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

Submitted via email: [rule-comments@sec.gov](mailto: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)<sup>1</sup>**

Dear Ms. Countryman:

Bloomberg L.P.<sup>2</sup> 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 pricing services, 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 “Request”).

Our response to the Request represents the views of Bloomberg with respect to the Bloomberg Evaluated Pricing (BVAL) service, an independent pricing service which provides an evaluated price for a broad spectrum of financial instruments, including liquid and illiquid bonds and other instruments.

### **About the BVAL Service**

The BVAL service provides representative prices on a daily basis for over 2.5 million securities across all asset classes, including thinly-traded and hard-to-price fixed income securities. The BVAL service provides independent, objective third-party valuations that draw on market data contributed from thousands of market participants that is then combined with market-leading analytics. The extensive use of high-quality market data is the main driver of the BVAL service’s innovative and quantitative approach.

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<sup>1</sup> 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>.

<sup>2</sup> Bloomberg L.P. is a global leader in business and financial information, delivering trusted data, news, and insights that bring transparency, efficiency, and fairness to markets. The company helps connect influential communities across the global financial ecosystem via reliable technology solutions that enable our customers to make more informed decisions and foster better collaboration.

*BVAL Prices.* The BVAL price is derived from a variety of contributed sources and the application of a sequence of algorithms that “rationalize” the available market data.

If current or relevant market pricing data (such as trades and quotes) is available for a security, Bloomberg’s models generate a mark-to-market price based on the available data. If market pricing data is not available or is insufficient, Bloomberg identifies comparable securities based on, for example, industry, credit quality, and the duration of the security, and derives a BVAL price by using the prices of those comparable securities analyzed through various correlation models.

The models are based on industry-standard valuation models and models published in academic research or white papers. BVAL evaluators also monitor data inputs, and, in certain instances (typically in the case of illiquid instruments), may adjust the market data incorporated into the model.

BVAL employs a quality control process that includes algorithmic verification of incoming data and error detection prior to model use, as well as evaluator review of material intraday price movements with a data-outlier approval process supported by an audit trail.

Bloomberg provides valuations at various times globally, depending on the instrument, usually coinciding with the end of the business day.

*Transparency.* Bloomberg also provides customers with information about the pricing methodologies used across various asset classes.<sup>3</sup> In this way, the BVAL pricing service provides transparency on how its evaluated prices are produced, explaining the data inputs and methodologies used.

*Rigorous Data Collection Process.* BVAL utilizes data from TRACE, MSRB, exchanges and broker quotes, and filters and verifies this data further for ongoing quality and consistency.

*BVAL Score.* The BVAL score is a proprietary and innovative metric designed to gauge the amount and consistency of market data used in BVAL’s models. The Final BVAL score is measured on a scale of 1 (the lowest) to 10 (the highest). The BVAL score changes dynamically as additional market data becomes available for a particular security, and thus provides users with yet additional – and timely – transparency regarding the quality of the market data underlying each BVAL price.

*Data Consistency and Operational Efficiencies.* BVAL offers data consistency to market participants. All market participants, including traders, portfolio managers and researchers, can

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<sup>3</sup> The BVAL price is available to Terminal customers for no additional fee. BVAL is also available for additional cost to customers who subscribe to Bloomberg’s Data License product (which, as compared to the user desktop license available via the Terminal, allows customers to use and share the data within the customer’s firm), based on the number of securities for which the subscriber wishes to receive BVAL prices. This letter refers to Data License subscribers as “subscribers,” and to all BVAL customers (Terminal customers as well as Data License subscribers) as “customers.”

utilize the same valuations that are being used in the mid- and back office, and thus can achieve operational efficiencies.

*Price Challenge Process.* BVAL subscribers can issue a challenge to a single security, group of securities or a sector. The challenge form includes free text input as well as the ability to add attachments. Challenges are generally assigned to and evaluated or reviewed (with an audit trail) by an evaluator specializing in that asset class. Subscriber challenges are typically based on one or more of the following: observations (quotations, trades) that subscribers view as more representative than the published price; sector moves or cohorts that subscribers view as indicating a different valuation; and/or a competitor pricing service provider's differing valuation.

The BVAL evaluator may respond to a subscriber challenge generally by either affirming the published price (*i.e.*, the provided information is reviewed and the challenge is rejected), or by incorporating the additional information provided by the subscriber into BVAL's models.

All challenge resolutions and any changes to input data or algorithm methodology that flow from the validation process are reflected in future valuations; BVAL published prices are never restated, amended, or recalculated retroactively.

### **Benefits of Independent Pricing Services to the Industry**

Since the financial crisis, there has been a push across the financial markets by securities market and prudential regulators, and asset owner, asset manager, clearinghouse, prime broker and broker-dealer risk managers to have stricter controls around mark-to-market practices as well as understanding the quality of asset valuations. Investment decision makers, research analysts and underwriters are integrating third party valuation data within their assessment of risk and return. Trade execution professionals are leveraging evaluated prices to bundle a variety of liquid and less-liquid (assets) securities into a "portfolio" or basket to use data, analytics and communication tools to efficiently affect a single-priced electronic transaction – where pricing and trading each constituent asset may not be possible.

Evaluated pricing services are also used in connection with "net asset value" ("NAV") determinations. Registered investment companies are required to calculate the NAV, which includes valuation of their holdings. In addition, funds, advisers, and other market participants frequently require or rely upon the calculation of a NAV for a variety of reasons, including valuations, redemptions, tax calculations, and reporting. Registered investment companies and other market participants frequently retain the services of third-party pricing services to inform these valuations.

Pricing services provide uniform, generalized pricing information to their users. These prices follow the established methodology and are not tailored to or personalized for any particular user.

*Data Shows Fragmentation of Valuation Functions in Response to Structural Market Shifts.*

While it could be argued that in the past advisers themselves once performed many of the functions necessary to value their investments, they in fact relied heavily on the support of third parties for certain valuations, many of whom were themselves engaged in a variety of capital markets activities, and thus prone to the potential for conflicts of interest. Today, we see those tasks, that were consolidated within such third-party entities, splintered into distinct index providers, valuation services, model providers, risk managers, data analysts, and many more. Competition and this trend toward specialization and professionalization of these distinct tasks has increased investor protections by reducing the actual and any appearance of conflicts of interest and has resulted in the prominence of pricing services that produce independent, transparent, and objective prices.

This is a logical (and desirable) response to a fundamental change in the securities markets – the explosion in the number of securities requiring end-of-day evaluated prices. In the US, according to the FINRA TRACE Fact Book, the number of TRACE Eligible (active) issues for Securitized Products, Agencies, and Corporate Debt increased 41%, led by corporate debt which increased 464%, from 2012 – 2021.

The imposition of an investment advisory regime on pricing services at this time appears particularly unnecessary given these changes in market structure and the reduction in actual or potential conflicts of interest with respect to pricing services.

**The Advisers Act Framework, If Applied to Pricing Services, Would Not Address Any Problem, Is Ill-Suited to the Underlying Activity, and Would Not Serve the Interests of the Market or Investors**

Although the definition of “investment adviser” is broad and includes advising others as to the value of securities as well as the provision of analysis and reports regarding securities, the “publisher’s exclusion” excludes from this definition publishers of bona fide publications. Independent pricing services fall squarely within this exclusion.

This is generally consistent with the SEC Staff’s longstanding position, which has been articulated through no-action letters, that providers of pricing services do not fall within the scope of the Advisers Act.<sup>4</sup> The Staff’s position is consistent with the notion that the reference in the Act’s definition of investment adviser to “advice about the value of securities” was intended to capture advice as to whether a particular security is undervalued or overvalued with a view towards recommending whether to invest in such security. In contrast, a pricing service such as BVAL reflects a model driven opinion of a price based on available market information that covers thousands of securities each day – and is not presented in a manner that suggests the

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<sup>4</sup> See *EJV Partners, L.P.*, SEC No-Act. (pub. avail. Dec. 7, 1992) (relief granted to computer-based “matrix pricing” service for securities based upon a proprietary formula); *Innosearch Corp.*, SEC No-Act. (pub. avail. Sept. 12, 1985) (relief granted to software designed to permit users to value options contracts based upon theoretical pricing models); and *Marakon Systems, Inc.*, SEC No-Act. (pub. avail. Sept. 6, 1982) (relief granted to software used to calculate the present value of the estimated cash flows of an entity).

purchase or sale of any security. This conduct was not intended to be regulated under the Advisers Act, and the Staff letters acknowledge that there is no public policy benefit in doing so.

The Staff's historical position is also consistent with the seminal Supreme Court opinion addressing the publisher's exclusion, *Lowe v. SEC*, 472 U.S. 181 (1985), in which the Court recognized that "Congress was primarily interested in regulating the business of rendering personalized investment advice . . . [and not] nonpersonalized publishing activities."

Examining 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.

Pricing services such as BVAL, which offer disinterested opinions on the valuation of securities, published on a regular schedule without regard to market activity, and not operated to tout or recommend any specific transactions, clearly meet the criteria set forth in *Lowe*, and are thus entitled to rely on the publisher's exclusion.

**No Investment Adviser-Client Relationship.** Pricing services such as BVAL are designed to offer impersonal, objective information to customers. For example, BVAL's prices are published on a regular, pre-established schedule rather than in response to specific market events. BVAL covers a wide range of thousands of securities across a number of asset classes, and does not tailor its coverage to the securities or positions that any particular customer might hold. To the contrary, with respect to any particular security, the same exact BVAL pricing is available as part of the Terminal to 350,000 customers, as well as to thousands of Data License subscribers.

For all of these reasons, the relationship between a pricing service and its customers is entirely impersonal, rather than the kind of fiduciary, person-to-person relationship that is characteristic of investment adviser-client relationships.

Moreover, these various factors demonstrate the absence of any *advisory* element within the BVAL service. In particular, a user of the BVAL service does not receive any information that would be expected to lead it to a particular conclusion as to a particular investment decision. BVAL does not predict where the price of a security may be in the future, nor how any particular customer's position may be impacted by changes in a particular security's valuation. Nor is the publication of BVAL's pricing presented in a manner that suggests the purchase or sale of any security, or that a particular security is overvalued or undervalued; to the contrary, the presentation of any one of the thousands of securities covered by BVAL is entirely identical to the presentation of all others. Thus, BVAL clearly does not constitute any kind of investment recommendation or advice, but rather, merely provides *information* based on which the *user* may make these determinations. Given these facts, imposing fiduciary obligations on pricing services would impede the ability of market participants to access independent data and would not serve any interests of market participants or improve investor protection.

**No Assets Under Management.** Registration as an investment adviser under the Adviser Act generally requires an investment adviser to have at least \$100 million (or in some cases \$25 million) of "regulatory assets under management" ("RAUM"), which includes only those securities portfolios for which the adviser provides continuous and regular supervisory or management services. BVAL does not have assets under management, does not direct trading, and for that matter, does not have any knowledge of whether any of its customers hold, trade, or otherwise have any interest in the BVAL prices. The absence of each of these characteristics further underscores why the investment adviser regime is ill-suited for a pricing service such as BVAL.

**Prices can be used (or not) in any manner by the customer.** Although evaluated pricing information providers offer expert valuation services, the entity using the estimated valuation has the ultimate responsibility to determine and arrive at, through its own policies, procedures, and internal functions, a "final" valuation. Customers may integrate pricing services valuations into their valuation policies, procedures, and internal functions, but the pricing service has no insight and no control over how or whether the price is used.

It is also worth noting that the majority of customers appear to incorporate prices from multiple pricing providers into their valuations processes, further underscoring the user's ultimate discretion over valuations relevant to their holdings. According to a 2016 Aite survey and report,<sup>5</sup> there were over 12 evaluated pricing providers identified by the respondents. As of six years ago, 84% of respondents had integrated more than one evaluated pricing information provider service valuation into their policies and procedures to determine their "final valuation".

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<sup>5</sup> See Virginie O'Shea and Pablo Valderrabano, "Fixed Income Valuation Data Vendors: The Price is Right", Aite, November 3, 2016, available at <https://aite-novarica.com/report/fixed-income-valuation-data-vendors-price-right>.

**No Reason to Revise the Current Framework.** The Request does not articulate a policy rationale or current problem in the market that would be addressed by bringing pricing services in scope of the investment adviser regime. To the contrary, customers and consequently the end investors would likely be harmed by extending the investment adviser regime to pricing services, as objective and independent pricing is a key feature, not a fault, of the current framework.

**No Benefit to Investors from Additional Regulation.** Pricing services often are providing pricing data to regulated fund managers and investment advisers that are themselves subject to the SEC's existing regulatory framework with direct fiduciary duties to their end clients. Adding an additional layer of oversight and fiduciary obligations to the existing framework would not only defeat the purpose of an independent pricing service, it would also create confusion for end investors, as well as potentially contradictory obligations between the fund or adviser and the pricing service.

For instance, the Request notes that in connection with adopting Rule 2a-5 under the Investment Company Act, the SEC highlighted the "potential risks and conflicts of interest that pricing services can present in registrants' valuing of securities." However, in contrast to its proposal here, the Commission responded to these risks by requiring *registered investment companies* to establish policies and procedures for overseeing pricing services.

Accordingly, the Commission has already taken concrete and sensible steps to address a potential concern arising from the provision of pricing services by third-parties, without imposing duplicative fiduciary requirements on such services. Before deviating from that approach, the Commission should carefully consider the benefit versus harm of imposing fiduciary requirements on the third-party, and introducing a second fiduciary into the relationship.

Additional regulation would be unnecessary and would only increase costs to investors. Adding a second fiduciary into the pricing process has the potential to confuse the market and create uncertainty as to how the obligations of the pricing service interact with, or take precedence over, the interests and obligations of the fund advisers. In sum, we do not believe that pricing services fall within scope of the Advisers Act and we believe that there is no articulable benefit to the market or investors in treating pricing services as investment advisers.

### **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,



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Bloomberg L.P.