620 8th Avenue
35th Floor
New York, NY 10018
United States

+1 212 931 4900 Phone
+1 212 221 9860 Fax

www.markit.com

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By Electronic Mail

Re: Request for Comment on Exchange Traded Products, 80 Fed. Reg. 34,729 (June 17, 2015)

Secretary
Securities and Exchange Commission
100 F Street NE.
Washington, DC 20549–1090

Markit appreciates the opportunity to comment on the Securities and Exchange Commission ("SEC" or "Commission") Request for Comment on Exchange Traded Products (the "RFC").[1]

Markit (NASDAQ: MRKT)[2] is a global financial information services company, offering independent data, valuations, risk analytics, and related services across regions, asset classes and financial instruments. Markit provides an extensive range of products and services, including data, analytics, calculation and administration services as well as infrastructure tools to support the growing needs of global exchange-traded product ("ETP") issuers. Markit's ETP analytics and composition data cover over 5,200 ETPs globally. Markit is also an independent index administrator for over 14,000 indices, including those utilized by ETPs.[3] ETPs tracking indices administered by Markit have over $80 billion in assets under management. Markit, on a voluntary basis, administers its relevant indices in accordance with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks.[4]

Markit has been actively and constructively engaged in the debate about regulatory reform in financial markets, including topics such as the implementation of the Pittsburgh G20 commitments for OTC derivatives and the design of a new regulatory regime for Benchmarks and indices. Over the past years, we have submitted more than 120 comment letters to regulatory authorities around the world and have participated in numerous roundtables.

The RFC notes the "increasing scope and complexity of ETP investment strategies in recent years" and that, in this new context, "the Commission believes that this is an opportune time to seek public comment on topics associated with its oversight of the listing and trading of ETPs on

[1] Request for Comment on Exchange Traded Products, 80 Fed. Reg. 34,729 (June 17, 2015), http://www.gpo.gov/fdsys/pkg/FR-2015-06-17/pdf/2015-14890.pdf.

[2] Please see www.markit.com for further information.

[3] These include the iBoxx and iTraxx family of indices. See Exchange-Traded Funds on Markit Indices, https://products.markit.com/indices/publications/etf.asp.

[4] IOSCO, Principles for Financial Benchmarks, July 2013, https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf (IOSCO Principles). See also IOSCO Compliance Disclosure, Markit administers its benchmark products in compliance with the IOSCO Principles, Dec. 3, 2014, http://www.markit.com/Content/Documents/Products/Disclosures/IOSCO_Compliance_disclosure.pdf.

national securities exchanges. We welcome the Commission's desire to engage in a dialogue with the public regarding ETPs.

I. Executive summary

Our comments reflect two areas where the services we provide come under the scope of the RFC: (1) services Markit provides to participants in the ETP ecosystem and (2) among these services, index administration. Most importantly, we suggest that in any future policy action, the Commission consider policies encouraging (but not requiring) the administration of indices in accordance with the IOSCO Principles for Financial Benchmarks (2013). This is because we believe that the IOSCO Principles can help address concerns suggested or implied in the RFC, including those related to the transparency, independence, and governance of indices used in ETPs.

II. Discussion

The RFC asks questions ("RFCQ") organized by topical category (five categories in total). Below we provide our answers to RFCQs by topical category in the order they appear in the RFC.

1. Arbitrage and market pricing of exchange-traded products

- RFCQ 2 asks "[d]o commenters believe that there are other mechanisms besides arbitrage mechanisms that do, or could, help ensure efficient market pricing of ETPs? Do other factors play a role in efficient market pricing of ETPs?"

We note that quality intraday prices for the underlying components of ETPs are critical to ensure the efficient market pricing of the ETPs themselves. These prices need to represent the most up to date evaluation of where ETP securities might trade. Data needed for reliable pricing will include transparency into the data and models used in the price evaluation mechanism, including liquidity metrics. Access to this information helps ensure that the ETP's indicative intraday value (IIV) remains in line with market prices and its net asset value (NAV). We note that ETP service providers, such as Markit, enable ETPs that invest in or track less liquid underliers to access quality intraday prices to produce accurate IIVs. Markit ETP composition data supports the calculation and tracking of intraday NAV and covers over 5,200 indices.

- RFCQ 5 asks "[d]o market participants conduct analyses of how well intraday prices of ETP Securities track the value of their underlying portfolio or reference assets? If so, how much weight do market participants place on such analyses?"

We understand that market makers and authorized participants (APs) perform such analysis on a continuous basis, mainly to spot arbitrage opportunities. Markit, in fact, offers ETP composition data (including creation, redemption, and calculation baskets) and analytics to equip issuers with independent data, including performance and liquidity metrics, which they will provide to potential investors in the fund. This data is coupled with intraday evaluated prices, as noted in the response to RFCQ 2 above, that provide valuable insight into potential arbitrage opportunities which issuers can take advantage of via the creation and redemption process.

- RFCQ 10 asks "[t]o what extent do market participants make use of the IIV for an ETP based on less-liquid securities? If underlying assets trade infrequently or are priced only at the end of the trading day for purposes of NAV calculation, does an IIV that is disseminated every 15 seconds (as is currently the case) contain useful pricing information?"

We believe IIVs contain useful pricing information. The basis between the ETP NAV and the IIV is an indication of liquidity. One of the uses of the NAV is that it provides a price, based on the fundamental, bottom-up value of the EP, even at times when there may not be any transactions occurring in the ETP itself. The emergence of a price differential (a "basis") between the NAV and IIV typically suggests that no effective arbitrage occurs. Having access to the relevant ETP data, quality independent pricing of the underlying assets (reflecting the imputed NAV), and IIV data are all crucially important to allow arbitrageurs to identify arbitrage opportunities and lead the market back to an equilibrium.

2. Exemptions and no-action positions under Regulation M, Section 11(d)(1) of the Exchange Act and Exchange Act Rules 10b-10, 11d1-2, 14e-5, 15c1-5 and 15c1-6

- RFCQ 19 asks "[t]he staff has issued no-action relief from Rules 101 and 102 of Regulation M[5] to ETNs in part on the basis of assumptions that the secondary market price for such products should not vary substantially from the value of the relevant reference index. Given that the secondary market price of an ETN can substantially deviate from its reference assets when the issuer of that ETN suspends issuances, how should Rules 101 and 102 of Regulation M apply to such products? Should relief from these rules be limited to ETNs where there is a clear, independent index, where there is no limitation on issuances or redemptions, or where an ETN's secondary market price does not vary substantially from the relevant reference index? What effect would such a change have? Are there any other relevant factors in this context? Are there any risks in maintaining the current relief for ETNs? What are the benefits of the relief? How should the Commission balance the risks against any benefits resulting from the ability of Authorized Participants to suspend issuances or redemptions? Should relief for ETNs contain different conditions than relief for other ETPs?"

We believe that the assumption that the secondary market price for ETNs (or ETPs more generally) should not vary substantially from the value of a relevant reference index when the ETN utilizes a transparent index is correct. Continuing the relevant no-action relief for these kinds of ETNs would encourage the use of ETNs utilizing a transparent reference index or those referencing an index administered in accordance with the IOSCO Principles for Financial Benchmarks.[6]

3. Exchange-traded product listing standards

- RFCQ 30 asks "[s]hould certain characteristics of an ETP receive particular emphasis in the Commission's evaluation of whether a proposed rule filing related to that ETP is

[5] Rules 101 and 102 of Regulation M generally prohibit distribution participants, issuers, selling security holders, and their affiliated purchasers from purchasing, bidding for, or attempting to induce others to purchase or bid for covered securities during the restricted period of a distribution of securities. Because most ETPs are in continuous distribution, meaning that they are continually creating and distributing new securities, this restricted period usually extends indefinitely. Absent relief, the purchase of ETP Securities by an Authorized Participant (who would be considered a distribution participant), or by the issuer in the redemption process, would violate Rules 101 and 102 of Regulation M.

[6] See section III.3 below, responding to RFCQ 30.

consistent with the Exchange Act? If so, which ones? For example, should the Commission's evaluation focus on the nature, characteristics, or liquidity of the specific investments, holdings, indices, or reference assets of the ETP and on the public availability of information about these underlying or reference assets? Should the Commission's evaluation focus on the effectiveness or efficiency of the creation and redemption process in facilitating arbitrage opportunities with respect to an ETP? What other factors, if any, should the Commission consider in its evaluation of whether a proposed rule filing related to an ETP is consistent with the Exchange Act?"

In general, we would encourage the Commission to adopt favorable regulatory treatment for ETPs utilizing reference indices administered in accordance with the IOSCO Principles for Financial Benchmarks (IOSCO Principles).[7] The IOSCO Principles encourage IOSCO members, including the Commission, to implement the Principles through regulatory action, where appropriate.[8] The IOSCO Principles are intended to cover "Benchmarks," a term that includes, but is not limited to, indices utilized in ETPs.[9] The 19 IOSCO Principles are intended to "address conflicts of interest in the Benchmark-setting process,"[10] "enhance the reliability of Benchmarks,"[11] and ensure that there is sufficient transparency in the methodology used for the Benchmark to allow Stakeholders[12] "to understand how the Benchmark is derived and to assess its representativeness, its relevance to particular Stakeholders, and its appropriateness as a reference for financial instruments."[13]

We note that the purposes of the IOSCO Principles are coextensive with the Commission's concerns. For example, RFCQ 19 (discussed above) implies that no-action relief for ETNs that utilize unclear or non-independent indices should not receive no-action relief from Rules 101 and 102 of Regulation M on the basis that the secondary market price of such ETNs can substantially deviate from its reference assets when the issuer of that ETN suspends issuances. Similarly, in

[7] International Organisation of Securities Commissions (IOSCO) Principles for Financial Benchmarks, July 2013, https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf.

[8] Id. at 7.

[9] The IOSCO Principles set forth a number of principles applicable to "Benchmarks" where "Benchmarks" are defined by the IOSCO Principles as "prices, estimates, rates, indices or values that are:

a) Made available to users, whether free of charge or for payment;

b) Calculated periodically, entirely or partially by the application of a formula or another method of calculation to, or an assessment of, the value of one or more underlying Interests;

c) Used for reference for purposes that include one or more of the following:

- determining the interest payable, or other sums due, under loan agreements or under other financial contracts or instruments;
- determining the price at which a financial instrument may be bought or sold or traded or redeemed, or the value of a financial instrument; and/or
- measuring the performance of a financial instrument." Id. at 35.

[10] Id. at 3.

[11] Id. at 32.

[12] The IOSCO Principles define "Stakeholder" as "Subscribers and other persons or entities who own contracts or financial instruments that reference a Benchmark." Id. at 37.

[13] Id. at 12.

another context, Commission staff has expressed concerns about the risks to investors that arise from the sale of structured notes that use non-public or not well-understood indices.[14]

We believe that the risks to investors that can arise when an issuer administers its own index and that index utilizes a non-public methodology can be addressed through the application of the IOSCO Principles. The IOSCO Principles direct Benchmark administrators to identify, disclose, manage, and avoid conflicts of interest[15] and to provide a "concise explanation, sufficient to facilitate a Stakeholder's or Market Authority's ability to understand how the determination was developed, including, at a minimum, the size and liquidity of the market being assessed (meaning the number and volume of transactions submitted)."[16]

In contrast to indices administered in accordance with the IOSCO Principles, ETP indices that utilize non-public indices as underlyings (e.g., certain actively-managed ETPs that utilize non-public benchmark indices) are less likely to provide transparency that could facilitate arbitrage trading, thereby reducing market efficiency. Needless to say that the risks associated with such non-public ETPs are heightened where there is a potential conflict of interest in the administration of the index.

The regulatory treatment of ETPs that replicate IOSCO-compliant vs. non-public indices should reflect the relative risk associated with these different kinds of ETPs. This could be achieved through, for example, heightened disclosure requirements for non-public index ETPs that would enable investors to better price the risk associated with investments in these products, including the increased potential for a dislocation between the NAV and the market price of the ETP security.

4. Broker-dealer sales practices and investor understanding and use of exchange-traded products

- RFCQ 38 asks "[d]o investors have access to sufficient information to understand ETPs, how ETP Securities trade, the costs associated with trading ETP Securities, and how their prices and valuations are determined, particularly as ETPs encompass increasingly complex Benchmarks, asset classes, and investment strategies? What is the source of information (e.g., exchanges, broker-dealers, market intermediaries, prospectuses, SEC releases, or investor alerts) available to investors? Are there ways to better enable investors to access information about the listing and trading of ETP Securities? If yes, what are they?"

- RFCQ 42 asks whether specific aspects of ETP trading should be communicated to investors to better inform their investment decisions, e.g., specific risks of investing in certain products. RFC 44 asks whether broker-dealers provide investors performance data and the contents of that performance data. RFC 49 asks whether investors' expectations of the nature of the liquidity, bid-ask spreads, and market prices of less liquid underlier ETPs differ and, if so in what ways do investors expect these ETPs to trade differently.

[14] SEC warns structured note issuers over proprietary indices, May 18, 2015, http://www.risk.net/structured-products/news/2409051/sec-warns-structured-note-issuers-over-prop-indices.

[15] IOSCO Principles at 16.

[16] Id. at 21-22.

Standardized disclosures for ETP indices, including those relating to performance and compliance with the IOSCO Principles, could enhance both the availability and utility of information relating to ETPs. New standardized disclosures could enhance the ability of investors to distinguish between ETPs that share common characteristics and seek to track similar underliers. We encourage the Commission to consult with the public, including ETP service providers like Markit, before it proposes new standardized disclosures relating to ETPs. With our experience in creating ETP-relevant data sets for institutional investors, we can help assess the utility of new standardized disclosures.

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Markit appreciates the opportunity to comment on the RFC. We would be happy to elaborate or further discuss any of the points addressed above. In the event you may have any questions, please do not hesitate to contact the undersigned or Salman Banaei at salman.banaei@markit.com.

Yours sincerely,

Marcus Schüler
Head of Regulatory Affairs
Markit
marcus.schueler@markit.com