

July 21, 2020

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Good Faith Determinations of Fair Value (File No. S7-07-20)

Dear Ms. Countryman:

ICE Data Pricing & Reference Data, LLC (“PRD”) appreciates the opportunity to comment on the U.S. Securities and Exchange Commission’s (“SEC” or “Commission”) proposed rule 2a-5 (“Proposal”).¹ From PRD’s perspective as a pricing service vendor, the Proposal is a positive development in clarifying how fund boards can satisfy their fair valuation obligations.

Background

PRD is an indirectly, wholly-owned subsidiary of Intercontinental Exchange, Inc. (NYSE: ICE) and a registered investment adviser². ICE Data Services is the marketing name used to refer to the suite of pricing, market data, analytics, and related services offered by Intercontinental Exchange, Inc. and certain of its affiliates, including PRD.

PRD provides global security pricing, evaluations, reference data, analytics and corporate actions designed to support financial institutions’ and investment funds’ pricing activities, securities operations, research, and portfolio management. PRD produces daily evaluations for approximately 2.8 million fixed income and international equity securities. PRD’s evaluated pricing spans approximately 154 countries and covers a wide range of financial instruments including sovereign, corporate and municipal bonds, structured products, leveraged loans, and our Fair Value Information Services for international equities, options, futures and fixed income products. Our reference data complements our evaluated pricing services by offering our clients a broad range of descriptive information, covering over 33 million financial instruments (both active and inactive or historical securities) across over 210 markets.

Fair Value Rule

In the press release announcing the Proposal, Chairman Clayton stated:

The way a fund values its investments is critical to Main Street investors. It affects the fees they pay, the returns they receive, and the value of the fund shares they hold. Today’s proposal would improve valuation practices, including oversight, thereby protecting investors and improving market efficiency, integrity and fairness.³

¹ Investment Company Act Release No. 33845 (Apr. 21, 2020).

² PRD is registered as an investment adviser with the SEC under the Investment Advisers Act of 1940, as amended (the “Advisers Act”), with respect to its advisory business which includes evaluated pricing services and evaluated curves, and as such, with respect to its advisory business, is subject to the requirement to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

³ SEC Proposes to Modernize Framework for Fund Valuation Practices, <https://www.sec.gov/news/press-release/2020-93> (Apr. 21, 2020).

PRD believes the Chairman correctly identified valuation practices as an area of importance for protecting investors. Extraordinary recent market volatility across equity and fixed income asset classes has highlighted new risks and challenges in pricing and valuing securities. Further, as the market continues to evolve and retail financial products increasingly facilitate exposure to securities that have not been associated with retail investing, fund boards have sought additional clarity regarding how to comply with their valuation obligations. PRD is pleased that the SEC has decided to address this issue.

PRD Responses to Proposal Questions

7. Are certain types of methodology testing inappropriate or irrelevant for certain investment types?

PRD believes that while the approaches suggested by the SEC for back-testing methodologies are appropriate for certain asset classes, they would be unduly burdensome and inappropriate for other investment types. More specifically, the SEC's suggestion to test prices by comparing them to subsequent transactions or open prices is only appropriate for those investment types where instrument-level transaction data is reported publicly (e.g., corporate bonds reported on FINRA® TRACE® and municipal bonds reported on MSRB EMMA®). The Proposal aptly points out that back-testing may be less useful for portfolio holdings that trade infrequently but does not address the appropriateness of requiring back-testing for investments that are not subject to a public reporting system.

For those investment types for which only cohort-level transaction reporting is made publicly available, or for those investment types that are not subject to transaction reporting, the comparison to subsequent transactions or open prices (i) is burdensome for funds and their providers; and (ii) results in unequal access to subsequent transaction data to be used as a comparison. Therefore, in these instances, PRD does not believe that a comparison to subsequent transactions or open prices offers a compelling validation of the reliability of the methodologies.

For this reason, PRD recommends that the Commission, in any final rule account, for the fact that testing prices against subsequent trades and open prices is appropriate only for those investment types where instrument-level public trade dissemination is available. PRD also believes that the SEC should adopt a principles-based approach to methodology testing for all other investment types where instrument-level public trade dissemination is not available, allowing funds to employ validation approaches that appropriately consider the characteristics and availability of market data for the different investment types.

10. Do commenters agree that the proposed rule should require oversight of pricing service providers, if used? Should the rule cover any service providers other than pricing services? If so, which service providers should be included? Should the rule further clarify who qualifies as a pricing service?

For funds that use pricing services, paragraph (a)(4) of the Proposal would require that the fund board or adviser establish a process for the approval, monitoring, and evaluation of each pricing service vendor. PRD agrees that it is appropriate that pricing service vendors be subject to oversight from the investment adviser or fund board that is responsible for fair value determinations. Importantly, PRD believes the Commission should clarify that the level of oversight required by the investment adviser or fund board shall take into account the regulatory status of the pricing service vendor.

Question 10 also asks whether there should be additional clarification as to who qualifies as a pricing service. In our view, the factors specified in the Proposal⁴ provide a solid initial framework for evaluating pricing service vendors.

⁴ The release specifies that “[t]he board or adviser generally should take into consideration factors such as (i) the qualifications, experience, and history of the pricing service; (ii) the valuation methods or techniques, inputs and assumptions used by the pricing

Any final Commission rule, however, would benefit from the SEC providing additional guidance that more fully addresses the qualifications that investment advisers and fund boards should expect from their pricing service vendors.

More specifically, to support a high standard of business practices and conduct, PRD believes that all pricing service vendors should have well-defined controls, infrastructure and demonstrable compliance programs designed to ensure the appropriateness and consistent application of methodologies developed for the evaluation of securities. These controls and programs should also provide for the dependable delivery of products and services, including risk and performance management tools to demonstrate consistent application of pricing methodologies and delivery of pricing services during significant market events.

In our view, the recent volatility in the markets has demonstrated the importance of reliable infrastructure, controls, and compliance in ensuring the consistency and quality of pricing services. PRD believes that the Proposal provides an opportunity for the SEC to further clarify, for the benefit of fund boards, investment advisers, the pricing service vendor community and investors, precisely what it expects from a fund board's or investment adviser's selection and evaluation of a pricing service vendor.⁵

11. Should there be a specific requirement in the rule to periodically review the selection of pricing services used and to evaluate other pricing services?

PRD believes that a specific prescriptive requirement to review the selection of pricing services is not necessary because Rule 206(4)-7 under the Advisers Act and Rule 38a-1 under the Investment Company Act already require periodic reviews of third-party vendors, including pricing service vendors. PRD believes that Chief Compliance Officers of investment advisers and investment companies should retain the discretion for designing this periodic review through their compliance programs, including the frequency of review.

13. Are we sufficiently clear on the interaction between rule 38a-1 and the policies and procedures under proposed rule 2a-5? Should we provide any further guidance on their interaction?

PRD believes that the Proposal is sufficiently clear on the interaction between rule 38a-1 and the policies and procedures required under paragraph 2a-5 of the Proposal as it relates to the interaction between the fund board and the investment adviser. The Commission should, however, further clarify paragraph (b)(1)(i)(E) in the Proposal as follows (changes in bold): “(E) Any material changes to the adviser’s process for selecting and overseeing pricing services, as well as material events related to the adviser’s oversight of pricing services (such as changes in the pricing service ~~providers~~ used or price overrides)”.

The term “service provider” is defined and used in the Rule 38a-1 adopting release to refer to a discrete list of providers with respect to which fund boards have oversight obligations. These obligations differ from those outlined in the Proposal for the oversight of pricing services. Referring consistently to pricing service providers as pricing service vendors in any final rule and related guidance would help avoid confusion and ambiguity regarding the

service for difference classes of holdings, and how they are affected as market conditions change; (iii) the pricing service’s process for considering price ‘challenges’, including how the pricing service incorporates information received from pricing challenges into its pricing information; (iv) the pricing service’s potential conflicts of interest and the steps the pricing service takes to mitigate such conflicts; and (v) the testing processes used by the pricing service.” See *supra* note 1, at 25-26.

⁵ Pricing service vendors that provide similar services, PRD believes, should be held to equivalent regulatory standards, and those standards should include, for any pricing service vendor that provides evaluation services to registered funds, the existence of an adequate infrastructure, including well-defined controls and a compliance program reasonably designed to address the standards expected from pricing service vendors under the Proposal.

board's oversight responsibilities under paragraph 2a-5 of the Proposal, which are justifiably different from the oversight requirements applicable to service providers specified in rule 38a-1.⁶

20. The rule would permit boards to assign the determination of fair value only to an adviser to the fund. Are there other parties to which we should permit boards to assign such determinations? For example, would it be appropriate to allow boards to assign these determinations to pricing vendors or accounting firms?

While pricing service vendors should continue to play a significant role in assisting boards to make fair value determinations, or assisting investment advisers to perform functions assigned by the board in connection with fair value determinations, PRD does not believe that boards should be permitted to assign fair value determinations to pricing service vendors or accounting firms. PRD's view is that investment advisers and funds are well-served by pricing service vendors that maintain their independence and have policies and procedures to help manage and minimize potential conflicts of interest while delivering consistent and sustainable products and services to their clients.

20. If we do permit other parties to be assigned the determination of fair value under the final rule, what safeguards, if any, should we include to ensure that the determinations of fair value in good faith are conducted consistent with the proposed rule? For example, should we only permit assignment to non-advisers if they have a fiduciary duty to the fund or if they are regulated by the Commission? Why or why not?

As discussed above in response to Question 10, PRD believes that the SEC should provide additional guidance that fully addresses the qualifications that investment advisers and fund boards should expect from their pricing service vendors.

The presence of sufficient infrastructure, including well-defined controls and a compliance program that is designed to address the standards expected from a pricing service vendor under the Proposal, should play a significant role in helping fund boards and investment advisers support their selection of such a pricing service vendor. Pricing service vendors should have policies, procedures and a compliance program that can help support an adviser's demonstration of compliance with the final rule and other applicable regulations. The SEC should also clarify under what circumstances it would be deemed necessary for a pricing service vendor to be regulated by the SEC as an investment adviser.⁷

34. In light of their importance, should the rule impose specific requirements beyond reporting regarding pricing services? For example, should any pricing services used be explicitly approved by the board?

Yes. PRD believes that any decision to utilize a pricing service vendor should be approved by the fund board, unless fair valuation determinations are assigned to the fund's adviser. Under those circumstances, a pricing service vendor should be approved by the fund adviser, and all pricing service vendors used by the adviser need only be reported to the fund board.

As discussed above in response to Question 10, PRD recommends that the SEC provide additional guidance regarding the qualifications that investment advisers and fund boards consider in evaluating their pricing service vendors, including infrastructure, controls, and compliance in ensuring the consistency and quality of pricing services, including risk and performance management tools to demonstrate consistent application of pricing

⁶ It is PRD's view that nothing in the Proposal would require a fund board to approve the policies and procedures of a pricing service vendor. PRD believes this is the right approach.

⁷ See *supra* note 2.

methodologies and delivery of pricing services during significant market events. PRD believes that such guidance would better ensure the quality of pricing service vendors.

34. Should there be a required finding or report by the adviser as to pricing services' adequacy and effectiveness?

Yes. It is appropriate to require the fund adviser to report information regarding the quality of the pricing service vendor to the fund board. Such reporting should include enough detail to support the fund board's approval of the use of the pricing service vendor (or the adviser's approval, as applicable). Assuming the fair value determinations are assigned to the adviser by a fund board, the fund board's review should be limited to assessing the adequacy of the adviser's selection and oversight of the pricing service vendor.

The final rule should not require a fund board to approve the specific policies and procedures of a pricing service vendor, as the investment adviser already maintains the responsibility to perform appropriate due diligence on the pricing service vendor, which typically includes a review of the pricing service vendor's infrastructure and pricing methodologies, as well as a summary of its applicable policies and procedures.

49. Is the proposed definition of when market quotations are readily available under the Investment Company Act appropriate?

The Proposal provides that a market quotation is "readily available" when that quotation is a quoted price (unadjusted) in active markets for identical investments that the fund can access at the measurement date, provided that the quotation will not be readily available if it is not reliable. In PRD's view, the Commission's proposed approach is inconsistent with the requirements under ASC Topic 820.⁸ ASC Topic 820 differentiates between observable inputs and unobservable inputs. Level 1 and Level 2 inputs fall under the category of observable inputs. However, Level 2 inputs that are deemed observable under the accounting standards do not meet the definition of "readily available" market quotations as defined in the Proposal and therefore must meet all the requirements for a fair value determination contained therein. This approach may create an undue burden on funds that regularly rely on Level 2 inputs to price their portfolio securities.

Many of PRD's fund clients deem our evaluations to fall into Level 2 of the fair value hierarchy (i.e. "inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly") based on their due diligence of our methodology and documentation. As a pricing service vendor, PRD provides ample information to its clients to support this determination including methodology documents, summary of inputs by asset class and reports containing the specific inputs used in the evaluations process for a limited select sample of securities. PRD also provides tools that allow clients more transparency into the market and assumptive data available for certain securities. If the Commission requires funds, each time they make a fair value determination, to record the specific assumptions and inputs considered in making the fair value determination, the funds are likely to seek this information from their pricing service vendor. This approach would put an enormous operational and financial burden on funds and investment advisers and would likely require pricing service vendors to increase their fees. PRD does not see a justifiable benefit to support the industry burden associated with this new requirement.

There are additional considerations related to the definition of "readily available market quotation." The concept of a market quotation that is "readily available" appears in other contexts in rules under the Investment Company Act of 1940 for which the proposed definition may not be appropriate. For example, the application of the definition as proposed may have undesirable consequences for purposes of rule 17a-7, which provides an exemption for certain purchases or sale transactions between a registered investment company and certain of its affiliated persons when

⁸ Footnote 48 of the Proposal specifically refers to ASC 820 as a relevant accounting standard. *See supra* note 1, at 20.

certain conditions are met. The first condition of that exemption includes a reference to “securities for which market quotations are readily available.”

Unfortunately, it can be difficult to satisfy the conditions of rule 17a-7 when investment advisers seek to execute a cross trade in fixed income securities between investment companies. PRD believes that the rule should be updated in a manner that would codify the no-action relief provided by the SEC staff in the context of the cross trading of municipal securities⁹ and expand it to apply to the use of evaluated prices of other types of fixed income securities that tend to trade more actively, for cross trading purposes. PRD believes that contemporaneous evaluated prices can be supplemented with supporting metadata to help address any regulatory concerns with such cross trades and allow funds to benefit more often from the cost savings associated with such cross trading.¹⁰ PRD is in general agreement with The Technology and Electronic Trading Subcommittee of the FIMSAC’s Preliminary Recommendations Regarding Modernizing Rule 17a-7 under the 1940 Act.¹¹

In summary, PRD believes that the SEC should consider a more flexible definition of “readily available market quotation.” It would be helpful, for instance, if the final rule were flexible enough to permit evaluated pricing, when supplied with an appropriate level of transparency, to meet the proposed definition of a market quotation that is readily available.

63. In which ways do funds’ current practices differ from the policies and procedures, reporting, and recordkeeping and other activities mandated by the proposed rule? Is our understanding correct that current funds’ practices are largely similar to the policies and procedures, reporting, and recordkeeping and other requirements of the proposed rule?

PRD recommends that any final rule align with current recordkeeping practices of funds in connection to a fair value determination. In particular, PRD questions the need to require funds under paragraph (a)(6)(i) “to maintain information regarding the specific methodologies applied and assumptions and inputs considered when making fair value determinations.” PRD believes that by modifying the recordkeeping requirement to align with the requirements under applicable accounting standards, the SEC can create more consistency and clarity and eliminate the unnecessary burden under the Proposal as discussed above in response to question 49.

PRD suggests that the final rule include provisions for recordkeeping that distinguish between fair value determinations based on inputs from pricing service vendors from other fair value determinations. Specifically, PRD suggests that the final rule include the following revision to paragraph (a)(6)(i) (changes in bold): *(i) Appropriate documentation to support fair value determinations, including information regarding the ~~specific~~ methodologies applied and the assumptions and inputs considered when making fair value determinations, **as required under applicable accounting standards**, as well as any necessary or appropriate adjustments in methodologies, for at least five years from the time the determination was made, the first two years in an easily accessible place...*

⁹ See e.g., Federated Municipal Funds, SEC Letter (Nov. 20, 2006); United Municipal Bond Fund, SEC Letter (Jan. 27, 1995).

¹⁰ The metadata provided with an evaluated price to help address regulatory concerns could include items such as:

- (i) the number of trades in the last month (or alternative time period) in that security;
- (ii) the number of quotes in the same time period; or
- (iii) the number of trades on comparable bonds in the same time period to support an adviser’s compliance with the Proposal.

¹¹ See <https://www.sec.gov/spotlight/fixed-income-advisory-committee/preliminary-recommendation-re17a-7.pdf>.

Conclusion

PRD appreciates the opportunity to present its perspective and views on the Commission's Proposal. Should any questions arise about the content of this letter, please do not hesitate to contact me.

Respectfully submitted,

/s/ John F. Robbins, CFA
Chief Compliance Officer
ICE Data Pricing & Reference Data, LLC