



September 2, 2022

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices; File Number S7-17-22 (“Proposal”)

Dear Ms. Countryman,

Intercontinental Exchange, Inc. (“ICE”), on behalf of itself and its subsidiaries, appreciates the opportunity to comment on the Proposal to enhance disclosures by certain investment advisers and investment companies about environmental, social and governance investment practices.¹ ICE is supportive of regulatory initiatives designed to improve transparency and enhance overall fairness and efficiency of the securities markets.

We believe that our experience as a service provider and an index administrator, providing services designed to help support our clients sustainable finance objectives, can provide useful insights into the questions asked by the Commission in this Proposal and we are appreciative of the opportunity to share our perspectives with the Commission.

Background on ICE Data Services

ICE, through its ICE Data Services business, offers a suite of pricing, market data, analytics, and related services, including through its subsidiary, ICE Data Pricing & Reference Data, LLC (“PRD”). Index Services are provided through another subsidiary of ICE, ICE Data Indices, LLC (“IDI”).

The PRD business provides pricing, evaluations, analytics, reference data and corporate actions for securities across the globe and is designed to support financial institutions’ and investment funds’ pricing, securities operations, research and portfolio management activities. PRD produces daily evaluations for approximately 2.8 million fixed income and international equity

¹ Proposed Rule on Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices, Release No. IA 6034; [IC-34594](#); (May 25, 2022).



securities. Our evaluated pricing spans over 150 countries and covers a wide range of financial instruments including sovereign, corporate and municipal bonds, structured products, leveraged loans, as well as our Fair Value Information Services for international equities, options, futures, and fixed income products. PRD's reference data complements these evaluated pricing services by offering its clients a broad range of current and historical descriptive information, covering over 35 million active and retired financial instruments. PRD is registered with the SEC as an investment adviser under the Advisers Act.

By leveraging its existing reference data expertise and infrastructure, ICE offers a range of data and tools to provide customers with transparency into the impact of climate and other sustainability issues. ICE's data provides detailed environmental, social and governance (ESG) attributes and indicators that may be financially material - such as greenhouse gas emissions reported, board diversity, benefits and workforce breakdown - sourced from both company and publicly available third-party sources. In addition, ICE's geospatial and economic data provides climate risk and social impact data and analytics for properties and communities within the contiguous US, allowing users to analyze commercial and residential properties, whole loan portfolios and real estate holdings, and the asset-backed securities or business and corporate operations tied to those locations.

IDI's extensive global index offering includes over 6,000 fixed income, equity, currency, mortgage, and volatility indices that are used by market participants around the world. Among IDI's indices, is a range of solutions for fixed income sustainable benchmarks that account for ESG factors in addition to other criteria. IDI adheres to the IOSCO Principles for Financial Benchmarks published by the International Organization of Securities Commissions (the "IOSCO Principles")² and has published a Statement of Adherence with the IOSCO Principles that has been reviewed by ICE's external auditor. IDI is also recognized as a third country benchmark administrator with the UK Financial Conduct Authority (the "FCA") and is subject to the UK's Benchmark Regulation.

Proposed financed GHG emissions disclosures for environmentally focused funds

ICE believes the SEC should carefully weigh the costs associated with its Proposal to require disclosure by environmentally focused funds of both the GHG metric emissions and intensity. In particular, ICE does not believe that funds should be required to disclose Scope 3, even if such information is reported by a portfolio company because such information lacks comparability across different reporting entities. To the extent a fund chooses to disclose such information, a fund should be permitted to disclose based on data reported by a portfolio company and modelled where company reports are unavailable.

² <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD474.pdf>



Further, to the extent that the Commission requires funds to disclose GHG emission, ICE agrees that purchased or generated carbon offsets should be separately disclosed from the fund's GHG emissions calculations, which would allow investors to compare among funds. Similarly, we would suggest that all long and short positions be reported separately.

However, we believe the SEC needs to further evaluate the appropriateness and impact of the requirement to include in disclosures the emissions of the underlying reference portfolio company for derivative positions that reference a company before adopting any requirement that includes such disclosure. It is not clear to ICE that the notional balance of the derivative is the correct basis on which to value a derivative position in terms of financing the appropriate percentage of a portfolio's GHG emissions. Importantly, the proposed approach could (and likely would) lead to a significant overcounting of emissions. For example, the fund industry's total cash and derivatives exposure (e.g. Total Return Swaps, Credit Default Swaps, Options, etc.) to a particular company could easily exceed 100% of that company's total, disclosed GHG emissions. In addition, there are potential operational complexities in measuring the long versus short exposure a derivative provides to the underlying company (i.e., cash short positions are not proposed to be included in the calculation of a fund's total GHG emissions, and therefore, ICE recommends that short and long positions will be separately reported. We do agree with the Proposal that only derivatives that reference an underlying portfolio company as defined in the Proposal should be included within the scope of what derivatives contribute to these calculations. However, for the reasons mentioned above, we suggest the SEC perform extensive outreach to better understand the implications of including such derivatives within the disclosure requirements.

The disclosure requirements under Item 8 of Form ADV may cause in certain circumstances an overstatement of ESG considerations by pricing services

Proposed amendments to Form ADV part 2A (i.e. "Adviser Brochure") would require the investment adviser under Item 8 to disclose the "criteria or a methodology for evaluating, selecting, or excluding investments in your significant investment strategy or method of analysis based on the consideration of ESG factors, describe that criterion and/or methodology and how you use it for each applicable significant investment strategy or method of analysis." ³ As a pricing vendor, PRD's evaluated prices represent market-based measurements that are processed through a rules-based pricing application and represent its good faith determination as to what the holder may receive in an orderly transaction for an institutional round lot position under current market conditions. Currently, our methodologies incorporate multiple factors which, as observed in the marketplace, thus far do not generally price in climate.

³ Proposed amendment to Item 8 of Form ADV Part 2A



However, if in the future certain ESG factors impact the value of securities, PRD may have to incorporate such considerations in its evaluation methodology. Such incorporation of an ESG factor will not be done as a recommendation of an investment strategy but rather, if incorporated, will be done to reflect a new input the market takes into consideration in determining the fair value of a security. PRD is concerned that requiring a pricing services provider like PRD to provide a detailed disclosure on the use of ESG factors as inputs into its methodology (if it were to use them) would cause these factors to be overstated as compared to other, even potentially more significant, inputs that go into the evaluation of a security, or cause users of PRD pricing services to believe that such inputs play a more significant role in its evaluation methodology than they actually do. PRD therefore recommends that the SEC not require such additional disclosure in Item 8 for pricing service providers.

LEI by itself is not an appropriate way to identify an index

Under the Proposal, Form N-CEN would require all index funds to report the name and LEI, if any, or provide and describe other identifying number of the index the funds track.⁴ LEIs are assigned on the entity level, however, not on the index level. Therefore, using the LEI on the form will only allow for the identification of the index provider. Most global index providers administer thousands of indices and, therefore, an LEI by itself is not sufficient for identifying the index being used. We recommend that Form N-CEN leverage existing common ways for identifying indices, such as requiring the use of the index ticker or a combination of the entity's LEI together with the unique index ticker, such as Index Tickers and Index Names.

The proposal should allow for hyperlinking to index methodology in the fund's statutory prospectus

Under the Proposal, the fund's statutory prospectus would include disclosure about the index methodology used and how the methodology incorporates ESG factors. ICE believes that a high-level description of the methodology and a hyperlink to the index methodology should be permitted to satisfy the requirement to provide such detail in the fund's prospectus. The Proposal permits a hyperlink to the index methodology in Part 2A of Form ADV for the same purpose and would be an equally useful means to provide transparent disclosure in the prospectus.

Specifically, Part 2A of Form ADV would require disclosure of the "criteria or a methodology for evaluating, selecting, or excluding investments in your significant investment strategy or

⁴ proposed Item C.3(b)(i) of Form N-CEN



method of analysis based on the consideration of ESG factors, describe that criterion and/or methodology and how you use it for each applicable significant investment strategy or method of analysis.”⁵ Under Item 8 of Form ADV Part 2A, the Proposal specifically states that “[i]f you utilize or follow a third-party ESG Framework, criterion, or index, you may include a hyperlink to any such framework, criterion, or index in your response to this Item.” ICE believes that similar to the instructions provided under Item 8 to Form ADV Part 2A, funds should be able to hyperlink to the index methodology in the fund’s statutory prospectus. The requirement for the fund to describe in the prospectus a methodology that is already described in detail in a publicly available document can create a risk that the summary may not include all the relevant detail or, overtime will not capture changes to index methodology that may have been adopted by the index provider. A retail investor that is interested in a deeper understanding of the methodology utilized by the index provider is just as likely to click on the link to read such methodology as reading a lengthy description of the methodology including in the fund’s prospectus.

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ICE 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,

A handwritten signature in black ink, appearing to read "Mark Heckert", is positioned above the typed name.

Mark Heckert, Chief Product Officer, ICE Data Services
Intercontinental Exchange, Inc.

⁵ Proposed amendment to Item 8 of Form ADV Part 2A