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August 16, 2022

Secretary,
Securities and Exchange Commission,
100 F Street NE, Washington, DC 20549-1090
Submitted electronically via rule-comments@sec.gov

Re: File No. S7-18-22

Dear Secretary Countryman and colleagues,

Thank you for the opportunity to provide input to this highly relevant and timely consultation. Elucidate Americas Inc. is based in Miami, Florida and is a subsidiary of Elucidate GmbH, a financial crime risk benchmark administrator with offices in Berlin, Germany.

We are registered by the Federal Financial Supervisory Authority (BaFin) in Germany as a Benchmark Administrator in the European Security and Markets Authority (ESMA) Registry under Article 34 of the EU Benchmarking Regulation (BMR) 2016/1011.

We welcome the SEC's initiative to extend the Advisers Act to cover indices and benchmarks. Our support for this extension is rooted in our experience with the BMR, which has evidenced that such a regulatory framework will: (i) provide more consistency across markets; (ii) increase transparency and ensure integrity around the provisions of indexes and benchmarks; and (iii) provide oversight on instruments that influence the market.

In particular, we welcome the recognition that the decisions of certain index providers can affect financial markets regardless of the volume of their Assets Under Management, and that therefore they may register under the Advisers Act. The Elucidate FinCrime Index (EFI), for example, is the world's first regulated financial crime risk benchmark, and is already being applied by major European financial institutions to manage financial crime risk among their extensive correspondent banking networks.

Based on our experience, the establishment of minimal standards in regards to transparency, governance and control systems for index providers has significant benefits for both individual providers and the market as a whole.

We will focus below on selected questions posed in the consultation document.

1. Are our descriptions of each information provider accurate and comprehensive? What types of potential risks and conflicts of interest does each type of provider present? How many providers of each type do commenters estimate currently offer their services in the United States?

By way of comparison, the BMR EU Regulation offers a slightly broader definition stating that 'provision of a benchmark' means: (a) administering the arrangements for determining a benchmark; (b) collecting, analyzing or processing input data for the purpose of determining a benchmark; and (c) determining a benchmark through the application of a formula or other method of calculation or by an assessment of input data provided for that purpose.

Potential conflicts of interest could be:

- The provision of an index is not operationally separated from other parts of the provider's business that may create an actual or potential conflict of interest.
- Employees that are subject to undue influence or conflicts of interest. Specifically:
 - Outside business interest that could compromise or interfere with the business activities of the benchmark provider;
 - Personal trading accounts: including direct control accounts, managed self directed accounts, managed fully discretionary accounts. Employees and their family members should be prohibited from engaging in any trade of a security while in possession of non-public information relating to the issuer of the security or the security itself.

We believe that the definition of "provision of a benchmark" and/or "information provider" should be as broad as possible, to encompass more companies and, therefore, ensure consistency, transparency and avoid any manipulation across index providers in the market.

3. How do providers analyze whether they meet the Advisers Act's definition of "investment adviser" under each element of the definition? For those providers that have determined that they meet the definition, what were the determining factors?

Under the BMR EU Regulation, the determining factors are: (i) they publish or make available the index to the public or clients; (ii) the index is entirely or partially

determined by the application of a formula or any other method of calculation, or by an assessment.

The above two factors could be taken into consideration when determining whether that would raise the investor advisor status and whether that constitutes “analyses or reports concerning securities”.

Having those factors listed in the BMR Regulation has helped guide the internal decision on whether we fulfill the criteria to be considered benchmark administrators. Focusing on the type and characteristics of output/information provided – and not only on the information provider itself – gives additional guidelines for making such a determination.

4. In light of new technologies and current market practices, when determining what constitutes “analyses or reports concerning securities,” what factors may raise investment adviser status issues? For example, are the factors described above appropriate?^[36] Should they be modified? If so, what modifications and why? What economic benefits and costs would result if advisers were required to consider the factors described above or with modifications? Alternatively, are there other factors that advisers should be required to consider regarding what constitutes “analyses or reports concerning securities”? Should the Commission provide additional guidance? What benefits and costs would result from requiring other factors or providing additional guidance?

Factors to be considered when determining what constitutes “analyses or reports concerning securities” could be drafted along the lines of what the BMR EU Regulation defines as being the “provision of a benchmark”. In particular, the BMR lists and includes in the definition the following:

- administering the arrangements for determining a index;
- collecting, analyzing or processing input data for the purpose of determining a index; and
- determining an index through the application of a formula or other method of calculation or by an assessment of input data provided for that purpose.

This list provides a clear indication on what raises the regulated status. In our experience, having clear and detailed guidelines helped forming our opinion on what constitutes the provision of benchmark. As stated before, focusing on the characteristics of the output – including the inputs necessary to get to that output – was extremely insightful on what we needed to consider.

9. How do information providers exercise discretion in providing information? For example, do index providers or model portfolio providers create indexes or portfolios at the request of their licensees or users based on more customized investment objectives

and goals? In these circumstances, does the provider include or exclude certain companies, funds, or countries from an index or portfolio based on the input of its licensee or user? As another example, in determining which inputs or factors to prioritize in assessing a security's price, does a pricing service prioritize certain factors over others based on the input of its licensee or user?

Any discretion that can be exercised in providing input data creates an opportunity to manipulate an index. This is why to the extent possible indices should draw directly on source data, following a transparent and well-governed methodology. For example, in cases where the input data is transaction-based, there is less discretion and therefore the opportunity to manipulate the data is reduced.

Generally, governance and control systems - such as having in place a function that operates with integrity to oversee the implementation and effectiveness of the governance arrangements that provide effective oversight - must be in place to monitor the exercise of discretion and the potential conflict of interest.

10. In what ways do information providers exercise discretion in establishing and updating their services or the information they provide? Is such discretion limited by a service's users? For example, with respect to pricing services, do users limit providers' discretion by contract, either by reference to standard pricing guides or principles or otherwise? If so, do users treat pricing services differently from other providers in how discretion is limited? If so, how and on what basis? Do the responses change when considering other types of information providers?

There should be an internal policy regulating this. In our view, the control framework shall be proportional to the level of conflicts of interest identified, the extent of discretion in the provision of the index and the nature of the index input data.

12. Do information providers adjust the services offered based on input from the users of their services? Do providers disclose such adjustments to users, including when such adjustments are made to address previous errors of the provider?

An information provider should establish measures and procedures for dealing with errors in input data or in the determination of the index, including when a redetermination of the index is required.

To ensure the integrity of the index the services should be adjusted similarly across all users.

13. Under what circumstances do information providers disclose changes or updates to the services provided, and to whom? For example, describe index providers' disclosures about the changes in the index strategy or related aspects (e.g., tracking methodology, portfolio structure, portfolio limitations, index data distribution channels) and the level of

discretion that the index provider may exercise. How do information providers communicate these changes or updates?

In cases where it becomes necessary to change the methodology to ensure the continued accuracy of an index, any changes in the methodology could have an impact on its users. The information provider should develop procedures to be followed when changing the methodology, including - if applicable - the need for consultation, so that users can take the necessary action in light of those changes or share their concerns about those changes.

Changes should be widely communicated through public disclosures on the website of the information providers and via *ad hoc* communication and meetings with the individual users.

16. What are the economic benefits and costs associated with investment adviser status for each type of information provider identified above? Are there provisions of the Advisers Act that providers are unable to comply with or that would be operationally complex and burdensome?

In terms of economic benefits, a more regulated status would ensure that those indexes under regulation are less vulnerable to manipulation and are subject to independent verifications, and therefore perceived as more reliable by users. Indirectly this generates an economic market-wide benefit compared to unregulated information providers.

Additionally, it provides credibility and defensibility to the market - by differentiating between validated indices and market opinions - and provides structure to the information provider around the requirements that should be fulfilled and maintained.

19. How, if at all, do index providers limit the dissemination of their methodologies or indexes to only those who license such information? Should the limitations placed on dissemination affect the analysis of their status as an investment adviser?

Transparency around index methodologies does not mean the publication of the formula applied for the determination of a given indexes, but rather the disclosure of elements sufficient to allow stakeholders/users to understand how the index is derived and to assess its representativeness, relevance and appropriateness for its intended use. As indicated under the BMR EU Regulation, we believe that this level of disclosure should be a minimum regulatory requirement, while still ensuring the confidentiality of the data inputs provided by the users to the information provider.

We believe that this approach ensures the confidentiality of key elements needed to protect both the methodology behind the index and the input provided by its users, while ensuring transparency.

32. At least one regulatory framework for index providers exists outside of the United States, under the European Securities and Market Authority (“ESMA”) and its EU Benchmarks Regulation (“BMR”).^[49] Some of the BMR’s key provisions include requiring EU administrators of a broad class of benchmarks to be authorized or registered by a national regulator, and for these administrators to implement various governance systems and other controls to ensure the integrity and reliability of their benchmarks. Administrators are also required to provide a code of conduct specifying requirements and responsibilities regarding input data. Although the BMR affects U.S.-based index providers that wish to have market access in the EU, it does not directly affect their business in the United States. Should any U.S. regulatory action, if adopted and implemented, be aligned with the framework placed by the BMR in the EU? Are there particular components of the BMR that should or should not be applied to index providers in the United States, and why? What has been the effect of the BMR on the provision of benchmarks and indexes in the EU? Has the BMR served as a barrier to entry for new benchmark and index providers?

Given the cross border nature of many indices and benchmarks, maximizing alignment to the extent possible – as the EU has done with Japan, Singapore and Australia – will reduce the potential for both friction and regulatory arbitrage. This in particular applies to the establishment of minimal standards in regards to transparency, governance and control systems for index providers as mentioned above.

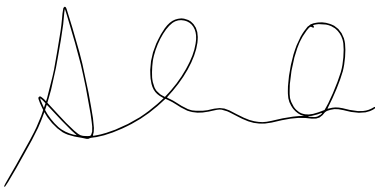
The cost to individual providers of complying with regulatory standards, which may in some cases become a barrier to entry to the market, needs to be weighed against the long-term intangible benefits to the economy including continued market confidence and strong investor protection.

In our experience as a company regulated by the BMR, the investment in complying with regulatory requirements is not overly onerous. Having regulated status also provides credibility and confidence in our product, opening new market opportunities both inside and outside the EU.

33. What information do registered advisers and investment companies currently submit to the Commission with respect to their information providers? What information, if any, should registrants be required to submit? What information currently required should be modified and why? Should some of the information be provided confidentially to the Commission? If so, which types of information and why?

Under the BMR EU Regulation, information providers should submit their methodology paper, governance and controls framework and inform the Commission of major changes applied to those. In our experience, these documents can provide the Regulator with a sufficiently detailed overview on the benchmark/index provision from both a technical and an operational point of view.

Thank you for your consideration. Please do not hesitate to contact us if we can provide any assistance or further detail.

A handwritten signature in black ink, appearing to read 'S. Riedel', with a stylized, cursive script.

Shane Riedel
President
Elucidate Americas Inc

