duties is defined by the governing contract. There is no broad and universal set of non-contractual and non-waivable fiduciary duties owed by every investment professional, as Appellants and *Amici* argue. SIFMA does not comment on the scope of any specific duties, as defined by the relevant contractual arrangements, owed to Appellants in this case. That issue is addressed by Appellees at length in their brief. *See* Appellees' Br. at 42-49, 52-62.

A. Under Massachusetts Law, Where A Fiduciary Relationship Is Established By Contract, The Terms Of The Contract Define The Scope Of The Fiduciary's Duties

Massachusetts courts look to the contractual scope of the relationship between a client and investment professional to determine the scope of the

applicable fiduciary duties.[22] Under Massachusetts law, "[w]here a fiduciary relationship arises out of a contract, the [fiduciary's] obligations are defined and limited by the terms of that contract, not by general fiduciary principles." *Max-Planck-Gesellschaft Zur Forderung Der Wissenchaften E.V. v. Whitehead Inst. for Biomedical Rsch.*, Civil Action No. 09–11116, 2010 WL 2900340, at *1 (D. Mass. July 26, 2010) (applying Massachusetts law, holding that "the fiduciary duty plaintiffs allege arises primarily from the contractual relationships, and so is limited by the contract terms").

The Massachusetts Supreme Judicial Court ("SJC") has repeatedly reaffirmed the ability of parties to contractually define the scope of a fiduciary's obligations.[23] *E.g.*, *Fronk v. Fowler*, 456 Mass. 317, 331 (2010) (holding that "the

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[22] Professor Tierney recognizes that "an adviser and client may of course tailor the 'scope of the relationship' by contract, such as the 'functions the adviser, as agent, has agreed to assume for the client, its principal." Tierney Br. at 11.

[23] Purportedly responding to similar authorities previously cited by Appellees, Professor Tierney argues that "[c]are must be taken not to conflate the legal principles that apply to altering fiduciary duties in LLC and LPs . . . or Massachusetts close corporations, with those that apply in other fiduciary relationships" because those cases do not involved the "suitability component of an investment adviser's duty of care," which Professor Tierney argues cannot be limited. *See* Tierney Br. at 20-21. However, like the bulk of Professor Tierney's brief, this argument relies on the flawed premise that JPMC is a RIA subject to the fiduciary standards of the IAA. It is not. More importantly, Professor Tierney ignores that the SJC itself has relied on cases interpreting corporate fiduciary standards in assessing the duties owed by those providing investment management services under Massachusetts law. *E.g.*, *Patsos*, 433 Mass. at 329, 338 (citing

(cont'd)

contours of fiduciary duties in a limited partnership are subject to contract"); *Chokel v. Genzyme Corp.*, 449 Mass. 272, 277-78 (2007) (explaining that "[w]hen rights of stockholders arise under a contract . . . the obligations of the parties are determined by reference to contract law, and not by the fiduciary principles that would otherwise govern.") (emphasis added); *Patsos*, 433 Mass. at 334 (explaining that the parties' "documentation" was relevant to determining the scope of an adviser's fiduciary duties).[24]

Notwithstanding this well-established precedent, Professor Tierney and the PIABA devote significant space in their respective briefs arguing that fiduciary duties "cannot be contracted away." *See* Tierney Br. at 19-23; PIABA Br. at 8-10. But in so doing, Professor Tierney and the PIABA conflate limitations on the *substance* of fiduciary duties with limitations on the *scope* of those duties.

Demoulas v. Demoulas Super Mkts., Inc., 424 Mass. 501, 519 (1997) (discussing fiduciary duties in closely held corporation)).

[24] *See also Homeowner's Rehab, Inc., v. Related Corp. V SLP*, No. SUCV20143807BLS2, 2016 WL 7077901, at *9 (Mass Super. Ct. Sept. 13, 2016) ("It is also true, however, that the contours of that fiduciary duty are subject to contract."); *accord Morton v. Aizenberg*, No. 21-cv-7782, 2024 WL 1892435, at *3 (S.D.N.Y. Apr. 29, 2024) (fiduciary duties related to discretionary investment accounts exists "only insofar as that duty is 'embodied in'" the parties' agreement); *Zorbas v. U.S. Tr. Co.*, 48 F. Supp. 3d 464, 489 (E.D.N.Y. 2014) ("While . . . an investment manager acting in a discretionary capacity has a fiduciary duty, such a duty is as set forth in the contract.").

Under Massachusetts law, substantively, fiduciaries owe duties of loyalty and of care. *E.g.*, *Blackstone v. Cashman*, 448 Mass. 255, 267 (2007) (fiduciary relationship involves "duties of loyalty and of care"); *Robinhood*, 492 Mass. at 716 n.35. SIFMA does not argue—and does not understand Appellees to argue—that investment professionals or other fiduciaries may fully disclaim these substantive duties via contract.[25] But, as described above, Massachusetts law *does* allow parties to contractually define the *functions* and *actions* of the fiduciary to which those duties will apply (*i.e.*, the *scope* of those duties). *See Patsos*, 433 Mass. at 333-34 (fiduciary duties apply to matters within an adviser's discretion, but, under the common law, only applied to broker-dealers in executing their client's instructions).[26]

B. Under Federal Law, The Terms Of The Contract Likewise Define The Scope Of The Fiduciary's Duties

Like Massachusetts law, the SEC's Fiduciary Guidance (assuming it were relevant to Appellants' claims at all) distinguishes between the *substance* and *scope*

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[25] As described below, state and federal law does permit fiduciaries to somewhat—but not entirely—limit their liability for breaches of the duty of care. *See* Section IV, *infra*.

[26] *Accord* SEC Fiduciary Guidance at 33,671 (adviser's "fiduciary duty must be viewed in the context of the agreed-upon scope of the relationship between the adviser and the client.").

of fiduciary duties, with the latter being defined by the applicable contract governing the parties' investment management relationship. As the SEC noted,

> [An] investment adviser's obligation to act in the best interest of its clients is an overarching principle that encompasses both the duty of care and the duty of loyalty.
> . . .
>
> [Those] dut[ies] must be viewed in the context of the agreed-upon scope of the relationship between the adviser and the client. . . . [T]he obligations of an adviser providing comprehensive, discretionary advice with a retail client (e.g., monitoring and periodically adjusting a portfolio of equity and fixed income investments with limited restrictions on allocation) will be significantly different from the obligations of an adviser to a registered investment company or private fund where the contract defines the scope of the adviser's services and limitations on its authority with substantial specificity (e.g., a mandate to manage a fixed income portfolio subject to specified parameters, including concentration limits and credit quality and maturity ranges).
>
> While the application of the investment adviser's fiduciary duty will vary with the scope of the relationship, the relationship in all cases remains that of a fiduciary to the client.

SEC Fiduciary Guidance at 33,671-72. The SEC further illustrated how the *scope* of the application of fiduciary duties can differ. In discussing the duty of care, specifically the component of that duty requiring that an RIA develop a reasonable understanding of the client's objectives, the SEC explained,

> [I]n providing investment advice to institutional clients, the nature and extent of the reasonable inquiry into the client's objectives generally is shaped by the specific investment mandates from those clients. For example, an investment adviser engaged to advise on an institutional client's investment grade bond portfolio would need to gain a reasonable understanding of the client's objectives within that bond

> portfolio, but not the client's objectives within its entire investment portfolio.

Id. at 33,673. In other words, even where the fiduciary requirements of the IAA are applicable, the SEC has recognized that there still must be—and is—room for variation in the *scope* of the fiduciary relationship.

C. There Is No Generic "Heightened Fiduciary Duty" For Investment Professionals

Appellants and *Amici* argue that JPMC and Chickasaw owed Appellants heightened fiduciary duties, untethered to the limitations of the applicable agreements, because the "parties to the subject relationship are cast in archetypal roles." *See* Appellants Br. at 31; *see also* Tierney Br., at 19. Specifically, *Amicus* PIABA notes that some unspecified "heightened fiduciary duty" must exist here because "[i]nvestments advisers and other financial professionals cannot get paid for advice and then avoid full responsibility for their actions." PIABA Br. at 7, 14 ("fiduciary duties are conferred through statutory and common law, each of which is independent of any contractual agreements"); *see also* Appellants Br. at 32-33 (bolding and underlining the quote "it is policy, not the parties' contract, that gives rise to a duty of care"). However, as described above, state and federal law uniformly recognize that fiduciary duties in investment management relationships are defined and shaped by the contractually agreed-upon scope of the relationship.

In any event, PIABA's suggestion that a "heightened fiduciary duty" is necessary to ensure that investors are not left without recourse in the event an investment professional fails to fulfill its obligations is misplaced. *See* PIABA Br. at 14. Investors may still have a claim for breach of fiduciary duty if the professional fails to act loyally and with due care *within the scope* of its contractual responsibilities.

D. *Robinhood* Did Not Establish Uniform Fiduciary Duties For All Investment Professionals

Appellants and *Amici* rely heavily on the SJC's recent decision in *Robinhood* to assert that all investment professionals offering services in Massachusetts owe their clients the same broad set of fiduciary duties—irrespective of the scope of their relationship or the governing contractual terms. Appellants' Br. at 32 ("The SJC has made clear that investment advisers, like JPMC, are 'by law,' fiduciaries.").[27] Appellants and *Amici* rest this argument on one sentence in *Robinhood* stating that, "[i]nvestment advisers, because of their trusted advisory role, generally must comply with the full complement of fiduciary duties of 'utmost good faith, and full and fair disclosure of all material facts,' and shoulder an 'affirmative obligation to "employ reasonable care to avoid misleading"'

[27] *Amicus* Institute for the Fiduciary Standard similarly argues that *Robinhood* "acknowledged the high fiduciary standard of investment advisers." Institute's Br. at 6.

clients." *Robinhood*, 492 Mass. at 700 (quoted in Appellants' Br. at 32). But *Robinhood* is inapposite here (and does not otherwise establish a broadly applicable, uniform fiduciary standard for all investment professionals offering investment management services in Massachusetts) for several reasons.

First, *Robinhood* concerned the so-called "Fiduciary Rule," a regulation promulgated by Secretary Galvin under the Massachusetts Uniform Securities Act ("MUSA") in 2020. The Fiduciary Rule requires that "broker-dealers that provide investment advice to retail customers to comply with a statutorily defined fiduciary duty." *Id.* at 697. Prior to the Fiduciary Rule, MUSA imposed a fiduciary duty on "investment advisers," which was defined to expressly exclude securities broker-dealers. *See* M.G.L. c. 110A, § 401(m) ("'Investment adviser'" shall not include "a registered broker-dealer or broker-dealer agent"). The Fiduciary Rule, in effect, overrode that exemption and subjected broker-dealers to MUSA's fiduciary duties. *See* 950 CMR § 12.207(1)(a).[28] The question before the SJC in *Robinhood* was whether Secretary Galvin exceeded his rulemaking authority in promulgating the Fiduciary Rule or whether the Rule was preempted by SEC regulations. Any assertion that *Robinhood* somehow altered the fiduciary standard applicable to anyone other than broker-dealers in Massachusetts is simply wrong.

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[28] As in the IAA, MUSA expressly excludes banks like JPMC from its definition of "investment advisers." M.G.L. c. 110A, § 401(m). The Fiduciary Rule did not alter this exclusion.

Second, the quote upon which Appellants and *Amici* rely does nothing more than repeat the unremarkable and long-established rule that investment professionals are fiduciaries, subject to applicable federal or state law. While Appellants and *Amici* hone in on the SJC's use of the phrase "full complement of fiduciary duties," the Court was contrasting the fiduciary duties applicable to registered investment advisers with the more limited agency principles applicable to broker-dealers prior to the Fiduciary Rule. *Robinhood*, 492 Mass. at 700. That has no impact on the fiduciary duties owed by investment professionals (like JPMC and Chickasaw) offering investment management services pursuant to a narrow contractual arrangement.

Third, the SJC expressly reiterated that its decision did not override or otherwise alter Massachusetts' common law about the fiduciary duties of investment professionals. *See id.* at 713 ("[T]he fiduciary duty rule does not abrogate the common law." (citing *Patsos*)). *Robinhood* thus did nothing to alter the law of fiduciary duty as applied to investment professionals in general, let alone alter the SJC's prior holdings that the scope fiduciary duties is defined by the contractual relationship between an investment professional and its client.

E. Applying A Uniform Fiduciary Standard To Every Investment Management Relationship, Regardless Of Contractual Arrangements, Is Unworkable

If the Court were to depart from established precedent and hold, as Appellants and *Amici* suggest, that investment professionals cannot limit the scope of their fiduciary duties by contract (*e.g.*, Appellants' Br. at 31), it would cause significant harm to investment professionals and clients alike.

The facts of this case illustrate the problem. The various agreements with Appellants provide that Appellants retained sole discretion to select an investment portfolio, and Appellants chose an MLP portfolio, consistent with their pre-existing MLP strategy and chose the amount of their funds to invest in that portfolio. JA557 ¶ C(i). The agreements gave JPMC discretion to choose the particular MLPs to fit within that portfolio—but did not provide any discretion for JPMC to invest in non-MLPs or alter the investment amount. JA557-58. Notwithstanding these contractual restraints, and Appellants' express acknowledgment that they understood the risks of investing a significant sum in MLPs against JPMC's advice (JA577), *Amici* essentially argue that JPMC was obligated under the duty of care to disregard Appellants' "final decision making authority" over the type and amount of investments they asked JPMC to make on their behalf (JA557) and unilaterally diversify Appellants' portfolio beyond MLPs. PIABA Br. at 6-10, 14; Institute Br.

at 12-13; *see also* Appellants' Br. at 40-44 ("Plaintiffs were elderly and should have been in stable investments with consistent returns and real income.").

If *Amici* were correct, the predictability of investment management relationships would be upended, resulting in uncertainty for both investment professionals and their clients. Investment professionals would be faced with an impossible choice: either discharge their specific contractual obligations in a manner consistent with the duties of care and loyalty, or exceed their contractual authority in a way that *might* benefit the client, but risks liability for taking extracontractual action. And from the client's perspective, *Amici*'s formulation would make client instructions expressed in investment management contracts meaningless, leaving clients uncertain as to what, precisely, their investment professional is empowered to do with respect to the investments they manage.

IV. THE ADVISORY AGREEMENT DOES NOT CONTAIN AN IMPERMISSIBLE HEDGE CLAUSE

The Advisory Agreement limits JPMC's liability to Appellants to "gross negligence and willful misconduct" (the "limitation-of-liability clause"). JA588(§11). *Amici* devote significant portions of their briefing to arguing that the limitation-of-liability clause is an unenforceable "hedge clause." Tierney Br. at 5-19; PIABA Br. at 8-15. That discussion is inapposite for at least three reasons.

First, *Amici* rely exclusively on federal law in support of their hedge clause argument. But, the limitation-of-liability clause appears in the Advisory

Agreement between JPMC and Appellants, and state law, not federal law, governs the applicability of that clause to JPMC and its relationship with Appellants. Thus, *Amici*'s discussion of the IAA and related SEC guidance is irrelevant.

In any event, even if the Court were to consider the SEC Fiduciary Guidance cited by *Amici*, it does not anywhere state that an RIA may not limit its liability for ordinary negligence. Instead, it provides that an RIA's fiduciary duties may not be waived wholesale, including through general waivers. SEC Fiduciary Guidance at 33,672. Nor does it provide that its provisions override or dictate the scope of state law. To the contrary, the SEC Fiduciary Guidance expressly states that it is *not* taking a position on state law, meaning that the SEC has not spoken as to the legality of limitations of liability under Massachusetts law. *See id.* at 33,672 n.31.

Second, *Amici* argue that contractual limitations of a fiduciary's liability are impermissible where the fiduciary's duties arise out of statutory or common law, rather than by contract. Tierney Br. at 19-20; PIABA Br. at 12-14. The authorities above, however, demonstrate that is not the case. *See, e.g.*, *Blake*, 2006 WL 4114305 (involving fiduciary duties of corporate director, which arise from the common law and the Massachusetts Business Corporation Law, M.C.L. c. 156B).

Third, applicable state law (Massachusetts law) plainly permits limitation-of-liability clauses in fiduciary contracts. Indeed, it is well-established in Massachusetts that a fiduciary may limit its liability by contract, so long as the

contract does not purport to eliminate liability for breaches of fiduciary duty "committed intentionally, in bad faith, or with reckless indifference to the interests of the beneficiary of those duties." *Max-Planck-Gesellschaft*, 2010 WL 2900340, at *1; *see also, e.g.*, *Greenleaf Arms Realty Tr. I, LLC v. New Boston Fund, Inc.*, 81 Mass. App. Ct. 282, 292 (2012) ("[p]arties to a fiduciary relationship may agree to alter or limit to some degree their fiduciary rights and obligations").

Massachusetts courts have upheld and enforced exculpatory provisions complying with this rule involving a variety of different categories of fiduciaries, including:

- trustee of a Massachusetts business trust, akin to a corporate director (*Mullins v. Colonial Farms Ltd*., 95 Mass. App. Ct. 1105, 2019 WL 1399964, at *5-6 (2019) (unpublished table decision) (enforcing exculpatory provision in declaration of trust that precluded liability for interested transactions));
- inventory agent for a retailer in Chapter 11 bankruptcy proceedings (*Marantz Co. v. Clarendon Indus., Inc.*, 670 F. Supp. 1068, 1069, 1072-73 (D. Mass. 1987) (enforcing exculpatory provision limiting liability to actions or omissions "which are the result of gross negligence, willful misconduct or bad faith"));
- trustee of a testamentary trust (*New England Tr. Co. v. Paine*, 317 Mass. 542, 549-50 (1945) (enforcing exculpatory provision limiting liability to acts intended to cause harm));
- outside directors of a Massachusetts corporation (*Blake v. Smith*, No. 0300003B, 2006 WL 4114305, at *5-6 (Mass. Super. Ct. Dec. 11, 2006) (enforcing exculpatory provision in company's articles of incorporation limiting liability to claims based on breaches of loyalty or good faith, intentional misconduct, or knowing violations of the law));

- trustee of a condominium (*Palm v. Stonehedge Farm Condo. Tr.*, No. 277787, 2005 WL 844972, at *9 (Mass. Land Ct. Apr. 13, 2005) (enforcing exculpatory provision in condominium bylaws limiting liability to claims based on willful malfeasance)); and

- exculpatory provisions in Massachusetts business trust instruments limiting liability to bad faith, willful misconduct, or fraud (*e.g.*, *Greenleaf Arms Realty*, 81 Mass. App. Ct. at 292 ("Exculpatory clauses in trust instruments . . . are enforceable in the Commonwealth"); *Boston Safe Deposit & Tr. Co. v. Boone*, 21 Mass. App. Ct. 637, 644 (1986); *Steele v. Kelley*, 46 Mass. App. Ct. 712, 737 n.24 (1999)).

Taken together, these authorities demonstrate that, regardless of the source of the fiduciary's duties, Massachusetts law permits fiduciaries to limit their liability to gross negligence and willful misconduct, as JPMC did here.

CONCLUSION

For the foregoing reasons, this Court should affirm the District Court's order.

Dated: August 1, 2025

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of and Fed. R. App. P. 29(a)(5) and Fed. R. App. P. 32(a)(7) because, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), this brief contains 6,438 words.

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Dated: August 1, 2025

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I, Eben P. Colby, hereby certify that on August 1, 2025, I electronically filed the foregoing brief with the United States Court of Appeals for the First Circuit by using the CM/ECF system. I certify that the following parties or their counsel of record are registered as ECF Filers and that they will be served by CM/ECF system:

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