

August 16, 2022

Ms. Vanessa A. Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street NE,  
Washington DC 20549

Via E-Mail: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

**Re: Request for Comment on Certain Information Providers Acting as Investment Advisers;  
Request Nos. IA-6050; IC-34618; File No. S7-18-22; RIN 3235- AM95**

Dear Ms. Countryman:

MarketAxess Holdings Inc. (“MarketAxess”) appreciates the opportunity to provide the Securities and Exchange Commission (“SEC” or “Commission”) with our comments regarding the above-referenced request for comment (the “Request”).<sup>1</sup> MarketAxess operates the leading institutional electronic trading platform for corporate bonds. Through its registered broker-dealer, MarketAxess Corporation, and its global affiliates, more than 1,900 firms traded a record \$6.8 trillion of U.S. investment-grade bonds, U.S. high yield bonds, emerging market debt, Eurobonds, Treasuries and other fixed income securities on the MarketAxess platform in 2021. MarketAxess’ Open Trading™ marketplace is regarded as the premier all-to-all trading solution in the global credit markets, creating a unique liquidity pool for the broad range of credit market participants.

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<sup>1</sup> See [Request for Comment on Certain Information Providers Acting as Investment Advisers](#), (87 Fed. Reg. 37254, June 22, 2022) (the “Request”). In general, the Request asks for information relating to whether index providers, model portfolio providers, and pricing services should be subject to regulation under the Investment Advisers Act of 1940, as amended (the “Advisers Act”). As the Commission may know, MarketAxess is the provider of the MarketAxess U.S. Investment Grade 400 Corporate Bond Index, which is designed to measure the performance of 400 U.S. dollar denominated investment grade corporate bonds with higher-than-average liquidity relative to the broader U.S. corporate bond market. See <https://www.marketaxess.com/pdf/MarketAxess-Index-Methodology.pdf>. MarketAxess has licensed the Index to the SPDR MarketAxess Investment Grade 400 Corporate Bond ETF (the “Fund”) See [LQIG: SPDR® MarketAxess Investment Grade 400 Corporate Bond ETF \(ssga.com\)](#). In addition to acting as an index provider, MarketAxess also provides information to market participants through its Composite Plus service (“CP+”), which is designed to provide an unbiased two-sided estimate of the future trading levels for corporate bonds. See [White-Paper-Composite-Plus.pdf \(marketaxess.com\)](#). Because MarketAxess does not currently act as a provider of model portfolios, we will not address this issue in this letter.

## I. Background.

As the Commission has noted in the Request, the role of index providers and pricing services has increased significantly over the years, and it may be the appropriate time for the Commission to consider whether these services raise regulatory issues that need to be addressed. MarketAxess commends the Commission for initially raising this issue through a request for information. This will provide the Commission with the opportunity to conduct a thorough review of this matter before determining whether any further Commission action is necessary. It will also help ensure that the scope of any action taken by the Commission will be narrowly crafted to achieve the Commission's desired results in a manner that does not impose undue costs or regulatory burdens on market participants.

Among other things, the Request notes that certain index providers and pricing services have historically concluded that even if they meet the definition of investment adviser, they may rely on the "publisher's exclusion"<sup>2</sup> and thus avoid regulation under the Advisers Act. However, given the length of time since Lowe was decided and the development of new business models in the interim, the Commission is now considering the extent to which such activities may raise investment adviser status issues.

## II. Index Providers and Pricing Services are Excluded from Regulation under the Advisers Act .

We continue to believe that it is appropriate for index providers and pricing services to rely on the publisher's exclusion. As the Supreme Court noted in Lowe, the Advisers Act is intended to regulate investment adviser relationships that are personal in nature and is not intended to regulate persons who do not offer individualized advice attuned to any specific portfolio or to any client's particular needs. Thus, we believe that Congress did not intend for index providers and pricing services that do not customize their offerings on an individualized basis to fall within the scope of the Advisers Act. While the development of new technology and business models may alter the way index providers and pricing vendors offer their services, we

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<sup>2</sup> Section 202(a)(11)(D) of the Advisers Act excludes a publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation from the definition of "investment adviser" (the "publisher's exclusion"). In Lowe v. SEC, 472 U.S. 181 (1985), the Supreme Court construed the publisher's exclusion and held that publishers are excluded from the definition of investment adviser under the Advisers Act as long as their publication: (i) provides only impersonal advice; (ii) is "bona fide," meaning that it provides genuine and disinterested commentary; and (iii) is of general and regular circulation rather than issued from time to time in response to episodic market activity.

believe such developments do not permit the Commission to disregard the regulatory framework established by Congress under the Advisers Act.<sup>3</sup>

In addition, the Request seems to imply that the Commission currently has the authority to require investment advisers that do not have any assets under management to register with the Commission if they have a “national presence.” We believe this misconstrues the plain meaning of the statute. Section 203A of the Advisers Act generally prohibits investment advisers from registering with the Commission unless they have at least \$25 million of assets under management or advise a registered investment company. However, under Section 203A(c) of the Advisers Act, the Commission may exempt investment advisers from the prohibition on SEC registration in cases in which the prohibition otherwise would be “unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes” of Section 203A. Thus, while Section 203A(c) allows the Commission to permit an investment adviser that has no assets under management to register as an investment adviser with the Commission, it does not appear to provide the Commission with the authority to require such registration. As a result, we believe that it would be necessary to amend the Advisers Act in order to provide the Commission with such authority.

### **III. Alignment with Benchmarks Regulation.**

In lieu of amending the Advisers Act, however, we believe it would be preferable to align U.S. regulation with the framework for index providers under the European Union’s Benchmarks Regulation (the “BMR”). We believe that this course of action would be preferable to subjecting index providers to the regulatory framework that underlies the Advisers Act. As noted above, the Advisers Act was not designed to regulate the provision of investment related information that is not tailored to individual client needs. Conversely, as noted in the Request, the BMR requires index providers to, among other things, adopt robust governance practices and implement controls that ensure the integrity and reliability of their benchmarks. In our view, these requirements seem better suited towards addressing the issues the Commission has raised in the Request.

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<sup>3</sup> As Chair Gensler recently stated when addressing the regulation of the crypto markets, “There’s no reason to treat the crypto market differently just because different technology is used. We should be technology-neutral.” [See SEC.gov | Prepared Remarks of Gary Gensler on Crypto Markets Penn Law Capital Markets Association Annual Conference](#) (April 4, 2022). We believe that this principle should apply to the regulatory treatment of information providers under the Advisers Act as well.

If you have any questions concerning this letter or our response to the Request, please feel free to contact us. We would welcome the opportunity to discuss these issues further with the Commission.

Sincerely,



Scott Pintoff  
General Counsel, MarketAxess