16 August 2022

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To the U.S. Securities and Exchange Commission (hereafter the "SEC"), pertaining to File Number S7-18-22 (*Request for Comment on Certain Information Providers Acting as Investment Advisers*):

From the perspective of Syntax Indices, an index provider, below are comments responding to the questions in S7-18-22 (hereafter the "Request for Comment").

It is our view that, in an arrangement where a fund or an investment adviser thereto claims to be guided by the composition and/or performance of an index, the fiduciary responsibility to investors in the fund cannot logically reside with the index provider unless the index both 1) is administered without influence by the fund and 2) follows an undisclosed and/or highly discretionary methodology.

To be clear on the terminology:

- "Discretion" as used in the Request for Comment seems to refer alternately to 1) personalizing the methodological design of an index to meet the preferences of a certain client or user, and 2) customizing the constituent positions comprising, or the performance measurements representing, an index to meet the preferences of a certain client or user in ways not directed by the index's methodology. Within the Request for Comment, the former (1) defines a "bespoke" index while the latter (2) defines a "customized" index, and both fall under the category of "specialized" indices as opposed to "broad-based" indices.

- By contrast, when referring to a "highly discretionary methodology", we mean the index provider exercising a great degree of what the International Organization of Securities Commissions (IOSCO) *Principles for Financial Benchmarks* (hereafter the "IOSCO Principles") call "expert judgment" by an "administrator", albeit potentially falling outside what the IOSCO Principles would deem appropriate, particularly if the allowable parameters of the customization have not been described in the published methodology of the index.

Our reasoning in the tracing of fiduciary responsibility is as follows: first, if an investment company or an investment adviser exerts control over the index, then the index provider is not "empowered to determine what securities or property should be purchased or sold by the fund" as mentioned in (III)B(i) of the Request for Comment as an element of the investment adviser definition; instead that power and the fiduciary duty it implies lie with the investment company or investment adviser exerting the control.

Second, if the index provider adheres to a published and sufficiently transparent methodology (including cases where the methodology was created as a bespoke index that was not subsequently customized outside of published changes to its methodology), then the index provider is again disempowered, in this case by the deterministic methodology rather than by interference by external parties. In this second case, the investment company or investment adviser still holds the fiduciary duties around choosing to track the particular index and reflect its allocations to various degrees of precision.

The below matrix lays out the four possibilities:

	Fund manager interferes in administration of the index	**Fund manager does not interfere in administration of the index**
Index methodology published and appropriately limiting discretion	The methodology is not being followed and is therefore invalid; regulation should prohibit this.	This is the normal practice; regulation should support this.
Index methodology unpublished and/or highly discretionary	The fund manager is engaging in active management; regulation should not consider this truly tracking an index.	The index provider is assuming fiduciary responsibility in lieu of the fund manager; regulation should prohibit this.

The foregoing dovetails with the following facts in the indexing industry:

- Typically access to the daily data for a given index is not exclusive to the client(s) who may use it in management of a fund, but may also be licensed by other subscribers. Furthermore, typically the delivery of such daily index data is via a standard set of file formats familiar to the subscribers of other indices published by the same index provider. This means that the index data is available as “uniform publications distributed to subscribers thereto”, as mentioned in (III)37 of the Request for Comment as an exclusion from the definition of an investment adviser to a fund. Upon request, Syntax Indices can provide examples of our standard file formats (live and *pro forma* constituent-level files, index-level files, etc.) to illustrate this point.

- An index provider of significant size usually licenses indices to multiple clients, and typically some of those clients are in competition with one another for investors’ allocations of their assets. Furthermore, an index provider that provides bespoke index design and calculation services is likely to provide some indices whose investment theses oppose one another, and any bespoke design or customization of an index must happen at the level of the index rather than at the level of each user of the index. An index provider cannot fulfill fiduciary duties to multiple subscribers of an index whose investment needs contradict one another.

It follows that the distinction between “bespoke” and “customized” as defined for purposes of this Request for Comment is key to the use case of a fund manager referring to the index. A bespoke index can properly serve as a basis for a passively managed fund, whereas a customized index, being ultimately subject to the control of the customizing client rather than subject to a published methodology, would render any fund tracking it an actively managed fund.

In cases where the index is not customized and a fund can claim passive management by tracking the index, the public accessibility of and administrative adherence to a transparent methodology governing the index that determines investment allocations and/or returns ought to be the keystone of the SEC's regulatory approach to the index provider.

To further clarify: we do not mean that the distinction between "specialized" and "broad-based" indices should be considered relevant, as is asked in item (II)18 of the Request for Comment. All such index methodologies exist on a spectrum that defies clean categorization. While a market capitalization-weighted index of the 3000 largest US-listed securities would clearly qualify as "broad-based", and a weight-optimized index of 50 securities chosen for their volatility and dividend characteristics would clearly qualify as "specialized", there are many methods of classifying industries and engagements therein, weighting by simple or complex algorithms, etc. that fall in-between the two extremes.

For example, Syntax Indices publishes a series of "broad-based" indices that match the constituents of major benchmarks while applying a proprietary Stratified Weighting scheme based on Syntax's classifications of companies into economic sectors. The proprietary, licensable sector classifications that drive this alternative weighting scheme could render the associated index "specialized" even though the objective is to provide broader diversification of business risks across economic sectors, not to optimize performance or emphasize any narrow portfolio characteristics.

In conclusion, we at Syntax Indices see the most logical and fruitful route of regulation as focusing not on any investment adviser status of an index provider, but instead on the disclosure and integrity of the index methodology that allows the fund the benefits of passive management. The existing IOSCO Principles can serve as a good starting place for the SEC's design of such regulation.

Thank you for considering these comments.