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August 16, 2022

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Submitted via email: rule-comments@sec.gov

Re: Request for Comment on Certain Information Providers Acting as Investment Advisers (Release Nos. IA-6050; IC-34618; File No. S7-18-22)[1]

Dear Ms. Countryman:

Bloomberg Index Services Limited ("BISL") appreciates the opportunity to provide the Securities and Exchange Commission ("SEC" or the "Commission") with our comments regarding the Commission's Request for Comment on certain information providers, including index providers, and whether and to what extent their activities may cause them to meet the definition of an "investment adviser" under the Investment Advisers Act of 1940 ("Request for Comment" or the "Request"). Our response to the Request represents the views of BISL and draws on the BISL's experience as a global benchmark administrator.

The Request seeks a wide variety of information on the operations, services, customer relationships, commercial models, risks, conflicts of interest, and regulatory status of index providers and how potential changes to the regulatory framework would impact index providers, their customers, investors, and the market for indices.

As an initial matter, Bloomberg appreciates the Commission's engagement with the public on this important matter prior to the issuance of any proposed rule. Information from relevant stakeholders combined with careful and methodical deliberation are essential ingredients of sound rulemaking.

While there may be a case to be made for more targeted regulation, we believe the investment adviser regime, if applied to index providers, would be ill-suited, burdensome, and would yield few, if any, benefits to the market.

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[1] Request for Comment on Certain Information Providers Acting as Investment Advisers (June 15, 2022), *available at* https://www.sec.gov/rules/other/2022/ia-6050.pdf.

This letter, which focuses on the Commission's questions relative to index providers, is divided into five sections.

- **Section I** presents an overview of BISL's index administration business.
- **Section II** discusses the benefits of the current IOSCO framework for benchmark providers.
- **Section III** explains why index providers are not investment advisers under the law.
- **Section IV** discusses why the application of the investment adviser regime would be ill-suited, if applied to index providers, and highlights that the Commission has not articulated a policy case or market failure that would justify upending the existing regulatory framework.
- **Section V** discusses the possibility for targeted action drawing upon ongoing international engagement. Index providers typically operate across asset classes on a global basis. Building on existing, proven international standards will minimize regulatory fragmentation and arbitrage, as well as minimizing market fragmentation.

I. Overview of Bloomberg Indices

BISL is an index administrator and calculation services provider with extensive experience in creating and managing benchmarks across asset classes, including fixed income, equity, commodities, currencies & FX, as well as cross-asset strategy and multi-asset class offerings. BISL publishes more than 100,000 unique indices daily.

BISL's benchmark indices are primarily used by banks, funds and advisers as (i) performance targets, (ii) informational measures of security-level and asset class risk and return characteristics, and (iii) references for index-linked products. BISL offers index users numerous benchmark-related services and solutions supporting these primary uses in the portfolio management process.

Bloomberg is committed to using best practices when publishing its indices and has conformed its practices to align with both the IOSCO Principles for Financial Benchmarks (the "IOSCO Principles")[2] as well as the UK's Benchmarks Regulation ("BMR"). The IOSCO Principles, published in 2013 with significant input from U.S. regulators, established a set of recommended practices for benchmark administration widely embraced by industry, including by BISL. Like the IOSCO Principles, the BMR aims to establish a framework to ensure benchmarks are robust and reliable, and to minimize conflicts of interest in benchmark-setting processes. In keeping with the IOSCO Principles and the BMR, and as discussed in greater detail below, BISL has implemented robust governance measures to oversee the administration of its indices, which are transparent, rules-based, replicable, and objective.

[2] *See* IOSCO Principles, available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf.

Index Governance and Conflicts of Interest Management

BISL is an independent benchmark administrator. Neither BISL nor its parent Bloomberg L.P. issues, underwrites or acts as placing agent or market maker for any securities or financial products and neither are involved in investment fund administration.

BISL maintains robust governance and oversight over its benchmark offerings and is committed to conducting its business in accordance with the highest ethical standards. BISL has established a conflicts of interest policy and related procedures for the identification, disclosure, management, mitigation, and avoidance of actual or potential conflicts of interest. In addition, BISL has policies and procedures to address matters such as information security, confidential information, personal account dealing, and disclosure of outside interests.

Pursuant to these policies, among other things, employees engaged in index product design, calculation, or production are prohibited from buying securities that track the indices BISL administers and are also subject to holding periods and pre-approval requirements for other securities transactions. In addition, employee compensation is not based on the performance (level) of the benchmarks BISL administers. Employees are explicitly prohibited from misusing confidential information for their personal gain or improper purposes.

Identifying Conflicts.[3] BISL periodically examines its business practices to identify activities that may cause a conflict of interest. To facilitate this review, all BISL employees, governance and oversight committee members and members of BISL's board of directors must disclose outside business activities at least annually. New product offerings, or material changes to existing offerings, are also reviewed for potential conflicts.

Governance and Oversight.[4] BISL uses two primary committees to provide overall governance and effective oversight of its benchmark administration activities:

- The Product, Risk & Operations Committee (PROC) provides direct governance and is responsible for the first line of controls over the creation, design, production and dissemination of benchmark indices, strategy indices and fixings administered by BISL. The PROC is composed of Bloomberg personnel with significant experience or relevant expertise in relation to financial benchmarks. Meetings are attended by Bloomberg Legal & Compliance personnel.
- BISL's Benchmark Oversight Committee (BOC) is independent of the PROC and is responsible for reviewing and challenging the activities carried out by the PROC, thereby providing a key oversight function. In carrying out its oversight duties, the BOC receives reports of management information both from the PROC as well as Bloomberg Legal & Compliance members engaged in second level controls. Nominations and removals from the PROC are subject to review by the BOC.

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[3] *See* IOSCO Principle 3, Conflicts of Interest for Administrators.
[4] *See* IOSCO Principle 5, Internal Oversight.

In addition to the PROC and the BOC, BISL's management reports to its board of directors, which is composed of senior Bloomberg management, a majority of whom are not directly involved in BISL's benchmark administration business. BISL requires mandatory compliance training for all BISL employees, the governance and oversight committee, and board members on conflicts of interest policy and other BISL policies and procedures.

In conformance with the IOSCO Principles[5], BISL also maintains and enforces a code of ethics to prevent conflicts of interest from inappropriately influencing index construction, production, and distribution, including the use of expert judgment or discretion.

The PROC reports quarterly to the BOC on governance matters, including but not limited to customer complaints, the launch of new benchmarks, operational incidents (including errors and restatements), major announcements and material changes concerning the benchmarks, the results of any reviews of the benchmarks (internal or external) and material stakeholder engagements.

In addition, BISL regularly convenes Index Advisory Councils ("IACs"), comprised of market participants to obtain and organize market feedback and assist Bloomberg in responding to changing market needs. This enables Bloomberg to produce the most relevant benchmarks and ensure responsiveness to the requirements of stakeholders. IACs are conducted pursuant to antitrust protocols and generally constituted on an annual basis. The IACs function solely in an advisory capacity – providing feedback and recommendations. All index product design and strategy decisions are retained by BISL. In addition to IACs, Bloomberg regularly engages less formally with index stakeholders to ensure its offerings meet their diverse and changing needs, including through direct engagements, webinars, periodic publications, and events.

Transparent, Rules-based Methodologies

BISL provides a comprehensive set of rules-based, replicable indices with clearly defined objectives of representativeness and investability. The methodology documents describe all material aspects of the indices, are designed to be complete and fully replicable, and are published on BISL's website for anyone to review.

Rules-based Methodologies. BISL's index methodologies facilitate systematic index determination minimizing the use of expert judgement or discretion in BISL's benchmark determination process. In the limited situation in which expert judgment or discretion is required, BISL undertakes to be consistent in its application, *with recourse to written procedures outlined in methodology documents and procedure manuals*. In certain circumstances exercises of expert judgment or discretion are reviewed by senior members of BISL management and Bloomberg Compliance teams, and are reported to the PROC.

Periodic Review of the Methodology. BISL will review the indices (both the rules of construction and data inputs) on a periodic basis, not less frequently than annually, to determine

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[5] See IOSCO Principle 14, Submitter Code of Conduct.

whether they continue to reasonably measure the intended underlying market interest, the economic reality or otherwise align with their stated objective. More frequent reviews may result from extreme market events and/or material changes to the applicable underlying market interests.

Prior to any material change that might meaningfully impact users, Bloomberg consults more broadly with stakeholders, where appropriate, before a recommendation is presented to the PROC for approval. This concept of shared ownership enables BISL to produce the most relevant indices and helps ensure responsiveness to user needs.

Any resulting change to the methodology deemed to be material will be subject to the review of the PROC under the oversight of the BOC, each of which committees shall be provided all relevant information and materials it requests relating to the change. Material changes will be reflected and tracked in updated versions of the methodology.

Potential material changes related to the indices will be made available in advance to affected stakeholders whose input will be solicited. The stakeholder engagement will set forth the rationale for any proposed changes as well as the timeframe and process for responses. Subject to requests for confidentiality, stakeholder feedback and responses will be made accessible upon request.

Distribution of Indices

Bloomberg Indices are broadly distributed through a variety of internal use licenses, financial product licenses, and redistribution licenses. Bloomberg Indices are also available via the Bloomberg Professional Services, including the BLOOMBERG TERMINAL® service. The index website makes available information on the indices, including the index methodology documents and factsheets.

II. Benefits of the Current IOSCO Principles Framework

The index industry is diverse. Index providers have many different business models, and indices themselves are used for different reasons, including tracking performance, benchmarking, and use in other products.

Some business models may be susceptible to conflicts of interest and opacity. Others may be less so. The challenge for regulators is to target regulation according to risk and avoid imposing unnecessary costs on investors or burdens on providers. We suspect the reason that the Request focuses on *potential*, as opposed to actual, demonstrated harm is, in part, because changes in the marketplace and regulatory changes – including LIBOR reforms – have done much to address potential conflicts.

While the banks that dominated the index space fifteen years ago had greater risk of conflicts – owing to their ownership of assets within the index – the movement to indices owned by exchanges and data providers, which neither own nor manage assets, have reduced potential

conflicts. During this time, the market for indices has organized itself around – and now aligns with – the IOSCO Principles, a set of governance and control standards designed to address conflicts of interest and promote transparency, benchmark quality, and accountability in the benchmark-setting process.

The IOSCO Principles were tailored to address certain identified risks, most notably:

- Risks associated with submissions to benchmarks, in which the submission of data inputs by contributors may be subject to certain vulnerabilities if not addressed by appropriate controls and policies.
- Risks associated with the content and transparency of methodologies, in which risks arise if the procedures and policies concerning the index methodology do not contain adequate detail; and
- Risks associated with the governance processes, in which conflicts of interest at both the submitter and administrator levels can create incentives for abusive conduct.

The IOSCO Principles were developed to address these vulnerabilities in a manner that is tailored to the business and meant to be applied flexibly in proportion to the level of risk presented.[6] Generally, responsible index providers should voluntarily comply with the IOSCO principles.[7] At a high level, the IOSCO Principles are focused on:

- (1) **Governance** - ensuring that benchmark administrators will have appropriate governance arrangements in place;[8]
- (2) **Quality of the Benchmark** - promoting quality and integrity of benchmark determinations through the application of design factors that result in a benchmark that reflects a credible market for an interest measured by that benchmark;[9]
- (3) **Quality of the Methodology** - promoting the quality and integrity of methodologies by setting out minimum information that should be addressed within a methodology, which should be published or made available so that stakeholders may understand and make their own judgments concerning the overall credibility of a benchmark;[10] and
- (4) **Accountability** - establishing complaints processes, documentation standards and audit reviews that are intended to provide evidence of compliance by the administrator with its quality standards.[11]

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[6] *See* Principles for Financial Benchmarks Final Report, IOSCO, at 4 (July 17, 2013).
[7] In addition to the IOSCO Principles, the BMR applies to administrators, contributors and users of benchmarks in the UK. The BMR was modelled on the IOSCO Principles. Like the IOSCO Principles, the BMR aims to establish a framework to ensure benchmarks are robust and reliable, and to minimize conflicts of interest in benchmark-setting processes. The UK BMR covers indices used as benchmarks across asset classes, including fixed income, equity, interest rates, FX and commodities. BISL is authorized by the UK's Financial Conduct Authority to conduct benchmark administration under the BMR. BISL may be found on the FCA's register and remains available for use by EU supervised entities during the EU BMR's transition period, as extended.
[8] See IOSCO Principles 1 -5.
[9] See IOSCO Principles 6-10.
[10] See IOSCO Principles 11-15.
[11] See IOSCO Principles 16-19.

Due to the high level of alignment with the IOSCO Principles by market participants, conflicts of interest or any prospect of "front running" – as mentioned in the Request - are extremely unlikely for almost all index providers, but especially for those providers that do not:

- Have assets under management;
- Trade in the instruments underlying the indices; or
- Make trade recommendations.

The changes brought about by the wide adoption of the IOSCO Principles have not taken place in a vacuum. Indeed, those changes occurred within a regulatory structure that was already robust and remains so. Invariably, index providers deal extensively with regulated businesses: banks, fund managers and investment advisors. Index providers do not directly serve the retail market; no participant in the retail market transacts directly with the administrator of any index. Rather, any retail transaction ultimately takes place under the supervision of a regulated entity subject to suitability standards or a fiduciary obligation.

The present market for indices is robust, diverse, and serves the needs of funds, advisers, investors, and other market participants. A diverse offering of indices has helped to broaden investors' access to a range of lower-cost and more accessible diversified investment strategies.

Given the variety of use cases, Bloomberg recognizes that no single benchmark design is universally appropriate for all investors. BISL offers a broad, innovative and evolving suite of indices from which investors, advisers, and funds can select. Customers can also customize the most appropriate benchmark for their unique portfolio needs. As an index provider, Bloomberg remains impartial to the benchmark selection decisions made by customers and investors.

Under the current environment, index administrators offer a high degree of transparency and have taken steps under the IOSCO Principles to eliminate and mitigate conflicts of interest and thereby ensure continuing availability of high-quality benchmarks. Robust competition among index providers has resulted in a diversity of offerings that are well-suited to meet the needs of advisers, funds, and investors. The Commission should carefully consider any changes in this space, as any change has the potential to cause significant disruption to the services currently provided. Such disruption could increase costs that will ultimately be borne by the end investors.

III. Index Providers Are Not Investment Advisers

The Investment Advisers Act of 1940 (the "Advisers Act") regulates investment advisers by requiring certain entities that are compensated for advising others about securities investments to register with the SEC and conform to regulations designed to protect investors. Central to the regulatory framework, SEC-registered investment advisers have a broad fiduciary duty to act in the best interests of each of its clients. In addition to the fiduciary obligation and the requirements flowing from this duty, investment advisers are subject to a variety of rules that are designed to eliminate or mitigate risks and conflicts present in the provision of investment advice.

The Investment Company Act of 1940 (the "Investment Company Act") regulates the organization of companies, including mutual funds, that engage primarily in investing, reinvesting, and trading in securities, and whose own securities are offered to the investing public. The regulation is designed to minimize conflicts of interest that arise in these complex operations. The Act requires these companies to disclose their financial condition and investment policies to investors when stock is initially sold and, subsequently, on a regular basis. The focus of this Act is on disclosure to the investing public of information about the fund and its investment objectives, as well as on investment company structure and operations. Simply put, these laws are tailored to address the risks associated with the businesses they cover—investment advisers and investment companies. Index providers are neither investment advisers nor investment companies.

By contrast, the IOSCO Principles provide a tailored set of governance and control standards designed to address conflicts of interest and promote transparency and accountability in the benchmark administration process. These Principles, which U.S. regulators helped develop, were specifically designed to address the needs and risks associated with the provision of indices. While the Investment Advisers Act and Investment Company Act are oriented toward the provision of investment advice and fund disclosure, the IOSCO Principles were crafted for a different purpose and have requirements that are better suited for the regulation of benchmark administrators.

The Advisers Act defines an investment adviser as "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities…"[12]

As the Commission notes, this definition includes three important elements for determining whether a person is an investment adviser: (i) the person provides advice, or issues analyses or reports, concerning securities; (ii) the person is in the business of providing such services; and (iii) the person provides such services for compensation. Each of these elements must be met in order for a person to be deemed an investment adviser.[13]

Section 202(a)(11)(D) of the Advisers Act excludes from the definition of investment adviser "the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation." The publisher's exclusion has been recognized and applied broadly through Staff no-action letters in a variety of contexts, including video information networks, telephone advisory services, and e-mail advisory lists.[14]

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[12] See Advisers Act § 202(a)(11).
[13] Request at 11.
[14] See, e.g., Reuters Info. Servs., SEC No-Action Letter, 1991 WL 176539 (Jan. 17, 1991) (video information networks); Hugh A. Hoffman, SEC No-Action Letter, 1995 WL 529276 (May 17, 1995) (900 number); Mary Lee Bostaris, SEC No-Action Letter, 1993 WL 101686 (Mar. 25, 1993) (900 number); Russell H. Smith, SEC No-Action Letter, 1996 WL 282564 (May 2, 1996) (e-mail address list).

In the seminal Supreme Court opinion addressing the publisher's exclusion, *Lowe v. SEC*, 472 U.S. 181 (1985), the Court recognized that "Congress was primarily interested in regulating the business of rendering personalized investment advice … [but also was] plainly sensitive to First Amendment concerns, [and] wanted to make clear that it did not seek to regulate the press through the licensing of non-personalized publishing activities." The Court examined a newsletter containing "general commentary about the securities and bullion markets, reviews of market indicators and investment strategies, and specific recommendations for buying, selling, or holding stocks and bullion."

The Court found that the publication did not fit within the central purpose of the Advisers Act because it did "not offer individualized advice attuned to any specific portfolio or to any client's particular needs." The Court noted that the "mere fact that a publication contains advice and comment about specific securities does not give it the personalized character that identifies a professional investment adviser." The Court concluded that so long as the publications "remain entirely impersonal and do not develop into the kind of fiduciary, person-to-person relationships … characteristic of investment adviser-client relationships," they would presumptively fall within the publisher's exclusion and therefore not be subject to the Advisers Act's registration requirements. Finally, the Court noted that it was "significant that the Act repeatedly refers to 'clients,' not 'subscribers'."

In analyzing the statutory language, the Court also determined that publications are "bona fide" if they are "genuine" and "contain disinterested commentary and analysis as opposed to promotional material disseminated by a 'tout'." Publications are of "general and regular circulation" if "there is no indication that they have been timed to specific market activity, or to events affecting or having the ability to affect the securities industry." Importantly, the Supreme Court interpreted "general and regular circulation" in contrast with "hit and run tipsters" and other disguised forms of personal communications.

The Investment Company Act defines an "investment adviser" of an investment company as (A) any person who … pursuant to contract with [the investment company] regularly furnishes advice to such company with respect to the desirability of investing in, purchasing or selling securities or other property, or is empowered to determine what securities or other property shall be purchased or sold by such company, and (B) any other person who pursuant to contract with a person described in clause (A) regularly performs substantially all of the duties undertaken by such person described in clause.[15] The definition expressly excludes a person whose advice is furnished solely through uniform publications distributed to subscribers thereto…"[16]

Index providers do not engage in the business of providing advice with respect to the desirability of investing in, purchasing or selling securities or other property and are not empowered to perform any of the duties undertaken by persons that provide such advice. Consequently, index providers do not meet the definition of "investment adviser" under either the Investment Advisers Act or the Investment Company Act. Index providers also do not typically

[15] See Investment Company Act § 2(a)(20).
[16] Id.

have an agreement with the Investment Company, and therefore do not meet that prong of the definition.

In sum, we do not believe that index providers and other information providers fall within the definition of "Investment Adviser" under either the Advisers Act or the Investment Company Act. We also believe that the IOSCO Principles would provide a more appropriate foundation for a regulatory framework.

IV. The Investment Advisers Act and Investment Company Act Are Ill-Suited for Index Providers

In our view, neither the Request for Comment nor other statements by the Commission have articulated any substantive investor protection concerns or policy rationale to support recharacterizing index providers as investment advisers. Application of these regimes would represent, at best, an inherent mismatch, highly likely to produce negative externalities in the form of unnecessary regulatory burden. These costs and additional burdens will have the largest impact on new entrants to the market and smaller competitors who are not able to adjust to incremental additional regulatory burdens. Ultimately, the cost of this gross regulatory mismatch will flow to the ultimate beneficial owners of the financial products tracking affected indices, the investing public.

Conflicting Fiduciary Duties.

As explained above, index providers are not investment advisers. They do not have a fiduciary relationship with their customers and assume no role with respect to the products that reference the indices they license to others.

Most index licensees are sophisticated financial institutions with a direct fiduciary obligation or other investor protection obligations. In this framework, the licensees are best positioned to discharge their fiduciary (or other regulatory) obligations with respect to their own customers. Imposing a similar fiduciary obligation on the index provider would be confusing to the end investor, and potentially contradictory, depending on the specific use case for the index. This "dual fiduciary arrangement" would be largely unworkable for indices that have multiple users with varying or contrasting investment goals and it would provide no additional protections for investors or assurances that their best interests are being safeguarded.

Extending fiduciary obligations to index providers would be especially inappropriate in this case as index providers do not have the type of personal interactions with their customers, and especially not with the end investors, that is typically associated with a fiduciary relationship and with the obligations of an investment adviser.

Finally, applying fiduciary duty obligations to investment advisers would undermine the independence of benchmark administrators, and potentially undermine the key goals of the IOSCO Principles by introducing new potential conflicts that will inevitably arise when an index is used by two different advisers for different purposes.

Specialized, Customized, and Bespoke Indices Follow the Same Rules of Construction and Methodology as Broad-based Indices.

The Request for Comment defines "specialized" indices as those which are "customized" (modified to suit the needs of a particular user) or "bespoke" (constructed at the request or direction of a particular user).[17] In so doing, the Request for Comment creates a false dichotomy. All BISL-administered benchmark indices, even those that the Commission may have characterized as "specialized," "bespoke," or "customized" are operated pursuant to their published methodology and the same rules-based, replicable, and transparent process and subject to the same oversight and governance controls. The IOSCO Principles note that this structure reduces potential conflicts of interest – and this is particularly true for customized indices/strategies. The administration of these indices does not require any new or different level of "discretion" as compared with broad-based indices. For so-called specialized indices, licensees may provide input or request certain features but all indices, once constructed, operate and function according to the same process.

In any event, it is odd to characterize the process for the creation of specialized indices "as making active decisions in designing or administering the index." For these indices, the *customer* is requesting the creation of an index and offering input *to the index provider* on construction of the index. To turn around and say that because the index provider is receiving instructions from the customer, the index provider is somehow providing personalized investment advice to the customer makes little sense.

No Investment Discretion.

Index providers do not provide specific recommendations and they do not exercise investment discretion with respect to any account. The Request incorrectly suggests that index providers hold significant discretion in changing the constitution, purpose, or methodology of an index; when in reality, each index is transparently described through a methodology document. The index provider constructs an algorithmic methodology at the outset that indicates the index's components and weighting and how the composition will change prospectively. Any subsequent changes to the index, such as rebalancing, reconstituting, and use of expert judgment, are done in accordance with the index's published methodology.

In calculating and publishing the index, the index provider does not make any judgment as to the merits of any investment, whether it is a product tied to the index or any of its components. The process is mechanical and dispassionate: the components that satisfy the rules established for the index are included, and those that do not are excluded. These rules are set out in a methodology document that is publicly available to provide transparent insight into how indices are constructed, rebalanced and managed over time.

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[17] Request at 5.

No Right to Direct Investments and No Trading of Securities.

Licensees license an index from an index provider to replicate the index via a financial product, benchmark an active portfolio against the index, or for a number of other purposes, or for no purpose at all. Licensees are not required to do anything as a result of licensing an index, and the index provider has no corresponding right to direct the trading or the investment decisions of the licensee. The Request indicates that index providers or indices have the ability to compel advisers or funds to purchase, sell, or hold securities.[18] A fund or adviser, in making a decision to track or benchmark to a particular index, have made a decision that is independent of, and not related to, that of the index provider's decision to offer such an index. At all times, the adviser, fund, or licensee maintains all rights to direct investments and index providers have no corresponding ability to direct trading.

No assets under management.

BISL, and many index providers, do not provider advisory services and do not manage assets. They therefore do not have any regulatory assets under management,[19] and they therefore lack one of the key features that is the hallmark of being an investment adviser.

V. Incentivizing Alignment with the IOSCO Principles

Index providers typically operate across asset classes on a global basis. Building on existing, proven international standards will minimize regulatory fragmentation and arbitrage, as well as market fragmentation.

We believe that any regulation should be appropriately tailored and applied consistently across markets. Consistent regulation across jurisdictions will provide for more efficient services and can result in lower costs to end investors. As noted above, the application of an ill-suited regulatory framework, such as the Advisers Act, will result in increased compliance, administrative, and operational costs, will create substantial confusion regarding conflicting or overlapping fiduciary obligations, and will provide no discernable corresponding benefit to investors.

The investment adviser and investment company regimes were not tailored to index providers and should not be simply copy-pasted where they will not fit. The Commission should instead consider incentivizing market participants to build upon the work that has been done to date under the framework of the IOSCO Principles. We would encourage the Commission to consider a broad non-exclusive exemption from regulation as an investment adviser for those index providers that align with the IOSCO Principles.

As noted above, the IOSCO Principles were developed to address risks specifically applicable to index providers, and the framework has been tailored to meet the needs of both the

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[18] Request at 6.
[19] *See* Form ADV Instructions at 21-24, available at https://www.sec.gov/about/forms/formadv-instructions.pdf.

administrators as well as market participants. As the IOSCO Principles are already applied on a global basis, these principles would not further fracture the global regulatory framework or result in divergent or conflicting obligations. Application of the IOSCO Principles would not result in an unlevel playing field among IOSCO-aligned index providers or diminish the ability of index providers to compete in the global market for indices. Accordingly, we believe a non-exclusive exemption from regulation for index providers that align with the IOSCO Principles would be the most appropriate path forward. In addition, we believe that the Commission could take steps to manage any remaining risks associated with conflicts of interest and transparency through additional disclosures applicable to funds and advisers and through adjustments to the existing framework in which funds and advisers exercise oversight of third-party service providers.

Conclusion

We appreciate your willingness to consider comments on this issue and would be pleased to discuss any questions that you may have with respect to this letter. Thank you.

Very truly yours,

Steve Berkley
Chief Executive Officer
Bloomberg Index Services Limited