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August 16, 2022

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

Re: File Number S7-18-22: Request for Comment on Certain Information Providers Acting as Investment Advisers

Dear Ms. Countryman,

LSEG (London Stock Exchange Group plc) welcomes the opportunity to respond to the Securities and Exchange Commission's ("Commission") request for comment on "Certain Information Providers Acting as Investment Advisers" ("Request").

LSEG's Role

LSEG is a leading global financial markets infrastructure and data business, with significant operations in the United States. We play a vital social and economic role in the world's financial system. With our trusted expertise and global scale, we enable the sustainable growth and stability of our customers and their communities. We are leaders in data and analytics, capital formation and trade execution, and clearing and risk management.

LSEG is well positioned to provide insight to the Commission as a leading information provider across several of our business lines. FTSE Russell, an LSEG business, is a leading global provider of indices. For example, our Russell US index series allows investors to track current and historical market performance by specific market segment (large/mid/small/micro-cap) or investment style (growth/value/defensive/dynamic). Institutional assets valued at \$10.6 trillion are benchmarked to Russell Indices.¹ For over 30 years, leading asset owners, asset managers, ETF providers, and investment banks have chosen FTSE Russell indices to benchmark their investment performance and create investment funds, ETFs, structured products, and index-based derivatives.

Refinitiv Benchmark Services (UK) Limited ("RBSL"), another LSEG business, is the provider of more than 30 key reference rates, and calculation agent for over 40 important national and regional reference interest rates and FX reference rates in 12 different countries. RBSL is a benchmark administrator authorized under the UK Benchmarks Regulation with a robust regulatory framework. Since the Request does not focus on reference price benchmarks such as those administered by RBSL, we have focused our discussion on index providers to the more relevant FTSE Russell business.

¹ Russell Indexes - Your index matters | FTSE Russell available at <https://www.ftserussell.com/russell-indexes-your-index-matters>.

LSEG also operates a pricing service, Refinitiv Evaluated Pricing Services (“REPS”), a global evaluated pricing source covering over 2.7 million fixed income securities, derivatives, and bank loans.

Role of the Independent, Rules-Based Index Provider

FTSE Russell is an independent index provider with a robust rules-based and transparent governance framework. In practice this means that FTSE Russell indices are:

- Robust: accurately represents the underlying market and manages any conflicts of interest
- Transparent: 750+ documents published on the [FTSE Russell website](#)²
- Rules-based: the objective is to minimize discretionary judgement so that index users can closely replicate the index through knowledge of the index methodology only

Independent index providers like FTSE Russell serve a central and pivotal role in facilitating market access and investment democratization; yet the role of indices in financial markets is frequently misunderstood. FTSE Russell establishes and maintains information about a basket of securities that are designed to represent a segment of the market, a category of securities or other grouping of securities (i.e., an “index”) that can be used by market participants either as a point of comparison or as a basis for an investment strategy, or such other means as the market participant determines appropriate. FTSE Russell indices are used by clients around the world to inform asset allocation decisions, support portfolio construction, and conduct risk and performance analysis. As the shift from active to passive investing has grown, the role of an index provider has become more visible, but it remains a limited one.

Index Provider Discretion

We appreciate and share the Commission’s desire to protect investors and recognize the growth in number and variety of indices over time and specifically the development of specialized indices, in which the Commission seems particularly interested. However, we do not agree with the characterization of index providers in the Request, specifically with respect to the discretion that index providers exercise.³ In describing the operations of index providers, the Request states that

² Index resources | FTSE Russell *available at* <https://www.ftserussell.com/index/resources>

³ The Commission states: “Index providers compile, create the methodology for, sponsor, administer, and/or license market indexes. They typically determine the particular “market” (which may be a sector or other group of securities) that the index measures, the index constituents that measure that market, and the weightings that each constituent receives. Once the index is designed and its methodology is created, index providers determine the index’s level (or measurement) pursuant to that methodology. These activities leave room for significant discretion—for example, an index provider typically has the ability to make changes to the index by adding or dropping particular constituents (i.e., index reconstitution) or modifying their weighting within the index (i.e., index rebalancing), in some cases without publicly disclosing their index methodologies or rules.” Securities and Exchange Commission, Release No. IA-6050; File No. S7-18-22 (June 15, 2022), Page 4-5 (citing Paul G. Mahoney & Adriana Z. Robertson, *Advisers by Another Name*, University of Virginia School of Law (Jan. 2021), at 28, *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3767087 (“[C]ompiling an index...is an inherently discretionary exercise”).

index providers have “significant” discretion to make changes, sometimes without disclosing index methodology and rules.

FTSE Russell has implemented and is dedicated to the highest standards of governance and transparency that minimize the need for any discretionary judgement.

The addition or deletion of index constituents is dictated by FTSE Russell’s published methodologies that describe the detailed eligibility criteria of indices. The periodic modification of weights is also dictated by FTSE Russell’s methodologies. The change in composition of indices is driven by the application of methodologies with eligibility criteria and calculations and is not driven by the use of discretionary judgement of an individual or a group of individuals.

The Request suggests that the decision to include or exclude a particular security is a discretionary choice by staff of an index provider which results in the imposition of clients to transact.⁴ This is an inaccurate reflection of the practice. Index users subscribe to the methodology, which is publicly available. FTSE Russell’s methodologies do not require discretionary judgement for the inclusion or exclusion of securities in an index. The exercise of discretionary judgement is very rare and may only be used under specific conditions that are described in our published FTSE Russell governance document: [Exercise of Expert Judgement in FTSE Russell Indexes](#).⁵

Index Governance

The Commission raises potential concerns about investor protection, including conflicts of interest as well as transparency related to the operations of index providers. We share the Commission’s desire to ensure these concerns are being met.

Strong governance is key to ensure that FTSE Russell indices continue to meet investor requirements and lead global standards in indexing. FTSE Russell’s decision-making body for index changes and developments is the Index Governance Board. Further details on the governance framework are published in the [FTSE Russell Governance Framework](#).⁶

FTSE Russell’s robust governance framework has been designed to meet the requirements of the International Organization of Securities Commissions (“IOSCO”) Principles for Financial Benchmarks (“IOSCO Principles”) and provides transparency on the design, administration, and changes to index methodologies. Highlights of the framework include:

Governance

- FTSE Russell has a control and governance framework that benefits from:

⁴ Request for Comment, Page 6.

⁵ Exercise of Expert Judgement in FTSE Russell Indexes available at [https://research.ftserussell.com/products/downloads/Exercise of Expert Judgement in FTSE Russell Indexes.pdf](https://research.ftserussell.com/products/downloads/Exercise_of_Expert_Judgement_in_FTSE_Russell_Indexes.pdf)

⁶ FTSE Russell Governance Framework available at [https://research.ftserussell.com/products/downloads/FTSE Russell Governance Framework.pdf](https://research.ftserussell.com/products/downloads/FTSE_Russell_Governance_Framework.pdf)

- Established internal governance operated through bodies formed of knowledgeable, experienced employees.
- External advisory committees formed of senior, experienced market practitioners and stakeholders which provide an independent discussion forum at which to consult stakeholders on methodology changes proposed by FTSE Russell.
- FTSE Russell has an established conflicts of interest management framework to identify, report and effectively mitigate any potential conflict.

Quality of the Benchmark and Methodology

- To ensure the quality of its benchmarks, all FTSE Russell indices have a clear and transparent index methodology, which is developed by the relevant SMEs and reviewed, approved and overseen through FTSE Russell's governance framework.
- In designing each index, consideration is given to the end user's requirements, alongside the suitability and availability of the underlying market and reference data.
- All indices and index methodology documents are overseen by the FTSE Russell Index Governance Board.

Accountability

- To promote accountability, FTSE Russell has a number of policies in place which detail how index calculation issues and external events will be managed.
- FTSE Russell has an established procedure in place for the management of any queries or complaints.

FTSE Russell fully embraces the IOSCO Principles and endorses IOSCO's objective to address conflicts of interest in the benchmark-setting process, enhance the reliability of benchmark determinations, and promote transparency and openness. Further, FTSE Russell publishes a Statement of Compliance with respect to the IOSCO Principles and obtains independent assurance of those assertions by a third-party auditor.⁷

As an authorized index provider in the UK, FTSE Russell also complies with the UK Benchmarks Regulation ("BMR") framework specifically designed for index providers. FTSE International Limited has been authorised and supervised by the Financial Conduct Authority ("FCA") since June 2018, originally pursuant to the EU Benchmarks Regulation and more recently, from 31 December 2020, pursuant to the BMR. As a result, our indices are created and maintained in line with the key BMR objectives, including:

- (i) improving the governance and controls over the benchmark process, in particular to ensure that index providers avoid conflicts of interest, or at least manage them adequately;
- (ii) improving the quality of input data and methodologies of benchmarks; and

⁷ IOSCO Principles | FTSE Russell available at <https://www.ftserussell.com/iosco-principles> .

- (iii) protecting consumers and investors through greater transparency and adequate rights of redress

FTSE Russell is not an Investment Adviser under the Advisers Act.⁸

FTSE Russell does not meet the definition of “investment adviser” provided by the Investment Advisers Act of 1940, as amended (the “Advisers Act”).⁹ That definition includes three 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 to others; and (iii) the person provides such services for compensation. Each element must be met for a person to be deemed an investment adviser.

Although FTSE Russell engages with clients and receives a compensation for its services, it does not advise others on the value or profitability of securities, nor does it provide information in a manner that suggests the purchase, holding, or sale of any security. FTSE Russell, as an independent index provider, does not create investable products; rather, an index represents a segment of the market, a category of securities or other grouping of securities that the index was designed to represent. For instance, composition of the Russell 2000® Index, which measures the performance of a small cap segment of the US equity universe, is primarily driven by the evolution of the constituent's market cap size. This does not provide an assessment as to whether investors should direct funds into such companies but only a representation of this particular segment of US securities. The Request asserts that “the index provider’s inclusion or exclusion of a particular security in an index drives advisers with clients tracking that index to purchase or sell securities in response.”¹⁰ As mentioned previously, this is an inaccurate reflection of the practice. Thus, any interest by a financial institution client or their investors in particular individual securities that comprise an index fund is made at their discretion.

Further, even if FTSE Russell were deemed to meet the elements of the definition of “investment adviser,” Section 202(a)(11)(D) of the Advisers Act, commonly referred to as the “publisher’s exclusion,” would apply given that FTSE Russell’s publication of index information: (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.”¹¹ FTSE Russell’s indices are constructed by following a well-defined procedure which is impersonal and unbiased in nature; the publication of the performance of FTSE Russell’s indices takes place daily irrespective of market activity.

Potential Applicability of the Advisers Act

If the Commission were to deem index providers as meeting the definition of “investment adviser” and seek to require such providers to register under the Advisers Act, the manner of registration will matter. Given the disclosure-based principles of the Advisers Act and financial market participants’ familiarity with it, Federal, versus state level registration would be the more

⁸ 15 U.S.C. 80b.

⁹ 15 U.S.C. 80b-2(a)(11)

¹⁰ Request for Comment, Page 6.

¹¹ *Lowe v. SEC*, 472 U.S. 181, 208-210 (1985).

appropriate regime.¹² In this context, the Commission will need to determine whether, and how, to apply any minimum thresholds to registration since an index provider does not actually manage assets or have any discretionary authority for client decisions. A single Federal registration also supports ease in length of time to come into compliance and overall cost of compliance. Any registration requirement would still present the fiduciary duty conundrum of potentially double regulations where the market participant and the index provider are both regulated, adding yet another layer of regulatory oversight which does not increase any protections for the end-investor while significantly increasing compliance costs.

Additionally, if index providers are deemed to meet the definition of “investment adviser” and the Commission seeks to re-evaluate the Supreme Court’s interpretation of the “publisher’s exclusion” in *Lowe v. SEC*, the Commission should use its authority to make exemptions from registration available for specific types of index providers. For example, reference price benchmarks, such as interest rate and FX benchmarks are inherently different in form and function from the indices discussed in the Request (which describes indices commonly utilized by asset managers or fund sponsors to create investible products) and should therefore be specifically exempted.¹³

The Commission should also take into consideration the existing frameworks under which many index providers already operate and ensure alignment and interoperability.¹⁴ As mentioned previously, there are multiple frameworks which FTSE Russell and many other index providers already adhere to such as the IOSCO Principles and the BMR, which address key areas of investor protection and governance. Any rulemaking to require registration of index providers, if proposed, should be limited to such provisions of the Advisers Act that address specific policy questions such as sound governance and transparency adapted specifically to index providers, such as those included in the IOSCO Principles.¹⁵

Pricing Services

Much of the discussion above relating to index providers is equally applicable to pricing services. While Refinitiv Evaluated Pricing Service (“REPS”) maintains clients and receives compensation for its services, the function of our service is to produce a fair market value where market participants would transact given normal trading conditions. This does not constitute advising clients or issuing analysis to influence the investment decision.

REPS aggregates readily available market data, prices securities using market accepted methodologies, performs quality checks, and lastly publishing our content. To price millions of securities daily, our staff leverages automation and adheres to a rigid process. The pricing content is published and made available to REPS clients who choose to use it to price their portfolios. To the extent there is correspondence with our clients, it primarily relates to confirming how a particular security is priced. The response by our evaluators typically results in explaining the bond structure, the methodology, and the assumptive inputs.

¹² Responsive to Request question 25.

¹³ Responsive to Request question 15.

¹⁴ Responsive to Request question 32.

¹⁵ Responsive to Request question 30.



LSEG

Similar to the potential applicability of the publisher's exemption to index providers, pricing services such as REPS would also fall under the definition if the SEC were to deem pricing services as "investment advisers" under the Advisers Act. REPS provides only impersonal advice. With the evaluation process focused on pricing a broad range of securities, pricing is not tailored to specific client needs. In fact, customizing a pricing process is both time consuming, inefficient and fails to meet our clients' SLAs.

In our comment letter to the SEC on Rule 2a-5 (the Rule), REPS was supportive of the suggestion that oversight of pricing services is required by the regulated institutions that use the services.¹⁶ Since the Rule went into effect, there has been a tremendous amount of work by our service to ensure that clients meet their obligations under the Rule.¹⁷ The demands included additional due diligence meetings, conversations around pricing methodologies, transparency into the valuation, price quality such as back-testing, and addressing conflicts among other items.

Rule 2a-5 has been invaluable in addressing the fundamental aspect of what pricing services should deliver to their clients in determining the fair value of a broad range of securities. We do not believe pricing services meet the requirements for regulation under the Advisers Act nor do we see any concerns regarding the operation of such services that have not already been addressed by the Commission in Rule 2a-5.

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We hope to further engage with the SEC on the applicability of the Investment Advisers Act to information providers. We would be pleased to provide any further information or respond to any questions that the Commission or the staff may have.

Sincerely,

Claire O'Dea
Director, Government Relations and Regulatory Strategy, Americas
London Stock Exchange Group

cc: Hon. Gary Gensler, Chair
Hon. Hester M. Peirce, Commissioner
Hon. Caroline A. Crenshaw, Commissioner
Hon. Mark T. Uyeda, Commissioner
Hon. Jaime Lizárraga, Commissioner

¹⁶ Refinitiv comments on Good Faith Determinations of Fair Value *available at* <https://www.sec.gov/comments/s7-07-20/s70720-7455246-221042.pdf>

¹⁷ SEC Rule 2a-5 | Modernising fund valuation practices across the industry *available at* <https://www.refinitiv.com/en/market-data/regulatory-services/sec-rule-2a-5>