

MEMO# 34238

August 2, 2022

ICI Draft Comment Letter on SEC's Information Providers RFC; Comments Due to ICI by August 10, COB

[34238]

August 2, 2022

TO: Accounting/Treasurers Committee
CCO Advisory Issues Subcommittee
Chief Compliance Officer Committee
Compliance Advisory Committee
ETF (Exchange-Traded Funds) Committee
Independent Directors Council
Investment Advisers Committee
SEC Rules Committee
Security Valuation Operations Committee
Small Funds Committee RE: ICI Draft Comment Letter on SEC's Information Providers RFC;
Comments Due to ICI by August 10, COB

In June, the SEC issued a request for comment on index providers, model portfolio providers, and pricing services.[\[1\]](#) The release poses many questions exploring whether information providers might meet the definition of "investment adviser" under the Investment Advisers Act of 1940 (Advisers Act) and the Investment Company Act of 1940 (Investment Company Act) and if so, the related implications.

Attached is ICI's draft comment letter. Please provide any comments to me (contact information below) by Wednesday, August 10, COB. Comments are due to the SEC by August 16.

ICI comments on behalf of registered funds in their capacity as knowledgeable users of the products and services of index providers and pricing services. (Our letter generally does not comment on model portfolio providers, and therefore we do not include them in the term "information providers" throughout unless otherwise indicated.)

We highly doubt that deeming information providers to be "investment advisers" under the Advisers Act and regulating them as such would improve the quality or cost-effectiveness of their products and services. Any benefits of this regulation likely would be modest, and the related costs likely would be passed on to clients. We address this in Section 1.

We strongly oppose deeming information providers to be "investment advisers" under the Investment Company Act. 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. And the practical consequences of treating them as such would be disastrous for funds—doing so would generate significant upfront and ongoing costs for funds and their investors, impede ordinary fund operations, and provide little investor protection. We estimate that compliance with the Investment Company Act's shareholder approval requirement for investment advisory agreements alone would be significant. The Act's board approval requirements, affiliated transaction limitations, and compliance obligations would impose significant additional costs and burdens. We address these matters in Section 2.

We conclude by discussing the market for index providers' products and services in Section 3. Some of the SEC's fund disclosure requirements have helped entrench the large incumbent index providers. We recommend ways in which these disclosure requirements could be amended to save fund investors money and help improve market competition.

Matthew Thornton
Associate General Counsel

endnotes

[\[1\]](#) Request for Comment on Certain Information Providers Acting as Investment Advisers, SEC Release Nos. IA-6050; IC-34618 (June 15, 2022) (the "release"), available at www.sec.gov/rules/other/2022/ia-6050.pdf. For a more detailed summary of this release, see ICI Memo to Members No. 34186, dated June 23, 2022.