



August 16, 2022

Submitted via SEC's Internet Comment Form at: (<https://www.sec.gov/rules/submitcomments.htm>)

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

Re: File Number S7-18-22

Dear Ms. Countryman:

On behalf of our members, the Insured Retirement Institute ("IRI")¹ appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC") **Request for Comment on Certain Information Providers Acting as Investment Advisers**, RIN 3235-AM95 (the "Request")², 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"),³ including whether an information provider is acting as an "investment adviser" of an investment company under the Investment Company Act of 1940.⁴

These comments follow careful review and consideration by IRI's members on the wide-reaching and meaningful issues raised in the Request and the potential impact of future rulemaking on those issues for the industry and investors. This letter reflects our members' preliminary views on the Request. However, we expect to continue the dialogue with our members on these issues in the coming weeks, and we will submit a supplementary letter if our continued discussions yield any additional input that would be of value to the SEC as it considers whether and how to pursue rulemaking on any of the issues raised in the Request.

We appreciate the SEC's acknowledgement of and attention to the continued evolution of the securities markets and the role of various service providers in the provision of investment advice, and we

¹ The Insured Retirement Institute (IRI) is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, broker-dealers, banks, marketing organizations, law firms, and solution providers. IRI members account for 90 percent of annuity assets in the U.S., include the foremost distributors of protected lifetime income solutions, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.

² 87 FR 37254 (Jun. 22, 2022).

³ 15 U.S.C. 80b. Unless otherwise noted, all references to statutory sections are to 15 U.S.C. 80b of the United States Code, at which the Advisers Act is codified, and all references to rules under the Advisers Act are to title 17, part 275 of the Code of Federal Regulations [17 CFR 275].

⁴ 15 U.S.C. 80a-2(20).

commend the SEC for seeking comments via this Request to better comprehend how information providers operate within the asset management and securities industries. The SEC bears the burden of ensuring that investor protections adapt in a timely and appropriate manner to reflect the current marketplace, and we are hopeful that these comments will assist the SEC in discharging this critically important responsibility.

However, we strongly emphasize caution against a one-size-fits-all definition of “Information Provider,” or the three subsets of information providers identified in the Request, specifically Index Providers⁵, Model Portfolio Providers⁶, and Pricing Services⁷. A wide range of service providers could potentially fall within these very broad categories, with fundamental differences in the services they provide, how they operate, and how they partner with issuers and distributors of securities. We do not believe investors would be well-served by a regulatory framework that disregards these fundamental differences. The SEC has historically taken a ‘facts-and-circumstances’ approach with respect to these types of service providers, and for the reasons set forth below, we respectfully recommend that the SEC maintain this approach going forward rather than pursuing rulemaking along the lines contemplated by the Request.

In some cases, information providers may engage in activities that appropriately subject them to the provisions of the Advisers Act, and the Request notes that some information providers are already registered with the SEC as investment advisers and regulated as such. However, many other information providers serve important functions within the securities industry but do not provide investment advice or recommendations to investors. We do not believe Congress intended for the Advisers Act to apply to firms or individuals that do not provide investment advice or recommendations regarding securities to investors, and we would strongly oppose any proposal to extend the requirements of the Advisers Act to such firms and individuals.

One of the animating concerns of the Request appears to be reflected in the statement that particular information providers “may have an ability...to affect national markets or otherwise have a ‘national presence.’” However, any such influence by itself would not be sufficient to confer Advisers Act jurisdiction over information providers that do not come within the definition of “investment adviser” under the Act. The concept of investment advice is rooted in the relationship between advice providers and advice recipients. In the absence of such a relationship, we do not believe the Advisers Act can or should apply to providers of index information, model portfolio services, and/or pricing services.

Moreover, we respectfully question whether any investor protection purposes would be served by requiring all information providers to register under and comply with the Advisers Act. As you know, individuals who meet the definition of investment adviser under the Advisers Act are held to a fiduciary standard of conduct, which requires them to adhere to robust duties of care and loyalty and, among other things provide important and meaningful disclosures to the recipients of their investment advice. In the absence of an actual relationship between the information provider and the investor, such duties and obligations would be unnecessarily burdensome and costly for information providers while also

⁵ See *Supra* Note 2, at Sec. I.A.

⁶ *Id.* at Sec. I.B.

⁷ *Id.* at Sec. I.C.

potentially creating confusion and uncertainty for investors (who would receive disclosures from parties who would likely otherwise be unknown to them).

Finally, we also note that the SEC's existing framework provides effective, appropriate, and adequate investor protections, thereby obviating the need for further rulemaking to broaden the reach of the Advisers Act to cover information providers as contemplated by the Request. This framework encompasses the regulation of two major users of index information identified in the Request, namely, active managers that use an index as a benchmark, and index funds that seek to track an index. Similarly, the Request notes that model portfolio providers include "broker-dealers, asset managers, third-party strategists, asset allocators, and advisers." We would expect that such persons, depending on the facts and circumstances, are already be appropriately registered and regulated under the existing regulatory framework. In addition, we would expect that users of pricing services discussed in the Request, such as mutual fund advisers and fund boards responsible for making valuation determinations, are already adequately capable of addressing potential concerns regarding the oversight and evaluation of pricing services used. Accordingly, we do not immediately perceive any incremental investor protect benefit that would result from requiring information providers to register under the Advisers Act.

In conclusion, IRI respectfully recommends that the SEC refrain from undertaking rulemaking to subject all information providers to the provisions of the Advisers Act. Rather, the SEC should continue to employ a facts and circumstances approach to determine whether the Advisers Act should apply to any particular provider of index information, model portfolio services, and/or pricing services on a case by case basis.

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Thank you again for the opportunity to provide these comments. As noted above, we will plan to submit a supplementary comment letter if our continued dialogue with our members regarding the subject of the Request yields any additional information or perspectives that might prove useful to the SEC. If you have questions about our comments on the Request, or if we can be of any further assistance in connection with these important regulatory questions and considerations, please feel free to contact the undersigned at [REDACTED]

Sincerely,


Emily C. Micale

Director, Federal Regulatory Affairs
Insured Retirement Institute