No. 24-2000

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

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 (Kelley, D.J.)

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND ASSOCIATED INDUSTRIES OF MASSACHUSETTS AS *AMICI CURIAE* IN SUPPORT OF APPELLEES AND AFFIRMANCE

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Dated: August 1, 2025

CORPORATE DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no company has 10% or great ownership in the Chamber.

The Associated Industries of Massachusetts is a non-profit association incorporated in Massachusetts and headquartered in Boston. It has no parent corporation and does not issue stock.

Dated: August 1, 2025

s/ Jaime A. Santos
Jaime A. Santos

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INTEREST OF *AMICI CURIAE*

The Chamber of Commerce of the United States of America (Chamber) is the world's largest business federation.[1] The Chamber represents approximately 300,000 direct members and indirectly represents the interests of more than three million businesses and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent its members' interests in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly participates as *amicus curiae* in this Court and in others in cases that raise issues of concern to the business community. *See, e.g.*, *Barchock v. CVS Health Corp.*, 886 F.3d 43 (1st Cir. 2018).

Founded more than one hundred years ago, the Associated Industries of Massachusetts (AIM) is a nonprofit association located in Boston. With over 3,400 employer members doing business in Massachusetts, it is the largest business association in the Commonwealth. AIM's mission is to promote the well-being of its members and their employees and the

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[1] All parties have consented to the filing of this brief. *See* Fed. R. App. P. 29(a)(2). No counsel for a party authored this brief in whole or in part. No party, no counsel for a party, and no person other than *Amici*, their members, and their counsel made a monetary contribution to fund the preparation or submission of this brief.

prosperity of the Commonwealth by improving the economic climate of Massachusetts, proactively advocating for fair and equitable public policy, and providing relevant and reliable information and excellent services.

Amici have a strong interest in the outcome of this litigation because many of their members provide investment advisory services or otherwise operate in fiduciary capacities. They file this brief to provide the Court with greater context regarding how parties to fiduciary relationships can (and frequently do) agree to limitations on the scope of the relationship and thus the extent of the fiduciary's undertakings and duties.

Plaintiffs ask this Court to ignore established law and hold that investment advisors and their clients are uniquely prohibited from tailoring the scope of their relationships. They in effect seek a rule that contractual agreements between investment advisors and their clients are meaningless, and that advisors owe limitless fiduciary duties to their clients—even when clients have entrusted their advisors with only limited discretion to act on their behalf. Not only does that rule have no basis in the law, it would end up harming the individual investors that benefit from advisory services; put investment advisors in the impossible position of risking liability for honoring client directives; and undermine the continued viability of the small businesses that employ most of the investment-advisor workforce. The

Court should reject Plaintiffs' invitation to craft such a rule, and affirm the district court's grant of summary judgment.

INTRODUCTION

Plaintiffs and their *amici* suggest that this case compels the Court to right a grievous wrong. In the tale they tell, investment advisors snuck exculpatory clauses into their contracts that waived their fiduciary obligations and exculpated them from fiduciary breaches stemming from imprudent investment decisions they made on their clients' behalf. A rogue district court then "[c]ompletely [i]gnore[ed] [c]ontrolling [l]aw" and held that such clearly unlawful provisions are enforceable. Appellants' Br. 31-34.

But that is not what happened. Instead, in a series of written agreements, Plaintiffs gave Defendants very specific directions about their investment objectives and the scope of Defendants' discretion. Plaintiffs delegated Defendants the authority to invest in one particular portfolio consisting of publicly traded partnerships, limited liability companies, and corporations, predominantly in the energy sector—MLPs for short. But Plaintiffs retained for themselves the sole authority and responsibility to select *which* portfolios in that category Defendants could invest in and when to exit those investments.

To be sure, Defendants owed fiduciary duties—Defendants do not contest that, and the district court did not hold otherwise. But because Plaintiffs limited the scope of Defendants' discretion to investing in MLPs, those duties extended only to "managing the MLPs and warning about the associated risks"—as the district court acknowledged. Appellants' ADD85 n.8. Plaintiffs ultimately failed to explain how *those* duties were breached; in fact, the evidence showed that Defendants faithfully fulfilled them. That is why the district court granted summary judgment.

Plaintiffs contend that the district court's analysis was wrong, primarily because investment advisors are fiduciaries as a matter of law. Because the relationship was "by law" a fiduciary one, the theory goes, the parties cannot have agreed to limit the scope of the relationship by contract. In Plaintiffs' view, advisors not only owe their clients fiduciary duties within the scope of their undertakings, but they also owe fiduciary obligations to take actions and make decisions that their clients have reserved for themselves. Any agreement tailoring the scope of the advisor's role is, in Plaintiffs' telling, a "waiver" of fiduciary duties of the type that the SEC has said the Investment Advisers Act (IAA) prohibits. So, by giving effect to the parties' agreements here, the district court impermissibly allowed Defendants to waive their fiduciary duties.

Plaintiffs are wrong, and the anti-tailoring rule they urge would end up harming all parties to the investor-advisor relationship. Under Massachusetts law (which Plaintiffs say governs here), even fiduciary relationships imposed as a matter of law can be tailored by agreement—just as in many other states. The same is true under the SEC guidance on which Plaintiffs rely. Indeed, in virtually all types of legally imposed relationships (*e.g.*, attorney-client relationships and doctor-patient relationships), the scope of the relationship is critical in determining what duties are owed, and ascertaining that scope properly considers the parties' agreement. Put simply, scope-shaping is not the same as duty-waiving, and the former is entirely permissible. And that is all the district court permitted here.

Adopting Plaintiffs' contrary view would radically change the state of the investment-advisor industry—and not to the benefit of individual investors. Investors rely on investment advisors to help them navigate the waters of unfamiliar financial markets so that they can reach their financial goals. If *every* investor-advisor relationship (and the corresponding fiduciary duties pertaining to that relationship) were limitless, costs would skyrocket: investment advisors, newly subject to unbounded fiduciary liability, would have to price their services accordingly. Plaintiffs' proposed rule could price many investors out of those investment-advisory services altogether, not to mention shutter the small businesses that overwhelmingly cater to individual investors. Moreover, investment advisors would be stuck between two impossible options: ignore limitations clients place on their discretion and risk being sued for doing so, or follow client instructions but *still* risk a lawsuit if those directives turned out to be unprofitable. To avoid this untenable result, the Court need only apply the law as it stands, just as the district court did. The Court should affirm.

ARGUMENT

I. The scope of investment-advisor relationships can be tailored by agreement.

Plaintiffs contend that investment advisors are fiduciaries as a matter of Massachusetts law and thus cannot by contract eliminate that status—an unremarkable proposition that Defendants do not dispute.[2] They contend, however, that because fiduciaries may not contractually eliminate their fiduciary status, they also may not by contract tailor *the scope of* the fiduciary relationship or the fiduciary obligations they agree to undertake. Appellants' Br. 31-34. Plaintiffs argue that, by giving effect to the parties' agreements here, the district court erroneously allowed Defendants to waive or

[2] Defendants maintain that New York or Florida law supplies the analysis for Plaintiffs' claims. Appellees' Br. 32-33. *Amici* take no position on this choice of law question, but focus here primarily on the Massachusetts law that Plaintiffs fail to meaningfully discuss.

"eliminate" their fiduciary obligations in clear violation of state law and SEC guidance. *Id.* at 34.

Plaintiffs are wrong on the law and misconstrue the district court's decision. Massachusetts law, like the law of many other states, allows parties to limit the scope of their fiduciary relationships. That type of scope-shaping is not the same as the duty-waiving contemplated by the SEC's guidance, which has no bearing on Plaintiffs' claims anyway. The district court recognized the difference, correctly finding that while Defendants owed fiduciary duties within the scope their relationship, Plaintiffs failed to marshal facts showing that *those* duties were breached. Nothing in the district court's opinion allowed Defendants to "waive" or eliminate all fiduciary obligations.

A. Parties to a legally imposed fiduciary relationship can contractually limit the scope of a fiduciary's discretion and, thus, its fiduciary responsibility.

Plaintiffs point out that investment advisors are fiduciaries "by law." Appellants' Br. 32. But that is the beginning of the inquiry, not the end of it. As courts have consistently recognized, "the existence of a fiduciary relationship does not mean that all interaction between the parties to that relationship is measured by the standards applicable to fiduciaries; the fiduciary is held to a higher standard of conduct only as to matters within the scope of the fiduciary relationship." *Korper v. Weinstein*, 783 N.E.2d 877, 881 (Mass App. Ct. 2003); *accord Conway v. Licata*, 104 F. Supp. 3d 104, 117 (D. Mass. 2015); *Sanders v. Phoenix Ins. Co.*, No. CV 14-14039-GAO, 2015 WL 13228002, at *9 (D. Mass. Nov. 20, 2015), *aff'd,* 843 F.3d 37 (1st Cir. 2016;. And ascertaining the scope of "by law" fiduciary relationships properly requires consideration of the contractual language governing those relationships—as countless courts agree but that Plaintiffs ignore.

1. Massachusetts courts recognize several types of fiduciary relationships that arise as a matter of law. *See UBS Fin. Servs., Inc. v. Aliberti*, 133 N.E.3d 277, 288-89 (Mass. 2019). The relationships between trustees and beneficiaries, attorneys and clients, and business partners are some "archetypal" examples. *See id.* So, too, are the relationships between physicians and patients, employers and employees, and shareholders in closely held corporations. *See Warsofsky v. Sherman*, 93 N.E.2d 612, 615 (Mass. 1950); *see also Merriam v. Demoulas Super Markets, Inc.*, 985 N.E.2d 388, 395 (Mass. 2013). The law makes these relationships fiduciary in nature because there is generally at least some "relation of trust and confidence which exists between" the parties to them. *See Hill v. Hall*, 77 N.E. 831, 835 (Mass. 1906).

Since these types of fiduciary relationships arise by operation of law, their fiduciary nature typically cannot be eliminated "wholesale" by contract. *Greenleaf Arms Realty Tr. I, LLC v. New Bos. Fund, Inc.*, 962 N.E.2d 221, 230 (Mass. App. Ct. 2012). What that means is that parties to these types of fiduciary relationships generally cannot make them entirely nonfiduciary by agreement. An attorney, for example, cannot add "our relationship is not a fiduciary one" to an engagement letter with a client and expect a court to agree. Nor could a doctor avoid a fiduciary relationship with a patient by having the patient sign an agreement saying, "my physician owes me no fiduciary duties." And "a shareholder in a close corporation always owes a fiduciary duty to fellow shareholders," despite what any agreements governing the relationship might say. *Merriam*, 464 Mass. at 727.

But that "by law" fiduciary relationships cannot be *eliminated* by agreement does not mean the parties to them are powerless to define their *contours*. Every "by law" fiduciary relationship has a scope, and that scope "is defined by the incidents and undertakings of the defendant." *Korper*, 783 N.E.2d at 881. Put differently, the scope of a fiduciary relationship is shaped by "the degree of discretion" one entrusts to the fiduciary and of which the fiduciary is aware and accepts. *Patsos v. First Albany Corp.*, 741 N.E.2d 841, 849 (Mass. 2001); *Broomfield v. Kosow*, 212 N.E.2d 556, 560 (Mass. 1965).

And written agreements are one way that parties to a fiduciary relationship can define those "undertakings" of the fiduciary. Indeed, the "[p]arties to a fiduciary relationship may agree to alter or limit to some degree their fiduciary rights and obligations." *Greenleaf Arms Realty Tr. I*, 962 N.E.2d at 230; *see Fronk v. Fowler*, 923 N.E.2d 503, 515-16 (Mass. 2010). So, even legally imposed fiduciary relationships can be tailored under Massachusetts law; they are not one-size-fits-all.

2. Massachusetts is no outlier on this score. For example, despite what Plaintiffs say about New York law (at 32-33), parties in New York can define the contours of their fiduciary relationships by contract, just like parties in Massachusetts. *See Fifth & Fifty-Fifth Residence Club Ass'n, Inc. v. Vistana Signature Experiences, Inc.*, 223 A.D.3d 521, 522-23 (N.Y. App. Div. 1st Dep't 2024) (contract took certain functions "outside the scope of the fiduciary relationship"). To be sure, fiduciaries will still owe fiduciary duties within the agreed-upon scope of the relationship. *See Zorbas v. U.S. Tr. Co.*, 48 F. Supp. 3d 464, 478-79 (E.D.N.Y. 2014). But those duties do not extend to matters outside of that scope. *See Ramiro Aviles v. S & P Glob., Inc.*, 380 F. Supp. 3d 221, 300 (S.D.N.Y. 2019).

The same is true in California. Even where a fiduciary duty is imposed by law, its "*scope or extent* ... depends on the facts of the case." *Duffy v.*

Cavalier, 264 Cal. Rptr. 740, 752 (Cal. Ct. App. 1989); *see Brown v. Wells Fargo Bank, N.A.*, 85 Cal. Rptr. 3d 817, 835 (Cal. Ct. App. 4th 2008). Those facts include consideration of client instructions. *See Leboce, S.A. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 709 F.2d 605, 608 (9th Cir. 1983); *Duffy*, 264 Cal. Rptr. at 752 (discussing *Leboce* as consistent with California law). Thus, where a client authorizes another to "act as its agent with strictly limited responsibilities," the fiduciary's duties will be "limited by the narrow extent of its agency." *Leboce*, 709 F.2d at 608.

The same is true in middle America. Illinois courts, for example, agree with Massachusetts that "an agent's fiduciary duty is limited to actions occurring within the scope of his agency." *Martin v. Heinold Commodities, Inc.*, 510 N.E.2d 840, 845 (Ill. 1987); *see In re Est. of Stahling*, 987 N.E.2d 1033, 1039 (Ill. App. Ct. 2013). That scope can "be defined by" agreement, even if "the fiduciary relationship itself may be *created* by legal principles independent of" any contract. *231 W. Scott, LLC v. Lakeside Bank*, 80 N.E.3d 753, 763 (Ill. App. Ct. 2017).

3. Plaintiffs do not address the scope of their contractual relationship with Defendants. Indeed, they suggest there is no need to do so, because "by law" fiduciary relationships cannot be waived, so the obligations owed under them are limitless. Appellants' Br. 32-34. But that confuses two different

concepts: as Professor Tierney's brief explains, "the parties to a fiduciary relationship" cannot "waive the fiduciary *nature* of the relationship"—but they "*can* use contract[s] to define or shape the scope of services." Prof. Tierney Br. 22 (emphasis added). Yet Plaintiffs equate all scope-shaping to duty-waiving.

To the extent Plaintiffs *ever* acknowledge that Massachusetts law permits scope-shaping, they suggest that this principle should be limited to partnership relationships. Appellants' Cert. Mot. Reply Br. 9-10; *see* PIABA Br. 10 n.3; Prof. Tierney Br. 21-22. But Massachusetts courts have never endorsed this unprincipled limitation. Indeed, courts have stated the principle as broadly applying to all "fiduciary relationship[s]"—not just those between partners. *Greenleaf Arms Realty Tr. I*, 962 N.E.2d at 230. And the Massachusetts Supreme Judicial Court has applied scope-shaping outside of the partnership context, explaining that ascertaining the "scope" of obligations owed depends on "the degree of discretion" one cedes to another—an analysis that properly considers "documentation," like contracts. *See Patsos*, 741 N.E.2d at 849-50.[3]

[3] Plaintiffs conspicuously ignore the long line of Massachusetts case law discussing the distinction between permissible scope-shaping and impermissible duty waiving. Instead, they repeatedly cite *Robinhood Financial LLC v. Secretary of Commonwealth*, 214 N.E.3d 1058 (Mass. 2023), which they suggest "made clear" that investment-advisor fiduciary

Nor is there any logical reason the rule should be limited to the partnership context. Doing so would mean that an attorney could never agree with a client to a narrow scope of representation even though those types of agreements are commonplace and unproblematic. Attorneys often agree to represent clients as to some issues but not others—*e.g.*, opining on antitrust implications of a proposed merger, but not securities, employment, or other consequences. Equally common are limited-scope representations in litigation—a client may retain an attorney to serve solely as local counsel, or to appear in a limited assistance capacity on behalf of an otherwise *pro se* client. *See* Mass. R. Lim. Assist. Rep. 1 (permitting "an attorney to represent a party in a non-criminal action for discrete, limited purposes"). In these instances, like in the investor-advisor relationship, one is acting as "an agent for a client," and the parties are not considered "equals." PIABA Br. at 10 n.3. Yet they are nonetheless allowed to shape the scope of their relationships. There is no sound reason why the parties to the investor-advisor relationship should be uniquely prevented from doing the same.

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status is immune from this well-established understanding and untailorable in any way. Appellants' Br. 1, 29, 32. But there is a reason why Professor Tierney does not cite *Robinhood* even once in his brief: that case was about federal preemption and the scope of a Massachusetts statute regulating broker-dealers, not about the scope of fiduciary obligations under Massachusetts common law. It has no relevance to the issues presented in this case.

B. The Investment Advisers Act does not change the limits to which parties to a fiduciary relationship can agree.

Plaintiffs also invoke the IAA to support that "by law" fiduciary relationships cannot be limited by contract. Appellants' Br. 33-34. They contend that because investment advisors may not "waive" their federal fiduciary duties under the IAA, then contractual language limiting the scope of a fiduciary's discretion is irrelevant to the fiduciary breach analysis. *See id.* That argument fares no better under the IAA than it does under state law.

For one thing, it is far from clear that the IAA has any bearing here. JPMC is a national bank excluded from the IAA's coverage—as Plaintiffs agree. D. Ct. Dkt. No. 1 ¶ 228. On its terms, the IAA applies only to "[i]nvestment adviser[s]," and banks are expressly carved out from that statutory term. 15 U.S.C. § 80b-2(a)(11). Nor have Plaintiffs asserted an IAA claim in any event; indeed, they mention the IAA only once in their complaint, and even then only in noting that JPMC is not subject to it. D. Ct. Dkt. No. 1 ¶ 228.

In any event, the IAA operates similarly to the state law described above. As the SEC has explained, "[t]he fiduciary duty follows the contours of the relationship between the adviser and its client, and the adviser and its client may shape that relationship by agreement, provided that there is full and fair disclosure and informed consent." Commission Interpretation

Regarding Standard of Conduct for Investment Advisers, 84 Fed. Reg. 33,669, 33,671 (July 12, 2019). To be sure, the SEC has made clear that advisors may not *waive* fiduciary duties within any agreed-upon scope. *Within that scope*, the advisor "remains … a fiduciary to the client" and "an adviser's federal fiduciary duty may not be waived." *Id.* at 33,672. But "the application of the investment adviser's fiduciary duty will vary with the scope of the relationship." *Id.* And that scope is defined by what "functions the adviser, as agent, has agreed to assume for the client, its principal." *Id.* at 33,671.

A simple example helps illustrate the difference between permissible scope-shaping and federally impermissible duty-waiving. Suppose an advisor and a client sign an agreement in which the client delegates the advisor authority to invest on his or her behalf, but only in companies that meet particular environmental standards. In that scenario, the client has not given the advisor discretion to invest in other types of companies not meeting the client's goals. So, the advisor could not have "agreed to assume" that function for the client. *See* 84 Fed. Reg. at 33,671. The advisor, then, would owe fiduciary duties in its selection and maintenance of environmentally friendly investments. But it would owe no fiduciary duty to remove the client's funds from those investments and place them into something else.

Indeed, if the advisor made such a move without explicit instruction, that decision might subject it to fiduciary liability under state law. *See Zang v. NRT New England Inc.*, 933 N.E.2d 694, 701 (Mass. App. Ct. 2010).

C. The parties here permissibly shaped the scope of their relationship.

What the parties did here was scope-shaping, not duty-waiving, as the district court correctly recognized. The parties' relationship was governed by a number of agreements, including what they have termed the 2015 Advisory Agreement. Appellants' ADD84. Under that agreement, Plaintiffs retained the "sole[]" authority and "responsibility" to select particular "[p]ortfolios" in which to invest. *Id.* Plaintiffs delegated Defendants the authority to manage "each [p]ortfolio following [their] own judgment and discretion," but did so "subject to the … [p]ortfolio" Plaintiffs had chosen. *See* JA557. And Plaintiffs selected an MLP portfolio strategy limited to investments in "publicly traded partnerships, limited liability companies and corporations, predominantly in the energy sector." Appellants' ADD85.

By doing so, the district court explained, Plaintiffs "restricted [Defendants'] discretion to only managing the MLPs." Appellants' ADD85 n.8. To be sure, Plaintiffs owed fiduciary duties within the "scope" of that delegated authority—as everyone appears to agree. Appellants' ADD98 ("[N]either the R&R nor Defendants dispute that Defendants had fiduciary duties to Plaintiffs.”). But the scope of Defendants’ “role was confined to managing the MLPs and warning [Plaintiffs] about the associated risks.” Appellants’ ADD85 n.8. And Plaintiffs failed to explain “how *those* duties were breached.” Appellants’ ADD49 (emphasis added). *That* is why Plaintiffs’ fiduciary-duty claims failed at summary judgment—not because the district court allowed Defendants to waive fiduciary duties *within* the scope of their relationship.

Professor Tierney suggests that the district court “conflated scope-shaping with duty-waiving”—a distinction that Plaintiffs for their part simply ignore—but his brief does not even attempt to elaborate on this proclamation. Prof. Tierney Br. 22. It does not grapple with the district court’s analysis, much less with the actual language in the parties’ agreements. That is because the district court did nothing of the kind. Instead, as explained above, it found the existence of a fiduciary relationship, and turned to ascertain what the scope of that relationship was. Once it did so, it looked to see what actions Plaintiffs said amounted to breaches of Defendants’ fiduciary duties. Finding that the actions that Plaintiffs said Defendants should have taken were not even within their discretion to take, the district court granted summary judgment. That is exactly how the analysis is supposed to work—under state law and under the IAA.

II. A rule uniquely prohibiting scope-shaping for investment-advisor fiduciaries would harm the investment-advisor industry and the investing public.

The holding Plaintiffs seek can only be reached under a rule that investment advisors and their clients cannot shape the scope of their relationship by agreement. Under that rule, it would not matter "what functions the adviser … has agreed to assume for the client" (84 Fed. Reg. at 33,672)—an advisor's duties, in Plaintiffs' view, must extend beyond the authority a client has delegated to it. Such a rule, however, is unworkable as a practical matter, and it would harm investment advisors and the investing public alike.

First, Plaintiffs' rule could price many individual investors out of advisory services altogether. Currently, investment advisors offer many different types of services. Some offer limited-scope services, in which they agree with a client to undertake certain limited functions, like investing only some of a client's assets in a particular type of portfolio.[4] Full-service options are also available, where the advisor agrees to undertake not only portfolio-management services, but also broader financial-planning services.[5] Generally, those full-service arrangements are more expensive than limited-

[4] *See* Inv. Adviser Ass'n, *Investment Adviser Industry Snapshot 2022*, at 49 (2022), https://tinyurl.com/2s3fm9r7.
[5] *See id.*

scope ones, to account for the increased amount of work required.[6] Accordingly, by being able to limit the scope of the relationship, clients with more limited means can keep costs down while realizing at least some of the benefits that investment advisors provide—like obtaining assistance "navigat[ing] … complex financial markets" for "investing for retirement, homeownership, and education."[7]

Under Plaintiffs' rule, the well-established practice of limited-scope arrangements would be a thing of the past, because even if investors and their advisors could agree to a limited scope of *services*, it would be impossible to agree to an enforceable limited scope of corresponding fiduciary *obligations* (and thus a limited scope of potential fiduciary *liability*). Without any ability to tailor the scope of the relationship in the investment-services context, it would make no economic sense for advisors to offer limited services (at a limited price) at all. Instead, the only tenable services available on the market would be full-service arrangements at full-service prices. As a result, many individual investments would simply be priced out of obtaining investment-advisory services altogether—an outcome

[6] *See id.* at 50.

[7] Inv. Adviser Ass'n, *Fiduciary advice has never been more important to consumers' ability to save and invest for the future*, https://tinyurl.com/a59shn4r (last visited July 31, 2025) ("*Fiduciary advice*").

that makes no sense, and certainly is not compelled by Massachusetts or federal law.

Second, Plaintiffs' rule could give investors nearly unbridled power over their advisors. Without any limits on the scope of the relationship, investors could effectively always state a viable claim for fiduciary breach. Say a client and an advisor agree that the advisor will invest only in one particular type of portfolio—like the MLPs at issue in this case. Under Plaintiffs' rule, if the advisor *follows* a client's express investment directions and objectives about where to invest, the advisor might be sued for a fiduciary breach if the investment generates suboptimal returns as compared to other types of portfolios. That could be true even where, as here, the advisor has warned clients against their selected strategy in the first place. Appellees' Br. 2, 42. Yet if an advisor *ignores* a client's investment directions—as Plaintiffs effectively contend Defendants should have done here—the advisor might also be sued for breaching fiduciary duties by violating the trust of his or her client. In other words, Plaintiffs' "heads I win, tails you lose" position gives customers an enormous power over their investment advisors to sue with the benefit of hindsight any time their investments underperform expectations.

Relatedly, Plaintiffs' rule would *discourage* investment advisors from acting consistently with their clients' directives, creating precisely the *opposite* incentives one would hope to see in a relationship of trust and confidence. Suppose, for example, that a client directs her investment advisor to invest *solely* in environmentally friendly investments—something common among investors with a deep commitment to conservation, who are willing to risk lower investment returns to advance their abiding commitments to environmentalism.[8] But if green-energy investments are predicted to suddenly decline (due to potential regulatory or legislative activity), Plaintiffs' proposed rule could easily encourage the client's investment advisor to withdraw from environmentally friendly investments in favor of more traditional oil-and-gas investments that are anticipated to dramatically increase in value. That move may work out for the client monetarily, but at the expense of whatever convictions drove the client's investment directives. A rule that would encourage fiduciaries to act *against* their clients' investment instructions cannot possibly be the right one.

[8] *See* Zach Stein, Carbon Collective, *What Is Sustainable Investing* (May 26, 2023), https://tinyurl.com/mru9suav.

Third, Plaintiffs' rule could upend the small businesses that make up "the vast majority" of the investment-advisor workforce.[9] These small businesses often offer tailored solutions to tailored investment problems to help individual-investor clients meet their financial goals.[10] If Plaintiffs prevail, the resulting rule could effectively preclude these small businesses from offering such tailored services, forcing them into the type of full-scope relationships that are more costly for advisors to offer. *Supra*, pp. 18-20. Due to economies of scale, large advisory practices may be able to survive in such a world, albeit trapped in the impossible predicament described above. Smaller practices, though, might not be able to compete with the broader level services provided by large practices (or the prices at which they provide them), and could be shuttered out of the market altogether. And those that survive could still be subject to liability at every turn—regardless whether they do *precisely* what their clients hired them to do. *Supra*, pp. 20-21. That type of unlimited liability is potentially ruinous for small investment-advisor practices, and the investing public would be left with fewer options to help them meet their financial goals.

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[9] Inv. Adviser Ass'n, *The Vast Majority of Investment Advisers Are Small Businesses*, https://tinyurl.com/4bfdjxus (last visited July 31, 2025); Inv. Adviser Ass'n & COMPLY, *Investment Adviser Industry Snapshot 2024*, at 26 (2024), https://tinyurl.com/26jd8yte.

[10] *Fiduciary Advice*, *supra* note 7.

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At bottom, Plaintiffs' rule would benefit no one—not individual investors, who would see their options in the market dwindle, and not financial-services companies, who would see their potential liability explode despite settled expectations about the ability to contractually limit the scope of their fiduciary relationship. The only individuals who might conceivably benefit are the attorneys hired to bring or defend these types of fiduciary-breach suits who would see their practices grow exponentially. And a rule that helps only litigating attorneys is almost never the right one.

To avoid that untenable result, this Court should simply apply the law as it has long existed, and allow investors and their advisors to tailor the scope of their relationship. Clients come out ahead by keeping a means to keep the cost of services down, so they can realize at least some of the benefits that investment advisors have to offer. They also retain the ability to meaningfully limit their advisors' investment discretion so that *their* financial objectives are advanced within a context of trust and confidence. Advisors also benefit by knowing exactly what they have to do to avoid fiduciary liability—operate prudently and loyally within the areas of discretion a client has delegated. And the small businesses that make up the vast majority of the industry can continue to provide the important services on which individual investors have come to rely. The Court should resist crafting a new rule that destroys these benefits of established law.

CONCLUSION

The district court's decision should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the type-volume limitations of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 5,050 words, excluding the parts of the document exempted by Rule 32(f).

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Dated: August 1, 2025

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CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing brief with the Clerk of the United States Court of Appeals for the First Circuit via the CM/ECF system on this 1st day of August 2025. I certify that all participants in this case are registered ECF users and that service will be accomplished by the CM/ECF system.

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