

SEC requests comments on Advisers Act status of index providers and other information providers

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[The SEC requested public comments and information on whether index providers, model portfolio providers and pricing services are acting as investment advisers under the Advisers Act, including questions regarding Advisers Act registration and related issues under the Investment Company Act.](#)

On June 15, 2022, the Securities and Exchange Commission (SEC) issued a request for public comments on the status of index providers, model portfolio providers and pricing services (information providers) under the Investment Advisers Act of 1940 (Advisers Act). According to the request, the SEC is seeking comments to facilitate its determination of whether further regulatory oversight is needed in this area, as certain information providers may have a “national presence,” and the evolving nature of their services may raise potential concerns regarding investor protection and market risk. Specifically, the SEC noted, among other things, the potential for front-running of trades when information providers have advance knowledge of changes to be made to the information being generated, and potential conflicts of interest when information providers hold the securities they are valuing or are including in their indices or model portfolios. The SEC also noted concerns relating to index providers’ decisions to include or exclude particular securities in their indices, which may influence users of the indices to buy or sell such securities, and investment advisers’ use of model portfolios, which may affect their clients’ understanding of fees, services being performed by each party and potential conflicts. According to the request, certain information providers may also implicate requirements applicable to investment advisers to registered funds under the Investment Company Act of 1940 – for example, when an index provider maintains a bespoke index created to meet the specific needs of a single fund.

In a statement supporting the SEC’s request, Chair Gary Gensler noted: “Given the changes to the asset management field in the intervening decades, it is appropriate to seek comment on information providers to consider if regulatory action is appropriate. Some elements of the [investment adviser] definition may not be interpreted consistently by market participants. Thus, I believe the market may benefit from further guidance with respect to their applicability to some information providers.”

The comment period will remain open for 60 days following publication of the request on the SEC’s website or 30 days following publication in the Federal Register, whichever period is longer. Davis Polk will publish a summary discussing the SEC’s request shortly.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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