MarketVector™

August 15, 2022

Via E-mail: rule-comments@sec.gov

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

Re: Request for Comment on Certain Information Providers Acting as Investment Advisers [File No. S7-18-22]

Dear Ms. Countryman:

MarketVector Indexes GmbH ("MarketVector") appreciates the opportunity to comment on the request for information regarding whether prospective regulation of "index providers" as "Investment Advisers" in the U.S. is necessary and appropriate.

As a globally-operating, German-based "Benchmark Administrator" regulated by the BaFin[1] under the EU Benchmarks Regulation[2] ("BMR"), MarketVector welcomes the U.S. Securities and Exchange Commission's (the "Commission") review of index providers as a positive step, since the current role of index providers raises important questions. During the past 25 years, indexing and the use of indexes as benchmarks[3] underlying financial products have grown dramatically. It is against this very backdrop that the EU implemented the BMR.[4]

The BMR does not treat index providers as investment advisers or ascribe fiduciary duties to them. Rather, per ESMA (European Securities and Markets Authority):

> The Benchmarks Regulation aims at (i) improving the governance and controls over the benchmark process, in particular to ensure that administrators avoid conflicts of interest, or at least manage them adequately; (ii) improving the quality of input data and methodologies of

[1] Federal Financial Supervisory Authority of Germany.

[2] Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014.

3 As defined by the BMR, 'benchmark' means any index by reference to which the amount payable under a financial instrument or a financial contract, or the value of a financial instrument, is determined, or an index that is used to measure the performance of an investment fund with the purpose of tracking the return of such index or of defining the asset allocation of a portfolio or of computing the performance fees.

[4] After Brexit, the BMR has been transitioned into UK law. Canadian securities regulators are seeking to have the newly adopted rules recognized as "equivalent" for purposes of the "third country regime" under the BMR, ultimately seeking alignment with the BMR.

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benchmarks; (iii) ensuring that contributors to benchmarks and the data they provide are subject to adequate controls, in particular to avoid conflicts of interest; (iv) protecting consumers and investors through greater transparency and adequate rights of redress; and (v) ensuring that supervised entities have robust written plans in case of cessation or material changes of benchmarks.[5]

The BMR requires an index provider to register with its national financial supervisory authority and further, the BMR provides such regulator with clear rules to supervise the index provider.

Additionally, the BMR requires an index provider to establish an Independent Oversight Function comprised of persons who are not responsible for the operation and management of the indexes in order to mitigate potential conflicts of interest facing the index provider. Furthermore, an index's methodology must have clear rules on when and how discretion may be exercised.

We do not consider index providers like ourselves to be providing investment advice. MarketVector does not make investment recommendations. Regulating index providers as "Investment Advisers" would, among other things, increase regulatory complexity, add substantial costs to index providers, their clients, and ultimately to both retail and institutional investors in products that use indexes. These added costs would potentially reduce the number of index product offerings, constrain index product development and innovation, likely result in a decrease in the number of products that track the performance of an index, and likely increase the costs of products that track the performance of an index and/or use index data. Furthermore, if the proposed regulatory structure for index providers does not cover index products overseen by other regulators (*e.g.*, the CFTC or OCC), it could create an unintended increase in "regulatory arbitrage" that shifts activities away from securities based indexes and towards index futures and index swap-based strategies.

We believe that if the regulation of index providers is to be pursued, it would not be appropriate to view index providers as investment advisers. Instead, we urge the Commission to consider the framework of the BMR, a framework that addresses the concerns enumerated by the Commission, and, that must already today be adhered to by all index providers domiciled outside of the EU, including the U.S., who provide indexes for financial products domiciled in the EU.

As previously stated, MarketVector appreciates this opportunity to submit these comments. If you or your colleagues have any questions, please do not hesitate to contact me at [redacted] or at [redacted].

Yours sincerely,

Steven Schoenfeld – CEO, MarketVector Indexes

[5] We note that many of these principles were addressed by the Commission in its orders granting self-indexing relief for ETFs.

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