

**MEMO# 34257**

August 17, 2022

# ICI Submits Comment Letter on SEC's Request for Comment on Information Providers

[34257]

August 17, 2022

TO: ICI Members

Investment Company Directors SUBJECTS: Advisory Contract Renewal

Audit and Attest

Audit Committees

Compliance

Exchange-Traded Funds (ETFs)

Fund Accounting & Financial Reporting

Fund Governance

Intermediary Oversight

Investment Advisers

Operations

Risk Oversight

Valuation RE: ICI Submits Comment Letter on SEC's Request for Comment on Information Providers

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.

ICI responded yesterday (our comment letter is linked below), on behalf of registered funds in their capacity as knowledgeable users of the products and services of index providers and pricing services.[\[2\]](#)

As a legal matter, we state that it is not at all clear that information providers are "investment advisers" under the Advisers Act and also fail to qualify for applicable exclusions (e.g., the "publisher's exclusion"). Setting aside that critical legal question, as a matter of policy we do not believe that regulating information providers under the Advisers Act would improve the quality or cost-effectiveness of their products and services. In fact, the related costs likely would be substantial and passed on to clients (e.g., funds and their

investors). Notwithstanding our concerns with Advisers Act regulation of these entities, if Congress seeks to create a regulatory structure for one or more types of information provider, it must do so in a manner that is tailored to their unique products and services.

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. 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. Simply bringing mutual funds into compliance with the Act's shareholder approval requirements would be enormously costly—industry-wide we conservatively estimate that these mutual fund proxy costs would range from \$1.3 billion to \$2.0 billion. These figures do not include exchange-traded funds (ETFs) and closed-end funds, which also would bear proxy costs. Furthermore, extending to these entities the Act's board approval requirements, affiliated transaction limitations, and compliance obligations would impose significant additional costs and burdens.

We conclude by discussing the market for index providers' products and services and how it affects funds. The SEC's fund disclosure requirements related to performance reporting have limited funds' choices in selecting indexes. We recommend disclosure amendments that would 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](https://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.

[2] 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.