

Index Industry Association concerns with the EP's Retail Investment Strategy draft report

The Index Industry Association (IIA) supports the objective of encouraging retail investment and believes this will bring significant benefits to both retail investors and the European capital markets. To this end, we welcome the adoption of a Retail Investment Strategy that allows European retail investors to benefit from lower costs and better access to investment products.

The IIA would however like to highlight parts of the European Parliament's recently published Retail Investment Strategy draft report as being counter to those aims, particularly as they relate to amendments 8, 19, 20, and 33 (see Annex I).¹ The proposed amendments would create a new regulatory and supervisory regime for wholesale market data in the EU with very detailed and prescriptive requirements. The creation of a new regulatory and supervisory regime stands in direct opposition to initiatives aimed at boosting European Union competitiveness and reduced administrative burden, such as the recently proposed review of the Benchmark Regulation by the European Commission.²

I. The index industry's role in benefitting retail investors

The value and benefits that indexes and indexing have brought to investors cannot be overstated. Indexes have helped retail investors with financial literacy and awareness. Understanding of financial markets is driven by the implicit and explicit use of indexes. Indexes give retail investors an easy reference to how financial markets are performing and have allowed for innovative investment products that allow retail investors to obtain a diversified portfolio of low-cost funds and exchange-traded-funds (ETFs) via passive investment. A 2019 study by the Center for Economic Development (CED) found index funds have saved investors of both index and active management, both directly and indirectly an estimated \$40-\$50 billion per year.³ Indexes have brought comparability, and therefore increased transparency and accountability also to the active fund management industry by serving as benchmarks for performance results.

II. Concerns with the Retail Investment Strategy draft report

The Retail Investment Strategy is not the place to introduce a new regulatory and supervisory regime for wholesale market data in the EU

The proposed amendments 8, 19, 20, and 33 would create a new regulatory and supervisory regime for wholesale data market in the European Union. Aspects related to the governance, regulation, and supervision of financial and non-financial data are already covered in the European Union's existing sectoral legislation. In the case of index providers, this takes the form of the Benchmark Regulation (BMR), which ensures the reliability of benchmarks, transparency, and the mitigation of conflict-of-interest risks for their administrators. The requirements set forth in the draft report go well beyond what is prescribed in the BMR, and risk disincentivizing the issuance of indexes in the Union, which would severely restrict EU retail investors' choice of investment options at the expense of EU capital markets. In fact, these very concerns have recently prompted the European Commission, by its own admission,⁴ to adopt a review of the BMR.

The Retail Investment Strategy draft report's requirement for index providers to establish a permanent establishment in the European Union, for instance, does not take account of the BMR third-country regime's failure, which risked seeing EU-based investors lose access to many of the world's indexes (the need for a reform of the third-country regime is one of the principal reasons why the BMR is undergoing a review).

¹ https://www.europarl.europa.eu/doceo/document/ECON-PR-753711_EN.pdf

² [https://ec.europa.eu/transparency/documents-register/detail?ref=COM\(2023\)660&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2023)660&lang=en)

³ Simon Peck, The Financial Index Industry, The Center for Economic Development, (June 2019) p.15.

⁴ https://ec.europa.eu/finance/docs/level-2-measures/benchmarks-delegated-act-2023-4849-report_en.pdf
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Price regulation is not the appropriate policy tool for a market economy

Moreover, Amendment 33 mandates that wholesale market fees be “based on actual costs.” However, the Retail Investment Strategy does not mandate that banks or asset managers (i.e. users of wholesale data) provide their services to retail customers “based on actual costs.” Further to this, a standardization of services and pricing would impede any flexibility in how indexes & data are produced and interfere with providers’ commercial strategy. Generally, the IIA thinks that price regulation is not the right policy tool to be used in a market economy, especially in wholesale markets.

Avoiding unnecessary new regulatory and reporting requirements

Lastly, the BMR review forms part of the European Commission’s administrative burden reduction programme published on 17 October, the objective of which is to bolster the competitiveness of European business. The proposed amendments 8, 19, 20, and 33 would walk back on the BMR review’s improvements in this regard, and introduce new regulatory and reporting requirements for benchmark and index providers, once more increasing compliance costs and administrative burden as well as creating barriers to entry for new actors.

III. Scoping-in index providers does not help EU retail investors

The difficulties for retail investors do not lie with the index providers. In fact, very little of costs retail investors pay are because of index providers. A study conducted by Greenwich Associates found, on average, index providers fees are only 1.3% of active managers total costs.⁵ As stated in the European Commission’s impact assessment accompanying the Retail Investment Strategy, the fees EU retail investors pay are significantly higher than in similar jurisdictions because of inefficient investment structures and distribution costs investment managers charge.⁶ Further investigating those costs would provide EU retail investors significant savings and would provide them with a higher quality of life and retirement. EU capital markets would also benefit from more diverse participation and increased liquidity.

The IIA therefore believes amendments 8, 19, 20, and 33, would not benefit EU retail investors and does not support the inclusion of those amendments. The IIA encourages the EU to instead re-shift the focus towards ensuring the Retail Investment Strategy follows its stated aims: “*placing the consumers’ interests at the centre of retail investing, empowering retail investors (i.e. “consumer” investors) to make investment decisions that are aligned with their needs and preferences and ensuring that they are treated fairly and duly protected.*”

About the IIA

Many of the leading independent index providers in the world are members of the IIA, including Bloomberg Indices, CBOE Global Indices, the Chicago Booth Center for Research in Security Prices (CRSP), China Bond Pricing Co. Ltd., China Securities Index Co. Ltd., FTSE Russell, Hang Seng Indexes, Morningstar, MSCI Inc., NASDAQ OMX, Parameta Solutions, Shenzhen Securities Information Co. Ltd., S&P Dow Jones Indices LLC, STOXX (Qontigo), and JPX Market Innovation and Research (Tokyo Stock Exchange). IIA members calculate over three million indices for their clients, covering a number of different asset classes, including equities, fixed income, and commodities. Part of the IIA’s mission is to consider ways to promote best practices for index providers, which makes it a natural supporter of appropriate and proportionate industry standards. Our members are dedicated to promoting transparency, competition, sound operational practices, intellectual property rights, education, and effective index management practices. IIA members are independent index administrators who neither trade the underlying component securities of their indices nor directly create products for investors. Moreover, our members publicly make available methodologies, explain how their indices are created, calculated, or maintained. For more information: <http://www.indexindustry.org/>

⁵ <https://www.greenwich.com/press-release/asset-managers-seek-more-value-index-providers>

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023SC0278>, p55

Annex I:

Amendment 8

“The access to, use of and cost of financial and non-financial market data necessary to provide investment services and to manufacture and distribute financial products are an important portion of the costs borne by investment firms, representing therefore a significant proportion of the total charges paid by retail investors. Financial and nonfinancial market data are essential to the correct functioning of financial markets, and to the provision of quality investment services to retail investors. Those data should be reliable and accessible under fair conditions. Investment firms depend on data providers to provide their services and to comply with Union regulators. In addition, as they are used in almost all investment decisions and to meet the many regulatory reporting requirements, those data should be of high quality, reliable and subject to very strict control procedures.”

Amendment 19

“Financial and non-financial market data means: (...) (iv) data provided by index administrators.”

Amendment 20

“Data provider” means a legal person whose occupation includes the offering and distribution of financial and non-financial market data on a professional basis.”

Amendment 33

“Data providers shall comply with the following requirements:

- (a) The provision of financial and non-financial market data shall be fair, reasonable, non-discriminatory, and transparent. In that regard, the following shall apply:*
 - (i) Transparency requires the disclosure of the methodologies and data sources or estimates used in providing financial and non-financial market data to the public. Data providers shall disclose on their website the methodologies and data sources or estimates they use in the provision of their services. Such transparency requirement shall also apply to their data pricing and licence policies applicable to the users to which they market their financial data and non-financial market data. Price methodologies shall be clear, accessible, and easily comparable across data providers;*
 - (ii) financial and non-financial data shall be made accessible without discrimination. To facilitate fair competition in the financial and nonfinancial data market, data providers shall also ensure that fees charged to users for the provision of financial and non-financial data are not discriminatory and are based on actual costs;*
- (b) regarding the quality of the data, the following shall apply:*
 - (i) data providers shall adopt all measures necessary to ensure that the information they use for financial and non-financial data is of sufficient quality and from reliable sources;*
 - (ii) data providers shall adopt and implement sound administrative and accounting procedures, internal control mechanisms, and effective control and safeguard arrangements for information processing systems;*
- (c) regarding supervision, control, and conflicts of interest, the following shall apply:*
 - (i) ESMA shall be entrusted with the authorisation and supervision of data providers, including administrative sanctions. The supervisory regime shall require third-*

country data providers who wish to provide services for Union clients to have a permanent establishment in the Union;

- (ii) data providers shall establish appropriate internal policies and procedures in relation to employees and other persons involved in the provision of their services. Such policies and procedures shall include internal control mechanisms and a compliance function;*
- (iii) data providers shall be submitted to annual external audits, ensuring the external oversight of all aspects of the provision of financial and non-financial market data;*
- (iv) the terms of the licence agreement concluded between data providers (combining data and price policies) shall be standardised and simplified. The definitions shall be harmonised to avoid any unjustified complexity;*
- (v) data providers shall take all reasonable measures to prevent, identify, manage and monitor conflicts of interest that may adversely affect the fair, reasonable, non-discriminatory, and transparent provision of financial and non-financial market data.*