

May 28, 2026

S&P Global  
55 Water Street  
New York, NY 10041-0001

**Re: S&P Dow Jones Indices Consultation on Treatment of MegaCap Companies**

To Whom It May Concern:

Americans for Financial Reform Education Fund (AFREF) writes in opposition to the proposed changes to the S&P U.S. Indices Methodology and Dow Jones U.S. Total Stock Market Indices Methodology related to MegaCap companies.

Millions of retirees, workers, and their families invest their hard-earned money in index funds to secure a dignified retirement and meet other financial goals. In doing so, they rely on S&P and other index providers to supply diversified benchmarks reflecting the investable market, not speculative instruments they can gamble on. The proposed changes would shift index investing — long considered a safe, conservative investment strategy — in the direction of greater risk, posing questions for fiduciaries about the appropriateness of index fund investments for retirement savers and for regulators about how index providers should be regulated.

**The proposed changes would be harmful to index investors and make markets less fair and efficient**

The proposals to shorten the seasoning period from 12 months to six months and exempt MegaCap companies from the minimum investable weight factor (IWF) requirement and financial viability criteria would be harmful to index investors and make public equity markets less fair and efficient.

As the consultation itself notes, lock-up periods during which insiders cannot sell their pre-IPO shares in the open market are typically six months. Although the consultation argues that the proposed six-month seasoning period would “still provid[e] time for trading history and price discovery,”<sup>1</sup> the opposite would likely be true. Any additions to an index should occur after giving the market ample opportunity to properly price shares *after* insiders are able to sell their pre-IPO shares. Otherwise, there is a danger the alignment of the timing would create an actual or perceived unfair market in which insiders sell and non-insiders buy at artificially inflated prices due to mass demand from funds that track S&P indices. Index investors would be exposed to any potential downward shift in share price after insiders have had a chance to cash out.

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<sup>1</sup> [“S&P Dow Jones Indices Consultation on Treatment of MegaCap Companies.”](#) S&P Dow Jones Indices. April 30, 2026 at 2.

Exempting MegaCap companies from the IWF requirement could also artificially inflate share prices, driven more by high demand chasing few shares than by companies' fundamentals. Once demand has stabilized, however, index investors, who do not have buy and sell discretion within their funds, are the investors most likely to be left with the shares once pricing stabilizes in a way that more accurately reflects companies' fundamentals. Additionally, a low number of available shares leaves investors exposed to higher volatility, as smaller shifts in supply and demand can have a higher impact on share price compared to the effects the same shifts would have on shares of companies with larger floats.

Lastly, exempting MegaCap companies from the requirement that net income from continuing operations be positive for the most recent quarter and the sum of the last four quarters would risk inflating bubbles by creating massive demand from index funds for unprofitable, unproven investments that may never become profitable. It would set the stage for index investors to be left holding the bag should a bubble burst, or in less extreme cases, saddled with losses once there is a market correction that results in decreased share prices.

### **Fiduciaries should reassess their index fund investments if S&P adopts the proposed changes**

Fiduciaries entrusted with the \$14 trillion in assets governed by the Employee Retirement Income Security Act (ERISA) and the \$6 trillion in state and local pensions governed by state fiduciary duty laws should reassess their index fund investments if S&P adopts the proposed changes.

The ERISA duty of prudence requires fiduciaries to determine that “the particular investment or investment course of action is reasonably designed, as part of the portfolio . . . or menu, to further the purposes of the plan, taking into consideration the risk of loss and the opportunity for gain (or other return) associated with the investment or investment course of action compared to the opportunity for gain (or other return) associated with reasonably available alternatives with similar risks.”<sup>2</sup>

The proposed index methodology changes would alter “the risk of loss and the opportunity for gain” of funds that track S&P indices, as they would now include investments that are riskier and more volatile in a timeline that would increase the odds of index investors getting saddled with potential losses due to eventual market corrections that shift share price downward. Fiduciaries should consider other indexing and benchmarking options, including in-house options in the case of institutional investors.

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<sup>2</sup> 29 CFR 2550.404a-1(b)(2)(i).

## The proposed changes resurface questions about whether index providers are investment advisers under the Investment Advisers Act of 1940

In 2022, the Securities and Exchange Commission (SEC) issued a request for comment “on certain information providers whose activities, in whole or in part, may cause them to meet the definition of ‘investment adviser’ under the Investment Advisers Act of 1940.”<sup>3</sup> Index providers were one of the three information providers the SEC sought comment on.

The request references the Supreme Court case *Lowe v. SEC*,<sup>4</sup> which interpreted the “publishers’ exclusion,” a statutory exclusion from the definition of investment adviser covering the “publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation.”<sup>5</sup> The Court held that one of the requirements of the exclusion is that “the publications have been ‘regular’ in the sense important to the securities market: there is no indication that they have been timed to specific market activity, or to events affecting or having the ability to affect the securities industry.”<sup>6</sup> The Supreme Court noted that the publishers’ exclusion Congress passed “does not sweep in bulletins that are issued from time to time in response to episodic market activity” or “advertisements that ‘tout’ particular issues.”<sup>7</sup>

This consultation indicates that it is timed to specific market activity by stating that there are “anticipated initial public offerings . . . by companies with unprecedented market capitalizations” this year.<sup>8</sup> Additionally, the target implementation date is June 8th, days before SpaceX shares are expected to be listed on Nasdaq.<sup>9</sup> These statements by S&P, combined with the expected market activities of the SpaceX, OpenAI, and Anthropic IPOs, also pose questions about whether these proposed changes could be considered to “‘tout’ particular issues.” Regulators should therefore reconsider whether index providers are indeed investment advisers that fall outside the publishers’ exclusion should the proposed changes be adopted.

We appreciate your consideration of our concerns. For further discussion, please contact Natalia Renta at [natalia@ourfinancialsecurity.org](mailto:natalia@ourfinancialsecurity.org).

Sincerely,

Americans for Financial Reform Education Fund

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<sup>3</sup> Securities and Exchange Commission. “[Request for Comment on Certain Information Advisers Acting as Investment Advisers](#).” June 15, 2022.

<sup>4</sup> 472 U.S. 181 (1985).

<sup>5</sup> 15 U.S.C. 80b-2(a)(11)(D).

<sup>6</sup> 472 U.S. at 209.

<sup>7</sup> *Id.* at 206 n. 51.

<sup>8</sup> “[S&P Dow Jones Indices Consultation on Treatment of MegaCap Companies](#).” S&P Dow Jones Indices. April 30, 2026 at 1.

<sup>9</sup> Wang, Echo and Anirban Sen. “[Exclusive: SpaceX accelerates IPO timeline, targets June 12 listing on Nasdaq, sources say](#).” Reuters. May 15, 2026.