

November 22, 2022

International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 Madrid
Spain
Submitted electronically to: ERI@IOSCO.org

Re: Survey on index providers for industry participants

Dear Sir/Madam:

[ICI Global](#)¹ appreciates the opportunity to provide feedback to the IOSCO on the survey on index providers for industry participants, which was launched to support IOSCO's efforts to gain a more granular understanding of certain conduct-related index provider matters.² IOSCO has identified as potential areas that require further study (i) the role of asset managers in relation to indexes and index providers and the role and processes of index providers in the provision of indexes, (ii) the potential impact of administrative errors on investment funds, and (iii) potential conflicts of interest that may exist at the index provider in relation to the fund.

To facilitate your information-gathering efforts, we point you to the following Investment Company Institute (ICI) resources regarding how funds use indexes that we hope can be helpful to your work.

[Primer on Regulated Funds' Use of Indexes](#)

In January 2021, ICI published a [primer](#) on how funds and advisers use indexes.³ It covers the following topics:

- Background information on indexes
 - Overview of the index market
 - Common features of indexes, illustrated by a few prominent examples

¹ [ICI Global](#) carries out the international work of the [Investment Company Institute](#), the leading association representing regulated investment funds. With total assets of \$34.9 trillion, ICI's membership includes mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in Europe, Asia and other jurisdictions. ICI's mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor. ICI Global has offices in Brussels, London, Hong Kong, and Washington, DC.

² See IOSCO, *Survey on index providers for industry participants*, issued October 13, 2022, available at <https://www.iosco.org/library/surveys/2022/C5-Survey-on-index-providers-for-industry-participants.pdf>.

³ See ICI, *Indexes and How Funds and Advisers Use Them: A Primer*, issued January 2021, available at https://www.ici.org/doc-server/pdf%3A21_ppr_index_primer.pdf.

- Contractual relationships between index providers and fund complexes
- Index creation and the role that fund advisers may play
- How funds, advisers, and others use indexes
 - Performance assessment
 - Other regulatory purposes
 - Portfolio construction, management, and investment policies
 - Multi-asset class portfolio construction

Feedback to the US Securities and Exchange Commission

In June 2022, the US Securities and Exchange Commission (SEC) published a Request for Comment on Certain Information Providers Acting as Investment Advisers.⁴ The SEC posed many questions exploring whether information providers, including index providers, might meet the definition of “investment adviser” under the Investment Advisers Act of 1940 and the Investment Company Act of 1940 and if so, the related implications. ICI provided comments on behalf of US registered investment companies in their capacity as knowledgeable users of the products and services of index providers.⁵

With respect to index-based funds, index-based fund advisers carefully review and conduct due diligence of indexes and their providers in advance of using them for index-based funds and then maintain continued oversight of each. The adviser’s overall objective—both in the initial selection and ongoing oversight—is to ensure that the index and its provider are helping meet the needs of its clients (e.g., funds). Advisers to index-based funds and the funds’ boards recognize that oversight of indexes and index providers is part of their fiduciary duty of care to the fund.

ICI does not support regulating index providers as investment advisers under the Investment Advisers Act of 1940 because the possible benefits of regulation are not clear and the costs are likely to be passed on to clients—for example, as fund expenses borne by fund investors.⁶ If, however, legislation to regulate index providers were to be introduced, it should be guided by existing principles and it is our understanding that the largest US index providers follow IOSCO’s 2013 recommended practices for benchmark administrators.⁷ If regulation of index providers is determined to be necessary and appropriate, the IOSCO principles could be informative. Their overarching policy objectives—promoting adequate governance (e.g., addressing potential conflicts of interest) and control requirements and the integrity and accuracy of input data—are sound.

⁴ See Request for Comment on Certain Information Providers Acting as Investment Advisers, SEC Release Nos. IA-6050; IC-34618 (June 15, 2022), available at <https://www.sec.gov/rules/other/2022/ia-6050.pdf>.

⁵ See Letter from Susan Olson and Matthew Thornton, ICI, to Vanessa A. Countryman, SEC, dated August 16, 2022, available at <https://www.ici.org/system/files/2022-08/34257a.pdf>.

⁶ ICI strongly opposes deeming information providers to be “investment advisers” under the Investment Company Act of 1940. As a legal matter, based on the products and services that they typically provide to fund complexes, they do not meet the definition’s requirements. Treating them as such would be immensely burdensome for funds and their investors—it would generate significant upfront and ongoing costs, impede ordinary fund operations, and provide little investor protection. The severe implications of deeming these entities to be “investment advisers” under the Investment Company Act are set forth extensively in ICI’s August 2022 comment letter.

⁷ IOSCO, *Principles for Financial Benchmarks, Final Report* (July 2013), available at www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf.

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ICI Global and its members appreciate the opportunity to provide feedback on this issue. If you have any questions regarding our response, please contact Michael N. Pedroni at +1-202-876-5352 or michael.pedroni@ici.org or Annette Capretta at +1-202-371-5436 or acapretta@ici.org.

Sincerely,

/s/ Michael N. Pedroni

Michael N. Pedroni
Chief of ICI Global