August 31, 2026

MSCI Equity Index Committee
c/o MSCI Inc.
7 World Trade Center
250 Greenwich Street
New York, NY 10007

Re: Consultation on Eligibility of Non-Operating Companies for MSCI's GIMI Indices

Dear Members of the MSCI Equity Index Committee,

Strategy Inc writes in opposition to MSCI's proposed eligibility test for MSCI's Global Investable Market Indexes, which would exclude certain "non-operating" companies from those indices. The proposal, like the 2025 proposal that MSCI withdrew, is discriminatory, arbitrary, and misguided. If adopted, the proposal would have no meaningful impact on Strategy's business, but it would profoundly harm MSCI's reputation as a reliable and neutral index provider. Like the 2025 proposal, the current proposal should be withdrawn.

Executive Summary

Late last year, MSCI proposed excluding from its indices all companies whose digital-asset holdings represent 50% or more of total assets.[1] Hundreds of organizations, including Strategy, opposed that proposal on the grounds that it was arbitrary, discriminatory, and targeted a foundational technology that can help fuel our nation's economic growth.[2] Weeks later, MSCI dropped the proposal.

MSCI's new proposal is a pretextual and flawed variation on its prior one. Though presented as objective and industry-neutral, the new methodology is neither. It relies on inapt, undefined terms and an invented methodology that ultimately rests on MSCI's own policy judgments—contrary to MSCI's longstanding commitments to the market and its customers. MSCI should withdraw the proposal immediately and remain what it has held itself out to be for decades: a mirror of the market, not an arbiter of it.

The Proposal Is a Pretext for Targeting Digital Asset Treasury Companies ("DATs"). MSCI's new proposal is dressed up in neutral-sounding language for the supposed purpose of targeting "non-operating" companies, but in reality it simply repackages MSCI's withdrawn proposal targeting DATs—its principal effect is to remove two major DATs from MSCI's indices and place a third on a public watchlist. There is no other apparent justification for the proposal, and MSCI offers none.

The Proposed Screening Methodology Is Fundamentally Flawed. The proposal's many flaws and idiosyncrasies confirm its discriminatory purpose. The proposed methodology turns on classifying a company's assets as "operating" or "non-operating." But MSCI never defines those terms. And while they might sound like words one would find on a CPA exam, they are not—no generally accepted accounting principles require companies to classify their assets in that way. The upshot is clear: MSCI decided to exclude DATs first and built a formula to launder that policy judgment.

The Proposed Deletion of Strategy Conflicts with Established Securities-Law and Accounting Principles. MSCI says its proposal would result in the deletion of Strategy (and other DATs) from its indices. But Strategy is an operating business by any recognized definition of the term. It has approximately 1,500 employees across the globe and actively *uses* its Bitcoin to create shareholder value, including by providing novel Bitcoin-backed digital credit instruments. And it has operational flexibility to adjust its business as Bitcoin technology evolves. That is why, based on governing U.S. GAAP principles and discussions with SEC Staff, Strategy reports its Bitcoin business as an

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operating segment and its Bitcoin gains and losses as *operating* expenses. MSCI can deem Strategy "non-operating" only by overriding SEC and U.S. GAAP understandings of how businesses should be classified and applying its own invented (and unexplained) definitions and methodology.

Discriminating Against Digital Assets Is Misguided and Undermines MSCI's Reliability and Neutrality. MSCI's business rests on its repeated assurances that its indices "reflec[t] the evolution of the underlying equity markets" and "express no opinion" on whether an "investment is good or bad." But digital assets are a vibrant and growing part of our nation's economy, and the U.S. government is working on a bipartisan basis to advance pro-crypto policies and legislation. By MSCI's own lights, its indices should "reflect" those trends, not reject them. The proposal instead injects MSCI's own policy judgments into indexing, which will undermine the neutrality and reliability of MSCI's indices and harm fiduciaries who use those indices as neutral gauges of the investable market.[3] It also conflicts with MSCI's commitment to transparency as an EU-registered benchmark administrator, while potentially reviving recent questions from the SEC about whether index providers are investment advisers.[4] Unexplained, policy-laden tests have no place in neutral index construction.

If MSCI Proceeds Despite These Flaws, It Should Revise the Proposal and Apply It Prospectively Only. If MSCI does not withdraw the proposal, it should revise and republish it with a clear rationale and detailed methodology. Among other things, it should apply the methodology only to a company's filings issued *after* implementation, adopt a test for identifying operating companies based on objective, industry-recognized standards, and publish the consultation record.

Background

Strategy (formerly MicroStrategy) was founded in 1989 and today is the world's first and largest Bitcoin treasury company. The company pursues innovative financial strategies designed to generate value from its Bitcoin holdings in addition to its ongoing enterprise-analytics software business, which actively employs over 1,500 employees worldwide and generates nearly half a billion dollars in annual revenue. Strategy believes its combination of operational excellence, strategic Bitcoin reserve, and focus on technological innovation positions the company as a leader in both the digital-asset and enterprise-analytics sectors.

In October 2025, MSCI proposed excluding companies with digital-asset holdings of at least 50% of total assets from its Global Investable Market Indexes based on unelaborated concerns that those companies were "similar to investment funds."[5] More than 250 organizations and 1,500 signatories opposed that proposal.[6] As Strategy explained, the proposal mischaracterized DATs, which include operating companies that actively use digital assets to generate shareholder value.[7] The proposal also subjected a single asset class to a discriminatory and arbitrary 50% threshold and injected policy judgments into index construction, contrary to MSCI's commitment to "express no opinion or view as to whether any market, company, strategy or investment is good or bad" and the U.S. government's bipartisan effort to promote digital assets.[8] MSCI withdrew the proposal but stated that it "intend[ed] to open a broader consultation on the treatment of non-operating companies generally."[9]

MSCI has now announced a second proposal to exclude "non-operating companies" "similar" to investment funds and business development companies. The proposal purports to identify those companies through "quantitative screens" created by MSCI.[10] While companies with "operating assets" (as determined by MSCI) of more than 50% of total assets would be categorically eligible for inclusion, all others would be subject to an "Exclusion Screen" consisting of five financial-ratio "flags": (1) operating assets below 20% of total assets; (2) operating expenses below 5% of total assets; (3) negative operating cash flow; (4) non-operating fair-value changes exceeding both 5% of total assets and 50% of net sales plus fair-value changes; and (5) financing cash flows exceeding 20% of total assets with capital raising for "asset accumulation" in the last year.[11] Triggering at least four flags would render the company

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ineligible for MSCI's indices. Current index constituents would be deleted after failing screens in two consecutive annual reviews. A constituent that fails once would be placed on a new public "watchlist."[12]

The proposal states that, if implemented, it would result in the immediate deletion of three companies from an index of thousands, including Strategy and Metaplanet (a Bitcoin treasury company), and place three more companies on the new watchlist, including SharpLink, an Ethereum treasury company.[13]

Discussion

I. MSCI Should Withdraw the Proposal

A. The Proposal Is a Pretext for Targeting Digital Asset Treasury Companies

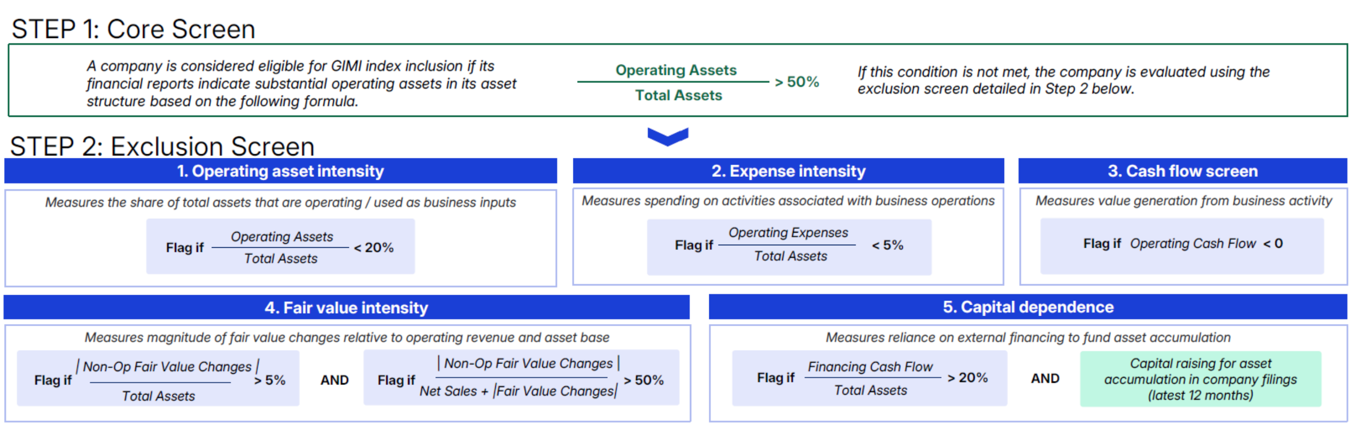
MSCI's prior proposal expressly targeting DATs was misguided and reflected a fundamental misconception of DATs. After significant market pushback, MSCI rightly abandoned it. But the current proposal, which purports to screen out "non-operating companies" generally through a multi-factor test, has the same purpose and effect as the old one.

MSCI gives no justification for the new proposal, and none is apparent. MSCI identifies no new problem. There are well-established legal tests for identifying non-operating companies, such as in the Investment Company Act of 1940 and the SEC's shell-company rules.[14] Those tests have been carefully vetted by Congress, the SEC, and the market over decades. And MSCI *already* excludes non-operating companies like investment funds under those widely accepted legal frameworks. MSCI cites no gap that those exclusions have failed to address. Nor does MSCI point to any customer or industry complaint that led MSCI to take action. The only apparent justification is the same one underlying the last proposal: an arbitrary desire to exclude DATs.

That is exactly what the proposal would do if implemented. As the proposal explains, applying its screening methodology would delete two DATs from MSCI's indices and place a third on track for deletion next year. Although the proposal would exclude a few other small companies, the bulk of the impact would fall on DATs: Strategy alone accounts for roughly 87% of the float-adjusted market capitalization at stake across all six companies affected by the proposal.[15] The ostensibly neutral screen thus is just MSCI's abandoned DAT proposal in thinly disguised form.

B. The Proposed Screening Methodology Is Fundamentally Flawed

MSCI's arbitrary and unexplained methodology confirms that it is gerrymandered to exclude DATs. The bulk of the proposed screening methodology turns on the labels "operating" or "non-operating" assets, expenses, and fair-value changes:



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Yet MSCI nowhere explains how it is defining those terms. The definitions cannot be found in any relevant accounting standard: Neither U.S. GAAP nor IFRS accounting standards classify assets as "operating" or "non-operating" or provide any guidance on how to do so. No recognized legal framework supplies those definitions either: well-established legal tests for identifying non-operating companies, like those in the Investment Company Act of 1940 and the SEC's shell-company rules, look nothing like MSCI's proposal.[16] And no other index provider uses terminology like this—just as no other index provider displays MSCI's consistent hostility toward digital assets.

The proposal's screening methodology is similarly flawed. MSCI does not identify the source of or justification for the financial ratios or percentage thresholds in its proposed "quantitative screens." No accounting standard, legal framework, or other index provider uses the five ratios MSCI has proposed—individually or combined—to determine whether a company is an "operating" company. And there is no apparent reason why index eligibility should depend on, for example, whether a company's "operating assets" exceed 50%, or whether the fair-value changes in a company's "non-operating" assets exceed 5% of total assets.

More confoundingly, MSCI's application of its unexplained methodology is *at odds* with generally accepted accounting principles. As discussed in more detail below, Strategy in its public SEC disclosures reports its Bitcoin treasury operations as a separate *operating* segment and its Bitcoin gains and losses as *operating* expenses, consistent with U.S. GAAP and discussions with SEC Staff.[17] MSCI's proposed methodology—which reaches the opposite conclusion about Strategy's business—thus cannot possibly be drawn from established accounting principles. Instead, MSCI's purportedly objective test for identifying non-operating companies must rest on its own subjective and unexplained judgments about whether assets and activities are "operating."

Applying its subjective test, MSCI evidently has made the policy judgments that digital assets are not operating assets and DATs are not operating companies. Only three of thousands of index companies—two of which are DATs—would be immediately removed from MSCI's indices under its proposal. Yet MSCI says its proposal would spare REITs and other companies with asset-heavy portfolios—like Weyerhaeuser (timber), Dominion Energy (energy infrastructure), Universal Music Group (content catalogues), and Burford Capital (litigation finance assets). It also would leave untouched many other companies, including MSCI itself, that have significant asset concentration on their balance sheets. MSCI has not supported that distinction with any evidence, such as a review of how its index companies use their assets. Indeed, in the eight months since withdrawing its original consultation, MSCI has not engaged with Strategy to learn about its operations.

C. The Proposed Deletion of Strategy Conflicts with Established Securities-Law and Accounting Principles

Although MSCI's proposal explains little about its methodology, one thing is clear: MSCI views Strategy and other DATs as non-operating companies. That conclusion miscomprehends the business of DATs like Strategy, and it contradicts basic U.S. GAAP and securities-law principles, which confirm that Strategy's Bitcoin business (like its software business) *is* an operating business.

Strategy is not an investment fund or "wrapper" for Bitcoin. It is an operating business that pursues financial innovation strategies designed to generate value from its Bitcoin holdings, including by developing and issuing novel fixed-income instruments that provide investors varying degrees of economic exposure to Bitcoin. Unlike an investment fund, Strategy has an elected board that may alter the company's business model—and which just this year announced a new Digital Credit Capital Framework to strengthen the company's preferred securities.[18] If investors want pure exposure to Bitcoin, they can buy Bitcoin directly or through an exchange-traded product that holds Bitcoin. But when investors buy Strategy's stock, they are investing in what Strategy's management team will *do* with the Bitcoin it holds.[19] Indeed, Strategy's share price historically has not been tethered to the value of Bitcoin.[20] That Strategy invests heavily in Bitcoin thus does not render it "non-operating." It simply reflects that

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Strategy, like ExxonMobil, Weyerhaeuser, and REITs, has business operations that rely on a particular asset. MSCI offers no reason to disregard the market's long-held view that Strategy is an operating business.

Strategy's public SEC filings corroborate that market understanding. Indeed, they show that Strategy is an operating company *even under MSCI's own test*, if that test were applied consistently with existing accounting and legal principles. In its most recent 10-Q, after discussions with SEC Staff, Strategy "define[d] its bitcoin treasury operations as a separate reportable *operating* segment."[21] Under governing standards issued by the Financial Accounting Standards Board, that means Strategy's Bitcoin business "*engages in business activities* from which it may recognize revenues and incur expenses."[22] Strategy also has consistently reported the results of its Bitcoin activities within "operating expenses" on its independently audited income statements.[23] An asset used in an operating segment and generating operating expenses should, under any reasonable definition, qualify as an operating asset. On that basis, Strategy would be *categorically eligible* for MSCI's indices because its Bitcoin holdings amount to more than 50% of its total assets. Yet although MSCI purports to rely on companies' public filings in applying its screening methodology, MSCI treats Strategy's Bitcoin as a non-operating asset without explaining why.

Strategy's SEC filings also show that, contrary to MSCI's assertions, Strategy has in fact *not* triggered four of five financial-ratio "flags." In particular:

- The second flag applies only if operating expenses are less than 5% of total assets. But Strategy records its Bitcoin impairment and unrealized losses as "operating expenses" in its financial statements, and those expenses *alone* exceed 5% of total assets.

- The fourth flag applies only if changes in the fair value of non-operating assets exceed 5% of total assets. But for each reporting period since January 1, 2025, when Strategy adopted fair-value accounting, Strategy has reported changes in the fair value of its Bitcoin within operating expenses in its consolidated statements of operations. And the fair-value changes attributable to its other assets are significantly *less* than 5% of total assets.

MSCI does not explain its contrary conclusions. A methodology that credits public filings only when they support MSCI's preferred outcome is not a neutral screen; it is a policy preference dressed up in financial formulas.

D. Discriminating Against Digital Assets Is Misguided and Calls into Question MSCI's Reliability and Neutrality

MSCI's continued effort to discriminate against digital assets is misguided and calls into question MSCI's neutrality and reliability. MSCI has consistently held itself out as providing indices that "accurately and objectively measure [the] performance of *a market or economic reality*."[24] In MSCI's words, its indices are intended to "reflec[t] the *evolution of the underlying equity markets*."[25] But the market reality is that companies are moving *toward* digital assets like Bitcoin, not away from them. Although digital assets are still at an early stage in their evolution, they promise to rework the global financial economy. An entire ecosystem is emerging around these assets, with companies including Fidelity, Blackrock, Morgan Stanley, and Coinbase playing key roles. And a growing number of public companies have Bitcoin on their balance sheets, including Tesla, SpaceX, and Block.[26] MSCI's indices, under MSCI's own principles, should reflect those trends. The proposal instead would inject unexplained, anti-crypto policy judgments and investment preferences into MSCI's indexing methodology.

Doing so would harm MSCI's customers. Asset managers, pension plans, and other institutional investors rely on MSCI's indices because MSCI represents them to be neutral, rules-based mirrors of the market. Those customers owe their investors fiduciary duties of prudence and loyalty—duties that courts have enforced when non-financial considerations were allowed to influence investment decisions.[27] If MSCI's indices begin to embed undisclosed policy judgments and investment preferences about which assets companies should hold, every fiduciary that uses them will need to ask whether it may continue to do so.

MSCI's discriminatory proposal also runs counter to the United States' effort to lead the next era of digital-asset-driven growth. The federal government is working to integrate "digital assets and innovative technology into traditional financial services and payment systems" and to make the United States the "crypto capital of the world."[28] Congress has passed comprehensive stablecoin legislation with strong bipartisan support; the SEC and CFTC have issued a joint interpretation concerning the classification and treatment of digital assets; and the President has directed the creation of a Strategic Bitcoin Reserve.[29] MSCI's campaign against the companies leading that effort is at odds with national policy.

It also raises serious regulatory questions. The SEC has recently asked whether index providers like MSCI are investment advisers.[30] In opposing that classification, MSCI argued that index providers "express no opinion or view as to whether any market, company, strategy or investment is good or bad" and "do not recommend or promote asset allocations, investments or investment strategies."[31] The proposal, if implemented, would conflict with those statements. And the more MSCI's methodology turns on discretionary judgments about which assets are worthy of investment, the more difficult it will be for MSCI to argue that it is not an investment adviser.

The proposal conflicts with MSCI's international commitments, too. MSCI is a registered benchmark administrator under the European Union's Benchmarks Regulation and adheres to the IOSCO Principles for Financial Benchmarks.[32] Under those frameworks, an index provider must give clear benchmarks for what is included in its indices by publishing "the key elements of the methodology" and providing "sufficient detail" for stakeholders "to understand how the [b]enchmark is derived."[33] A screen that turns on undefined terms and undisclosed judgments cannot be reconciled with those requirements.

II. If MSCI Proceeds Despite These Flaws, It Should Revise and Re-Propose the Test and Apply It Prospectively Only

MSCI should withdraw its proposal. But if despite all the flaws detailed above, MSCI continues to believe that *some* eligibility test along the lines of the proposal is warranted, it should apply the new test prospectively only, fashion a rational and objective test with adequate explanation, and publish the consultation record.

Most importantly, if MSCI proceeds it should apply any changes only prospectively based on financial statements issued *after* the proposal is finalized. MSCI has identified no problem requiring immediate action, and companies should have time to react to any new standards, adjust their operations, and engage with MSCI regarding its judgments. MSCI has handled other methodology changes through prospective, phased, or grandfathered application.[34] Its consultation on unequal voting structures, for example, contemplated multi-year grace periods so that constituents could adapt.[35] No less is warranted here.

MSCI also should explain why any new eligibility screen is needed, what objective it serves, and how it selected its ratios and thresholds. Any new screening methodology should rely on objective, generally accepted legal or accounting principles. If, for example, MSCI continues to rely on a distinction between "operating" and "non-operating" assets and activities, it should define that distinction using objective criteria widely understood by the market and apply it using companies' reliable SEC disclosures rather than MSCI's own invented, discretionary screens. Doing so would ensure that MSCI's indices remain predictable and reliable by allowing customers and listed companies to ascertain easily whether and when a company will be removed.

Finally, if MSCI proceed with adopting a screening test, MSCI should publish the consultation record with its decision, including anonymized submissions (subject to confidentiality requests) and reasoned responses to material

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issues.[36] MSCI also should explain how its methodology applies to all or most of its constituents, including identifying which companies would be flagged, under which factors, and why. A change that would remove companies from an index should rest on a record that the market can evaluate. And given this proposal's unusual history, unexplained calibration, and concentrated impact, MSCI should place a legal hold to retain all documents that refer or relate to the development, purpose, and issuance of its final test.

Conclusion

MSCI should withdraw the proposal. There is no need for MSCI to distort its indices and harm its reputation as a neutral, reliable index provider. As MSCI acknowledges in the proposal itself, existing laws and principles already differentiate passive trusts or investment funds from operating companies. If a company runs afoul of those rules, regulators are well equipped to enforce them. MSCI should adhere to its commitment to "reflect" the investable market, rather than adopt a discriminatory, arbitrary, and undefined indexing methodology that runs directly counter to that longstanding role.

If the Committee has any questions or is interested in further information, we are available to discuss.

Sincerely,

Michael J. Saylor
Executive Chairman & Chairman of the Board
Strategy Inc

Phong Le
President & Chief Executive Officer
Strategy Inc

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[1] MSCI, *Consultation on Digital Asset Treasury Companies*, 2 (Oct. 2025) (available here).

[2] *See, e.g.*, Letter from Michael J. Saylor, Strategy Exec. Chair & Founder, and Phong Le, Strategy President & CEO, to MSCI Equity Index Comm. (Dec. 10, 2025) ("Strategy Letter") (available here); Bitcoin for Corporations, *Call on MSCI to Withdraw its Non-Operating Company Screen*, Project Index Integrity 2.0 ("Bitcoin for Corporations") (250+ organizations and 1,500 signatures) (last visited Aug. 17, 2026) (available here); Letter from Matt Cole, Strive Chairman & CEO, to Henry A. Fernandez, MSCI Chairman & CEO (Dec. 4, 2025) ("Strive Asset Management Letter") (available here).

[3] *Compare, e.g.*, Letter from Neil Acres, MSCI Managing Dir. & Glob. Head of Gov't & Regul. Affs., to Vanessa A. Countryman, SEC Sec'y, at 4 (Aug. 15, 2022) ("MSCI Letter") (available here) (holding MSCI's indices out as neutral), *with Spence v. Am. Airlines, Inc.*, 775 F. Supp. 3d 963, 1003–10 (N.D. Tex. 2025) (ERISA plan sponsor breached ERISA's duties by investing assets while relying on ESG objectives).

[4] *See* SEC, *SEC Requests Information and Comment on Advisers Act Regulatory Status of Index Providers*, *Model Portfolio Providers, and Pricing Services* (last updated June 15, 2022) (available here).

[5] MSCI, *Consultation on Digital Asset Treasury Companies*, 2 (available here); MSCI, *Extension of the Consultation on Digital Asset Treasury Companies* (Oct. 10, 2025) (available here).

[6] *See, e.g.*, Bitcoin for Corporations (250+ organizations and 1,500 signatures) (available here); Strive Asset Management Letter (available here).

[7] Strategy Letter (available here).

[8] MSCI Letter at 4 (available here); Strategy Letter (available here).

[9] MSCI, *MSCI Announces Results of the Consultation on the Treatment of Digital Asset Treasury Companies* (Jan. 6, 2026) (available here); *see also* MSCI, *Updated MSCI List of Digital Asset Treasury Companies* (May 12, 2026) (available here).

[10] MSCI, *Consultation on Eligibility of Non-Operating Companies for the MSCI Global Investable Market Indexes Methodology* (Aug. 2026) ("MSCI Proposal") (available here).

[11] *Id.* at 8.

[12] *Id.* at 9–10.

[13] *Id.* at 5.

[14] 17 C.F.R. § 230.405; 15 U.S.C. § 80a-3.

[15] MSCI Proposal at 5 (reporting a float-adjusted market capitalization of $23,931 million for Strategy, as against $3,618 million for the other five companies combined).

[16] 17 C.F.R. § 230.405; 15 U.S.C. § 80a-3.

[17] Strategy Inc, Form 10-Q for the quarter ended June 30, 2026, Segment Information, 27 (filed Aug. 3, 2026) (available here).

[18] Strategy, *Strategy Announces Digital Credit Capital Framework, USD Reserve Policy, STRC Dividend Policy, Digital Credit and MSTR Repurchase Authorizations, and BTC Monetization Program* (June 29, 2026) (available here).

[19] *SEC v. Nat'l Presto Indus., Inc.*, 486 F.3d 305, 315 (7th Cir. 2007) ("Reasonable investors would treat Presto as an operating company rather than a competitor with a closed-end mutual fund. The SEC has not tried to demonstrate anything different about investors' perceptions or behavior. It follows that Presto is not an investment company.").

[20] *See, e.g.*, Tomi Kilgore & James Rogers, *MicroStrategy's Stock Surges as Bitcoin Purchases Resume, Lifting Holdings to above 600,000*, MarketWatch (July 14, 2025) (available here) ("MicroStrategy's stock ha[d] soared 55% in 2025 [through July], while bitcoin ha[d] run up 28.5%").

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[21] Strategy Inc, Form 10-Q for the quarter ended June 30, 2026, Segment Information, at 27 (filed Aug. 3, 2026) (emphasis added) (available here).

[22] Financial Accounting Standards Board, ASC 280-10-50-1 (emphasis added).

[23] Strategy Inc, Form 10-K for the fiscal year ended December 31, 2024, Consolidated Statements of Operations (filed Feb. 18, 2025) (available here) (reporting digital asset impairment losses within operating expenses); Strategy Inc, Form 10-K for the fiscal year ended December 31, 2025, Consolidated Statements of Operations (filed Feb. 19, 2026) (available here) (reporting unrealized losses on digital assets within operating expenses).

[24] MSCI, *MSCI Index Policies*, at 5 (June 2026) (available here) (emphasis added).

[25] MSCI, *MSCI GIMI™ Methodology* 12, 35 (Aug. 2026) (available here) (emphasis added).

[26] *See* Tesla, Inc., Form 10-Q for the quarter ended June 30, 2026, at 16 (July 23, 2026) (available here) (reporting 11,509 Bitcoin held); Space Exploration Technologies Corp., Form 10-Q for the quarter ended June 30, 2026, at 16 (Aug. 4, 2026) (available here) (reporting 18,712 Bitcoin held); Block, Inc. Form 10-Q for the quarter ended June 30, 2026, at 25 (Aug. 5, 2026) (available here) (reporting 9,117 Bitcoin held).

[27] *See, e.g.*, *Spence*, 775 F. Supp. 3d at 1003–10 (ERISA plan sponsor breached ERISA's duties by investing assets while relying on ESG objectives).

[28] Exec. Order No. 14,405, *Integrating Financial Technology Innovation Into Regulatory Frameworks*, 91 Fed. Reg. 30,475 (May 19, 2026); The White House, *Fact Sheet: The President's Working Group on Digital Asset Markets Releases Recommendations to Strengthen American Leadership in Digital Financial Technology* (July 30, 2025) (available here).

[29] *Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets*, Securities Act Release No. 11,412, Exchange Act Release No. 105,020, 91 Fed. Reg. 13,714 (Mar. 23, 2026) (available here); *Implementing the Guiding and Establishing National Innovation for U.S. Stablecoins Act for the Issuance of Stablecoins by Entities Subject to the Jurisdiction of the Office of the Comptroller of the Currency*, 91 Fed. Reg. 10,202 (Mar. 2, 2026) (available here); *GENIUS Act Requirements and Standards for FDIC-Supervised Permitted Payment Stablecoin Issuers and Insured Depository Institutions*, 91 Fed. Reg. 18,534 (Apr. 10, 2026) (available here); Exec. Order No. 14,233, *Establishment of the Strategic Bitcoin Reserve and United States Digital Asset Stockpile*, 90 Fed. Reg. 11,789 (Mar. 6, 2025) (available here).

[30] SEC, *SEC Requests Information and Comment on Advisers Act Regulatory Status of Index Providers, Model Portfolio Providers, and Pricing Services* (June 15, 2022) (available here).

[31] MSCI Letter, at 4 (available here).

[32] IOSCO, *Principles for Financial Benchmarks: Final Report*, at 12–13 (July 2013) ("IOSCO Principles") (available here) (Principles 11 and 12, addressing the content of, and changes to, benchmark methodologies); Regulation (EU) 2016/1011, art. 13 (requiring benchmark administrators to publish "the key elements of the methodology" and procedures for consulting on material changes).

[33] Regulation (EU) 2016/1011, art. 13(1)(a); IOSCO Principles, at 22 (July 2013) (Principle 11) (available here).

[34] *See, e.g.*, MSCI, *Consultation on the Treatment of Unequal Voting Structures in the MSCI Equity Indexes*, at 2, 14 (Jan. 2017, updated June 2018) (available here); MSCI, *Treatment of Depositary Receipts Where Underlying Shares Are Not Available for Trading as Part of the August 2026 Index Review* (July 24, 2026) (available here).

[35] MSCI, *Consultation on the Treatment of Unequal Voting Structures in the MSCI Equity Indexes*, at 2, 14 (Jan. 2018, updated June 2018) (available here); *see also, e.g.*, MSCI, *Conclusions of the Consultation on Methodology Enhancement to the MSCI Islamic Index Series and the MSCI Islamic Index M-Series* (Sept. 30, 2024) (available here) (adopting an exit buffer under which an existing constituent is deleted only after meeting certain criteria for three consecutive review periods).

[36] *See* Regulation (EU) 2016/1011, art. 13(2)(b) ("comments referred to in point (a) of this paragraph, and the administrator's response to those comments, to be made accessible after any consultation, except where confidentiality has been requested by the originator of the comments"); IOSCO Principles 24 (July 2013) (Principle 12) (available here) (procedures for material

changes should provide “advance notice and a clear timeframe” for comment and should make stakeholders’ “summary comments” and the administrator’s “summary response” accessible “after any given consultation period”).