



VIA ELECTRONIC SUBMISSION

August 16, 2022

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

Re: Request for Comment on Certain Information Providers Acting as Investment Advisers

Dear Ms. Countryman:

Invesco Ltd. (“**Invesco**”) appreciates the opportunity to provide comments to the U.S. Securities and Exchange Commission (the “**SEC**” or “**Commission**”) on the request for comment (“**Request for Comment**”) regarding whether certain information providers’ activities, in whole or in part, may cause them to meet the definition of “adviser” under the Investment Advisers Act of 1940 (the “**Advisers Act**”) or the Investment Company Act of 1940 (the “**Investment Company Act**”), and whether any regulatory action by the Commission would be appropriate to address market risk and investor protection concerns raised by the activities of such information providers.¹

Invesco is a leading independent global investment manager with approximately \$1,390.4 billion in assets under management as of June 30, 2022. Invesco is a global company focused on investment management, and our services are provided through a wide range of strategies and vehicles, including open-end mutual funds, closed-end funds, exchange-traded funds (ETFs), collective trust funds, separately managed accounts, real estate investment trusts, unit investment trusts and other pooled vehicles. Invesco’s indirect wholly owned U.S. registered investment adviser subsidiaries, including Invesco Advisers, Inc. and Invesco Capital Management LLC (“**ICM**”), advise or sponsor mutual funds, ETFs, closed-end funds and unit investment trusts, including over 200 index-tracking mutual funds and ETFs. Invesco Indexing LLC (“**Invesco Indexing**”), an indirect wholly owned U.S. subsidiary of Invesco formed in 2017, is an independent index provider that develops and licenses customized, proprietary indexes and benchmarks for a wide range of clients, including registered funds, investment advisers, separate accounts, and insurance-based products.

I. Executive Summary

As the sponsor of over 200 index-based ETFs and mutual funds, and a leading innovator in the industry for over 17 years, Invesco has an extensive history of engaging with the

¹ See Request for Comments on Fund Names, SEC Release Nos. IA-6050 and IC-34618 (June 15, 2022), available at <https://www.sec.gov/rules/other/2022/ia-6050.pdf>. Terms defined in the Request for Comment have the same meaning when used in this letter unless otherwise defined herein.



Commission on the varied nuances of the regulatory framework applicable to asset managers and index funds. Given our extensive history in developing and advising index funds and our more-recent experience in establishing Invesco Indexing, we believe that Invesco has a unique perspective on many of the questions raised in the Request for Comment.

At the outset, we note that we are supportive of the Commission’s efforts to examine the important role that information providers serve within the asset management industry, and we agree with many of the Commission’s observations regarding the continued growth of passive, index-tracking investment products, the critical role that index providers (and other information providers) serve in this ecosystem, and the potential conflicts of interest associated with certain information provider activities. In fact, as further discussed below, Invesco dedicates considerable resources to the oversight of the information providers whose services we utilize, in an effort to address many of the same concerns raised by the Commission. In this regard, we believe that some degree of regulation of information providers, if appropriately tailored to the specific roles that information providers serve, could benefit the asset management industry and investors in index-tracking investment products. We would welcome the opportunity to engage with the Commission and/or lawmakers on the shape that such regulation may ultimately take.

However, consistent with long-established interpretations of the relevant statutory terms, we do not believe that information providers act as “advisers” within the meaning of the Advisers Act or the Investment Company Act when providing customary services in the form and method generally present in the industry. Furthermore, we have significant concerns that expanding the currently accepted definitions of “adviser” under these Acts to encompass these information providers will lead to increased costs and other unintended consequences for investors, which vastly outweigh any potential benefit. While Invesco strongly supports the positions stated in the Comment Letter submitted by the Investment Company Institute (the “ICI”), Invesco is writing separately to emphasize its views, based on our direct experience both working with a wide range of information providers and developing proprietary indexes.

I. Index Providers Should not be Classified as Advisers under the Advisers Act

In the Request for Comment, the Commission analyzes the “investment adviser” status of index providers and other information providers under the Advisers Act, including the key elements of and exclusions from the definition of investment adviser. In relevant part, the Commission questions whether index providers are appropriately relying on the “publisher’s exclusion” to the investment adviser definition (as interpreted by court actions) and suggests that certain aspects of index provider operations may cast doubt on the availability of this exclusion. These factors include the use of “discretion” by index providers,² and the development of “specialized indexes” that are tailored to meet the needs of individual clients.³ As further discussed

² See Request for Comment at page 4 (“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”).

³ We note that the Commission defines specialized indexes to include both “customized” and “bespoke” indexes. See Request for Comment at page 5, note 6 (“Customized” indexes are those where an existing index is modified to suit the needs of a particular user, e.g., removing from a securities index all securities issued by companies engaged in a particular trade or business, and “bespoke” indexes are those where an index provider constructs an index at the request or direction of a particular user).



below, Invesco does not believe that index providers are acting as investment advisers under the Advisers Act and does not believe that regulating index providers as investment advisers would ultimately work to the benefit of investors that seek exposure to index-based products.

A. The Activities of Index Providers are Distinguishable from Advisory Activities and Fall Within the Publishers Exclusion

Invesco believes that the fundamental role of an index provider is to generate and provide its clients with a dataset, in accordance with a generally transparent, rules-based and stable methodology. While this dataset is typically comprised of securities (or other instruments), along with their corresponding weights and values, index providers expressly do not make any recommendation regarding an investment in the securities comprising the index, or recommend employing the methodology underlying the index for any investment purpose.⁴ At all times, index providers provide data services focused on the maintenance and delivery of an index, without regard to any investment decisions made by clients who license one of their indexes. Put another way, it is not possible to invest directly in an index, and a decision to offer an index-tracking investment product in the United States is almost always intermediated and scrutinized by a separate SEC-regulated entity.⁵ In this regard, we believe that an index provider's production and dissemination of index data is impersonal, disinterested, and squarely within established understandings of the publisher's exclusion to the definition of "adviser" under the Advisers Act.

Invesco does not believe that the appropriate exercise of discretion by index providers, or the extent to which index providers offer specialized indexes, alters this analysis. As noted above, in generating index data, index providers operate pursuant to transparent, rules-based methodologies that, by design, limit the exercise of the index provider's discretion. These rules-based methodologies govern nearly all aspects of index maintenance and calculation, including (but not limited to): constituent selection and weighting, rebalance and reconstitution schedules, and intra-period additions or deletions, which may incorporate corporate actions and market events. In administering an index, index providers, by design, are *not permitted* to make the type of active decisions commonly associated with advisory activities (i.e., index providers are not "picking stocks" or "actively managing" an investment portfolio). Instead, index providers are bound to administer each index in accordance with a previously established methodology. In our experience, index providers almost always follow robust governance and oversight frameworks designed to ensure the integrity and independence of this process.⁶

While index providers may exercise professional expertise when designing a particular index (i.e., determining how to design the rules that best reflect a particular theme, sector, factor, or other exposure in a dataset), we do not believe this has material bearing on the analysis above.

⁴ We note that common index license contract provisions expressly state this fact and require licensees to prominently disclose this arrangement in any materials for index-tracking investment products (e.g., "[the index provider] makes no representation or warranty, express or implied, to the owners of [the index tracking fund] or any member of the public regarding the advisability of investing in securities generally or in the [index-tracking fund] particularly, or the ability of the index to track general stock market performance.... [The index provider] has no obligation to take the needs of the [the adviser] or the owners of the [index-tracking fund] into consideration in determining, composing or calculating the index.")

⁵ See *infra* Section 2 for a discussion of Invesco's oversight of index providers in connection with managing passive funds.

⁶ For example, refer to Invesco Indexing's "Indexing Control and Accountability Framework" and "Benchmark Statements" available at <https://www.invescoindexing.com/>.



Regardless of how index methodologies are initially developed, including whether the overall index thesis may be driven by client demand or some level of input, the creation and dissemination of index data remains impersonal and disinterested. This is the case for both specialized and widely used indexes, and we do not believe the index provider's role is materially distinguishable in these differing situations. In either case, an index provider does not take a view as to the advisability of investing in the securities that comprise the index and is not involved in the management of an index fund or investment product that tracks the index. If anything, to the extent that index providers incorporate specific methodology parameters at the request of a client (such as an adviser to an index-tracking fund), we believe this underscores the fact that the *index provider* is not engaged in advisory activities or espousing a view on any particular investment strategy. The index provider is instead *responding* to the advisory activities or views of other entities.

Finally, we would note that, while index providers do maintain the ability to modify index methodologies, we do not believe that this suggests that index providers are engaged in advisory activities. It is important to recognize a critical distinction between customary index rebalances and significant index changes (such as modifications to the ruleset and methodology that drives the index composition). An index rebalance or reconstitution is an objective, rules-based, time-bound event that does not incorporate any discretion from any party. Such rebalances and reconstitutions are by far the most common drivers of any changes to the securities that make up an index over time, and index providers often rebalance and reconstitute indexes on predetermined schedules known to the index licensees. In contrast, index methodology changes, which may necessitate some level of professional judgment on the part of the index provider, are typically very rare. In our experience, methodology changes may be driven by a variety of factors, most often changes in market dynamics or index inputs (which may, at times, be brought to the attention of the index provider by clients or other market participants) that result in an index no longer reflecting its intended theme or focus. Similarly, market events that significantly impact particular constituents of an index (foreign sanctions, for instance) may require an index provider to revisit the underlying methodology overall. Methodology changes are themselves governed by robust policies and procedures that require consultation periods,⁷ which are designed to promote transparency and ensure that clients and other market participants (which may utilize the index to perform an advisory role) are able review and comment on potential changes. Even with a methodology change, the index provider expresses no view on the advisability of investing in the index or its underlying securities. Collectively, we believe this underscores the fact that index providers do not act in advisory capacity for their clients.

B. Requiring Index Providers to Register as Investment Advisers Would Increase Costs to Investors Without Providing an Offsetting Benefit

Invesco does not believe that requiring index providers to register as advisers under the Advisers Act would provide a benefit to investors. At the outset, while the Request for Comment identifies several potential conflicts of interest associated with index provider activities (such as front running of trades), we note that the Commission does not identify any actual harm that

⁷ For example, Invesco Indexing has adopted a "Changes to Benchmark Methodology and Cessation Policy" (available at <https://www.invescoindexing.com/>), which governs Invesco Indexing's approach to index methodology modifications.



Advisers Act regulation would effectively address. In this regard, we agree with the ICI's view that any benefits of requiring SEC-registration of index providers would be modest at best.

In addition, we believe that the investing community generally understands the appropriate distinction between the role of index providers and the role of investment advisers. Requiring index providers to register as investment advisers may actually cause confusion where none previously existed, by unnecessarily blurring the line between passive and active investment. Investors have for several years increasingly chosen to allocate portions of their portfolios to passive, index-based products, as a way to gain market exposures at a low cost. Investors have continued to seek out passive investment vehicles that provide consistent, reliable, and predictable exposures and portfolio makeup, shifting away from actively managed products where, by definition, the fund managers have portfolio management discretion. We believe this industry shift demonstrates that index-based products (and by extension, index provider services) are delivering on the proposition that an index will reflect an objective, non-discretionary, and non-advisory character. If they were not, investors would have no reason to buy them.

We note that the largest users of index data (and the users that the SEC appears to be most concerned with) are generally SEC-regulated entities, such as regulated investment advisers. As further discussed in Section II below, we believe that this intermediation provides substantial protection to investors and lessens any potential benefit from requiring adviser registration of index providers.

Finally, we note that requiring index providers to register as investment advisers would result in substantial cost to index providers. While large index providers would likely be able to bear the costs of compliance with investment adviser regulation, Invesco notes that smaller providers may be forced to exit the industry, limiting investors' choices of providers. Similarly, such regulation would create new barriers of entry that would likely lead to the further consolidation in an already concentrated industry. Decreasing the competition in the index provider space would likely reduce innovation in this space, leading to fewer index-based investment options for investors. As further discussed in Section II below, we believe that increased costs to index providers would almost certainly be passed on to investors in index-based funds, undermining one of the significant benefits of index-based investing: the ability to gain transparent and targeted market exposure at costs that tend to be lower than actively managed investments. We believe these consequences could be substantially avoided or mitigated by appropriately tailored index-provider regulation that does not seek to broadly reclassify established service providers as "advisers."

II. Index Providers Should Not be Classified as "Investment Advisers" under the Investment Company Act

In the Request for Comment, the Commission also analyzes whether index providers may meet the definition of investment adviser under the Investment Company Act in certain situations. In relevant part, the Commission highlights two elements that generally determine whether a person is acting as an investment adviser to a fund: (1) whether a person regularly furnishes advice to the fund with respect to the desirability of investing in, purchasing or selling securities or other property, or is empowered to determine what securities or property should be purchased or sold by the fund, and (2); whether a person acts pursuant to a contract with the fund. The Commission also



notes that the definition includes a person who “regularly performs substantially all the duties” undertaken by an investment adviser.⁸ As noted by the Commission, the Investment Company Act also includes several exclusions from this definition, including (in relevant part) for persons that distribute uniform publications to subscribers, or provide statistical information without regularly furnishing advice or making recommendations concerning specific securities.

As further discussed below, we believe that classifying index providers as fund advisers would be entirely inconsistent with the definition of investment adviser set forth in the Investment Company Act. Furthermore, we believe such a requirement would be unduly burdensome for fund boards and investment advisers alike and would ultimately harm investors in index funds by increasing costs and reducing investor choice.

A. Background

Invesco currently advises over 200 index-tracking ETFs and mutual funds in the United States, and it currently contracts with over 17 index providers in this capacity.⁹ This includes small independent index providers that maintain only a few proprietary indexes to the largest index providers in the industry. As the Commission acknowledges, investor demand for index funds has grown rapidly over the past several years, which we believe is largely attributable to the ability of index funds to provide investors with transparent, tailored and innovative exposure to a wide variety of asset classes and market segments, at a lower cost than actively managed strategies.

When launching index funds, Invesco’s standard practice is for the fund’s investment adviser (or an affiliate thereof) to enter into a license agreement with the index provider for the right to use a particular index in connection with a fund. The funds themselves do not enter into any direct contractual relationship with the index provider. While the license fees associated with these agreements are very commonly linked to a percentage of a fund’s assets, Invesco (and not the fund) has the contractual obligation to pay the index provider.¹⁰ In addition, as discussed in Section I.A above, in a typical license agreement, index providers will expressly disclaim any and all warranties regarding the fitness of an index to be used for any particular purpose (including as the basis for an index tracking fund).¹¹ These agreements also typically require that any references to the index and index provider in fund documents be accompanied by prominent disclosure regarding the limited role of the index and the index provider, and the fact that the index provider is not making any recommendation as to the suitability of an investment in the securities that comprise the index. We believe these practices further support a well-established industry view that index providers are not acting as investment advisers of index tracking funds.

⁸ See Request for Comment at page 28.

⁹ With respect to Invesco ETFs alone, Invesco advises nearly over \$375 billion in assets.

¹⁰ We note, however, that depending on the terms of the applicable advisory agreement between Invesco and the fund, Invesco may pass through this licensing cost to the fund pursuant to a sublicensing agreement with the fund. In such cases, the fee may nonetheless be borne by Invesco due to unitary fee structure or general expense caps. As such, where Invesco is obligated to pay index license fees incurred by the funds, we note that license fees often represent an important cost consideration for Invesco.

¹¹ Through this arrangement, the responsibility for oversight of the index, advisability for investment and protection of investors is appropriately placed on the adviser to the fund, subject to the oversight of the fund’s board of trustees. As adviser to the fund, the sponsor (and not the index provider) is best suited to monitor the character of the fund and protect the interests of investors.



Invesco conducts extensive due diligence on each index provider it contracts with – including Invesco Indexing - on both an initial and ongoing basis.¹² Invesco believes that this oversight is required by its fiduciary and contractual obligations to the funds it advises. To the extent that Invesco determines to utilize a particular index as the basis of a fund, it does so with the full understanding that the index provider *is not acting as investment adviser* or assuming any of Invesco’s contractual, fiduciary or regulatory obligations to the fund. In this regard, Invesco evaluates a variety of aspects of an index provider’s operations, including the service levels it provides to the adviser, the accuracy and timeliness of the index data it delivers, the robustness of the providers’ governance and internal controls, and the effectiveness of individual indexes in reflecting desired themes/exposures. Such reviews and ongoing diligence are reported to the funds’ board of trustees on a regular basis. To the extent that Invesco determines that an index or index provider is not delivering services in accordance with the highest level of industry standards, it may then seek approval to change the applicable underlying index and/or index provider. As stated previously, this arrangement appropriately places the fiduciary responsibility on the adviser, subject to board oversight.

B. Index Providers Do Not Meet the Statutory Definition of “Investment Adviser” under the Investment Company Act

In the light of the facts outlined above, Invesco does not believe that index providers meet the statutory definition of adviser under the Invesco Company Act. The index providers that Invesco contracts with have no direct contractual relationship to the funds, and they have no ability to direct or determine the securities that the funds hold. In this regard, neither element of the investment adviser definition is satisfied. Furthermore, we believe it is equally apparent that index providers do not provide “substantially all” of the services provided by an investment adviser to a fund. Finally, we would note that we also believe that the two exclusions highlighted above would generally apply to index providers as well.

While Invesco utilizes index data in performing its own advisory responsibilities, it is Invesco, acting as the investment adviser, that is solely responsible for managing the funds’ portfolios pursuant to its advisory contracts with this fund. As noted by the ICI in its Comment Letter, we would like to emphasize that managing index tracking funds takes considerable skill and discretion on the part of investment advisers. Invesco has developed robust portfolio management, trading, compliance, operational and other capabilities necessary to ensure that the funds it advises are able to effectively pursue their investment objectives. In its role as investment adviser, Invesco is also responsible for myriad additional services that an index provider simply has no role in supporting.¹³ Index provider services do not in any way supplant or supersede Invesco’s obligations to the funds it advises. In this way, an index provider is similar to many other data providers that Invesco may work with in order to fulfill its responsibilities as an investment adviser.

¹² Invesco has formed an Index Provider Oversight Committee (IPOC), which is principally responsible for the overall governance and oversight of index provider relationships for the funds. Key elements of the IPOC’s oversight process include index provider due diligence requests, on-site visits, daily index verification checks, and a formal review of indexes and index providers annually.

¹³ For example, portfolio management and trading, organizing funds, preparing all fund regulatory filings, preparing materials for fund board meetings, overseeing fund service providers, maintaining fund compliance programs, calculating net asset values, etc.



C. Classifying Index Providers as Fund Advisers Would Have Significant Negative Impacts on Index Funds

As the Commission acknowledges in the Request for Comment, the Investment Company Act imposes a variety of requirements and limitations on investment advisers, including (among many others) shareholder and board approvals of investment advisory agreements; compliance with Rule 38a-1; and compliance with the Investment Company Act's limitations on affiliated transactions.¹⁴ Similar to the burdens associated with Advisers Act registration discussed in Section I.B above, we believe that compliance with these requirements would have significant cost implications for index providers, resulting in further consolidation and increased costs to index licensees.

Just as significantly, we believe that Investment Company Act requirements, if applied to index providers, would result in significant additional burden on fund boards and fund advisers alike, without providing any benefit to investors. We reiterate the points noted in the ICI's comment letter regarding the costs associated with compliance with Section 15 of the Investment Company Act alone. Creating a framework where changing an index or index provider would be as costly and difficult as changing a sub-adviser (pursuant to Section 15 of the Investment Company Act) would effectively undercut the ability of advisers to protect investors and deliver on its investment thesis. When taking into account the number of index providers that Invesco contracts with, we believe the additional requirements associated with index providers being deemed advisers under the Investment Company Act could be prohibitively costly. These cost increases would put considerable pressure on advisers to raise fees, consolidate index providers, and/or close funds. Furthermore, we do not see any apparent benefit of adopting such an approach. As noted above, Invesco has a robust framework in place for overseeing index providers, in accordance with its fiduciary and contractual duties (i.e., Invesco, and not a third-party index provider, is best suited to act in a fiduciary capacity with respect to the index funds it advises).

D. The Commission's Concerns Regarding Index Providers Would Be Better Addressed by Well-Tailored Regulation Specific to Index Providers

Although we believe that the classification of index providers as advisers under the Advisers Act or the Investment Company Act would create significant, negative consequences for investors, we nonetheless understand the Commission's perspective that some regulation of index providers may be appropriate. If the Commission believes that index providers should be subject to more robust regulatory oversight than is currently the case, we believe this would be much more effectively accomplished by carefully tailored means rather than by distorting the current definition of investment adviser far beyond its statutory text or intent. Most of the index providers that Invesco contracts with, including Invesco Indexing, already comply with a non-U.S. regulatory framework and adhere to industry-identified best practices, including the International Organization of Securities Commission's *Principles for Financial Benchmarks*. To the extent that the Commission seeks to regulate these information providers, we believe that these existing frameworks should carefully be taken into account by the Commission, and/or used to guide the

¹⁴ See Request for Comment at pages 28–29.



contours of an effective U.S. regulatory scheme that is appropriately tailored for index-related concerns.

III. Other Information Providers

While Invesco's response has been primarily focused on issues relating to index providers, we note that the Request for Comment also raises questions on the activities of other types of information providers: namely, pricing services and model providers. In this regard, Invesco agrees with the concerns that the ICI has raised with the Commission and notes that much of the foregoing analysis is equally applicable to the activities of these information providers as well. As a general matter, we do not believe there is a compelling policy argument for treating other types of information providers as advisers under the Advisers Act or investment advisers under the Investment Company Act. Furthermore, we believe that many of the Commission's concerns are already sufficiently mitigated by the fact that, in nearly every instance, users of information provider services are SEC-regulated entities that oversee these services in accordance with their contractual and fiduciary obligations. As with index providers, we believe that requiring SEC registration of these entities and/or requiring funds to treat these entities as investment advisers would impose substantial additional burdens on fund boards and advisers while increasing costs to investors, and we do not believe that such an approach would yield a proportionate benefits to investors.

IV. Conclusion

As discussed above, Invesco does not believe that information providers fall within the definition of adviser under the Advisers Act or investment adviser under the Investment Company Act, and we have significant concerns about any regulation by the Commission that would attempt to expand these definitions to encompass these service providers. We do not believe that the rules and regulations applicable to investment advisers are appropriately designed to address the activities of these entities, and we believe that attempting to shoehorn them into this regime would be unnecessarily costly, burdensome, and harmful to investors, without providing a commensurate benefit.

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Invesco appreciates the opportunity to comment on this important request for comment, as well as the Commission's consideration of our comments shared in this letter. We are available to discuss our comments or provide any additional information or assistance that the SEC might find useful.

Sincerely,

Invesco Ltd.

Jeffrey H. Kupor

Jeffrey Kupor
Head of Legal, Americas
(404) 439-3463
jeffrey.kupor@invesco.com

CC: Chair Gary Gensler
Commissioner Hester M. Peirce
Commissioner Caroline A. Crenshaw
Commissioner Mark T. Uyeda
Commissioner Jaime Lizárraga
Securities and Exchange Commission