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Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Submitted online via http://www.sec.gov/rules/submitcomments.htm

Re: Release Nos. IA-6050; IC- 34618; file No. 57-18-22

Request for Comment on Certain Information Providers Acting as Investment Advisors

Dear Ms. Countryman:

Thank you for the opportunity to submit this letter in response to the request for comments contained in the above-captioned release whereby the U.S. Securities and Exchange Commission ("Commission" or "SEC") is seeking public comment on certain information providers whose activities, in whole or in part, may cause them to meet the definition of "investment adviser" under the Investment Advisers Act of 1940 (the "Advisers Act").

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The ETF BILD (Business Insights & Leadership Discussion) is a forum located at www.etfbild.com with a mission to be the catalyst for discussions on the most pressing issues faced by the business leaders of the exchange traded fund (ETF) industry. The ETF BILD Project is at the intersection of academic research and actionable business leadership. The ETF BILD Project is focused on the business insights, leadership, and discussion of the ETF industry.

Request for Comment

ETF BILD commends the Commission, particularly its Division of Investment Management, for seeking comments through the Request for Comment on Certain Information Providers Acting as Investment Advisers ("Request for Comment") on the role of certain information providers and their status under the Advisers Act. In this letter, we focus solely on one subset of information providers: index providers. The Commission in the Introduction section of its Request for Comment directly asks whether "regulatory action is necessary and appropriate to further the Commission's mission." For purposes of this letter, we interpret "regulatory action" to mean subjecting index providers to the Advisers Act and/or certain provisions of the Investment Company Act (the "1940 Act") if their indexes are tracked by exchange traded funds (ETFs), mutual funds or other registered investment companies.

Summary

Subjecting index providers to either statutory scheme would add a second layer of regulatory protection for investors at significant costs to the index providers and indirectly to those investors when the current primary layer of regulatory protection is more than adequate. In between each investor whose investments are influenced or dictated by an index and the provider of that index is a regulated financial professional. In our view, it is therefore logical to focus any regulatory efforts to address concerns about indexes at the point-of-contact, where an existing regulatory framework exists, instead of pulling in entities upstream who have no relationship with, or ability to discern, the investment needs of the investor.

Adding An Extra Layer of Regulation is Duplicative

We recognize that there may be conflicts of interests of index providers and that specialized indexes in some instances resemble a managed portfolio of securities more than a broad-based index. Potentially regulating the index provider whose indexes might raise theoretical issues ignores the fact that a regulated entity stands between the investor and the index provider. A registered investment adviser must determine that the use of the index for its clients is in their best interests; a registered investment company tracking an index employs a registered investment adviser to ensure the use of a particular index is appropriate and its decisions regarding indexes are overseen by a board of directors, in most cases a majority of independent directors. These regulated entities or persons have the ability to conduct due diligence on index providers and to contractually build in safeguards that protect their clients and investors, and they bear the ultimate regulatory or litigation risks if the portfolio based in the index is tainted with conflicts or deemed unsuitable to a reasonable investor.

One might argue that if the Commission were to conclude that regulatory action is necessary to regulate the providers of indexes it would be an admission by the Commission that it is unable or failing to adequately regulate the users of that information that it is charged by Congress to regulate. This surely is not the case. The Commission has broad inspection and enforcement powers to examine how its regulated entities are utilizing indexes including such use is in the best interests of clients or shareholders.

Foisting a Fiduciary Duty on Index Providers with No Direct Client Contact is Unworkable

Question 8 of the Request for Comment asks in part"[t]o what extent do information providers view themselves as having fiduciary obligations to any investors that rely on the information they provide (for example, when investors receive such information through another financial professional)?"The Commission and its staff in a variety of contexts has described fiduciary duty as the duty of an investment adviser to, at all times, serve the best interest of its client and not subordinate its client's interest to its own. The Commission's view is predicated on a relationship between the adviser and its client, allowing for some form of interaction between the two so that the investment adviser can fulfill its fiduciary duty.

We believe that under the current interpretation of the Advisers Act clients and individual investors are fully protected by the fiduciary responsibilities of the advisers who are selling these financial instruments. The engineers of these products, whether index providers or data providers, do not have any direct interactions with the end clients or investors. They have no information about their level of risk tolerance, the design of their portfolio investments or even if they are retail investors or institutional investors. This responsibility currently lies where it should with the financial intermediary that is directly selling the products to investors or the investor's advisers. In addition, the indexers and data pricing services do not give advice, they only describe how the product is built and how it is performing versus other financial instruments or benchmarks. It is data analysis for the intermediaries, far removed from a recommendation to buy, sell or hold. Furthermore, the same index could be a core holding in one investor's portfolio but used as a satellite holding in another portfolio.

One of the main tenets of the Advisers Act is *"to monitor those who for a fee, advise people, pension funds and institutions on investment matters".* Indexers and data pricing services do not offer advice and in some case specifically footnote on their reports and websites that they are not investment advisers and their content is not advice. This transparent disclosure currently remains an industry best practice and standard set forth by each individual firm's compliance and legal department. ETF BILD posits that requiring regulated entities to make this disclosure by rulemaking would be a more judicious way to distinguish between the difference between an investment adviser and an indexer or data pricing provider.

IOSCO Standard

The Board of the International Organization of Securities Commission (IOSCO) has implemented a set of standards for index benchmarks that reaches all index providers that have a benchmark tied to a financial product distributed through the European Union countries. As mentioned in the introduction of the Commission's request for comments, a small group of indexers are responsible for approximately three-quarters of the revenue produced by indexes in the U.S. These indexers and many others work in a global marketplace and as such have formally implemented and adhere to those IOSCO principles. So, most index assets are already regulated, and those indexers have spent a tremendous amount of time and money to become compliant with indexing regulation. If the SEC desires to regulate indexers and it has the statutory authority to do so, then it may become a redundant regulation and a cost and time burden to indexers that has no additional effect on the investing public.

Smaller Index Providers Harmed, Innovation Stifled

ETF BILD believes as the Commission does that the protection of the individual investor is of the utmost importance and if that protection is weakened by the proliferation of complex financial products, then the very backbone of our industry will be broken. Since ETF BILD was founded within the ETF industry, we have welcomed the opportunity to comment specifically on issues impacting smaller ETF complexes. In our view, smaller index providers face similar challenges due to their size.

ETF BILD is concerned that over-burdening the small index providers that produce a smaller amount of revenue with the cost of implementing and on-going compliance of new regulations will reduce their ability to create new and innovative index products. An unintended consequence of expanding the reach of the Advisers Act to regulate index providers could be the consolidation in the index community due to new and significant compliance costs. As a result, a small number of indexers might dominate the indexing industry. All investors need to have the ability to access segments of the markets that fit their needs and risk levels. If index revenues are garnered by a handful of large index providers, innovation could be stifled. Thus, there is a real concern that the introduction of index provider regulation will provide the marketplace and investment community no added protection while risking the loss of innovation and choice.

Conclusion

We appreciate the SEC reviewing our letter and hope our views are constructive as the SEC considers issuing a final rule. Should the Commission or staff have questions about our submission, we are pleased to provide additional information at your convenience. Should you have any questions about our views, please reach out to any of the undersigned.

Sincerely,

John Jacobs - [redacted]

Richard Keary – [redacted]

Justin Meise - [redacted]

Bibb Strench – [redacted]