



July 12, 2024

VIA ELECTRONIC SUBMISSION

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

Policy Division
Financial Crimes Enforcement Network
U.S. Treasury Department
P.O. Box 39
Vienna, VA 22183

**Re: Proposed Rule on Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers (File No. S7-2024-02) (“Proposal”)
Docket No. FINCEN-2024-0011**

Dear Ms. Countryman and FINCEN Policy Division:

Intercontinental Exchange, Inc. (“ICE”), on behalf of itself and its subsidiaries, appreciates the opportunity to comment on the Proposal by the U.S. Securities and Exchange Commission’s (“SEC”) and the U.S. Treasury’s Financial Crimes Enforcement Network (“FinCEN”).¹ As discussed below, ICE is supportive of regulatory initiatives designed to enhance investor protections and facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Both from the perspective of a Registered Investment Adviser and a service provider to investment advisers, ICE believes that certain aspects of the Proposal are unnecessary and will not create the benefits envisioned under the Bank Secrecy Act nor the USA PATRIOT Act² of 2001. We are appreciative of the opportunity to share our perspectives with the SEC and FinCEN.

I. Overview of ICE’s Investment Adviser

A U.S. subsidiary of ICE, ICE Data Pricing & Reference Data, LLC, is registered with the SEC under the Investment Advisers Act of 1940 (“Investment Advisers Act”), for its fixed income securities evaluations, certain analytics, and other advisory services. It produces daily evaluations for approximately 3 million fixed income securities spanning approximately 150 countries and 80 currencies, including sovereign, corporate and municipal bonds, mortgage and other asset-backed securities, as well as leveraged loans.³ ICE Data Pricing & Reference Data, LLC also offers to customers subscription-based non-advisory services, such as reference data

¹ Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers, Release No. Release Nos. BSA-1; RIN: 3235-AN34; File No. S7-2024-02, 89 FR 44571 (proposed May 13, 2024).

² Specifically, Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (“USA PATRIOT Act”).

³ These products and services are provided in the U.S. through ICE Data Pricing & Reference Data, LLC and internationally through ICE Data Services entities in Europe and Asia Pacific.

and corporate actions information, which complement the evaluated pricing by providing descriptive information on millions of financial instruments. These data can be used by clients to enhance risk management, support compliance needs, and improve operational efficiency.

Importantly, ICE Data Pricing & Reference Data, LLC does not offer accounts where customers can hold customer funds or securities, nor does it offer any asset management accounts or accounts that could be used as an entry point into financial markets, for example through the facilitation of securities transactions.

II. Investment advisers that do not offer custody or management of client asset services or whose services do not provide access to financial markets do not pose the risk of money laundering or terrorism financing as described in the Proposal

The proposed rules would apply to all persons meeting the Advisers Act definition of “investment advisers” (i.e. advisers registered or required to be registered with the SEC, as well as those exempt from registration under Section 203(l) or 203(m) of the Advisers Act and applicable rules thereunder) and would require investment advisers to establish customer identification programs (“CIPs”).

The Proposal would require investment advisers’ CIPs to apply to all customers, regardless of whether the investment advisory services facilitate the activities the Proposal is designed to address. For example, ICE Data Pricing & Reference Data, LLC does not offer accounts where customers can hold customer funds or securities nor does it offer any asset management accounts or accounts that could be used as an entry point into financial markets, such as through the facilitation of securities transactions. ICE Data Pricing & Reference Data, LLC provides only subscription-based securities evaluations, analytics and market data services to customers who pay a fee based on the specific informational services the customer determines to purchase. ICE Data Pricing & Reference Data, LLC’s advisory and non-advisory services cannot be used to facilitate the type of money laundering or terrorism financing described in this Proposal any more than a subscription to a financial periodical, news service or the services provided by other pricing services not registered with the SEC as investment advisers. Nevertheless, the Proposal would require ICE Data Pricing & Reference Data, LLC to implement a CIP. ICE does not believe the SEC and FinCEN have explained the benefits associated with implementing and applying a CIP to customers of services such as those offered by ICE Data Pricing & Reference Data, LLC that do not facilitate the activities this Proposal is designed to address.

The Proposal acknowledges that *“the benefits of the proposed rule would also be lessened to the extent that an investment adviser’s customer holds accounts for purposes other than accessing financial markets (for example, if the customer holds an account only to receive investment research services).”*⁴ The Proposal then caveats that statement with a footnote reading *“however, these services could also be used to facilitate other aspects of the money laundering process.”*⁵

⁴ <https://www.sec.gov/files/rules/proposed/2024/bsa-1.pdf>, page 46

⁵ <https://www.sec.gov/files/rules/proposed/2024/bsa-1.pdf>, page 46, FN 85

Without any further explanation, ICE does not understand how an investment adviser providing to a customer investment research services alone could tangibly facilitate the illicit activities described in the Proposal. Although the Proposal would allow for a risk-based assessment of a customer, the Proposal does not permit investment advisers to distinguish among investment advisory services that may facilitate money laundering and other illicit activities, and investment advisory services that do not.

ICE does not believe that the SEC and FinCEN have supplied sufficient evidence on why any advisory business that does not design, market or sell investment strategies, hold or manage assets, or provide personalized investment advice should be covered under this Proposal. The explanation provided under Reasonable Alternatives as to why the proposed rule would not provide exceptions for customers that do not use investment advisers to access financial markets⁶ assumes an adviser would always offer a mix of services to their advisory clients and therefore, the costs of excepting these accounts from the requirements of the rule would not result in large cost savings. This assumption excludes from the analysis investment advisers like ICE Data Pricing & Reference Data, LLC where none of its customers use its services to access financial markets. For such advisers, the requirement to put in place a CIP would be costly and, given the lack of evidence of a risk associated with such activities, yield no benefits.

For this reason, ICE recommends that the SEC and FinCEN exclude from any requirement that investment advisers have CIPs those advisory services that are solely informational in nature, such as advisory services listed in items (8), (9), (11), and (12), where such “other” activities do not provide access to financial markets, of Item 5 Question in Form ADV Part 1A. Such activities do not represent the type of exposure to facilitating money laundering or terrorism financing the Proposal is designed to mitigate. This exclusion could also be accomplished by limiting the scope of the definition of Account to only contractual or business relationships that offer asset management services, custody services or provide access to financial markets. Alternatively, the SEC and FinCEN could exclude from the definition of Customer those customers to whom the investment adviser does not provide asset management services, custody services or access to financial markets.

III. The proposal imposes significant costs on investment advisers that do not offer custody or management of client asset services or whose services do not provide access to financial markets

This proposed broad definition of Customer poses a significant burden on advisers like ICE Data Pricing & Reference Data, LLC who provide its informational services to thousands of clients. The Proposal defines a “Customer” as “...a person - including a natural person or a legal entity - who opens a new account with an investment adviser”. The definition excludes from the term Customer “A person that has an existing account with the investment adviser, provided the investment adviser has a reasonable belief that it knows the true identity of the person.” This exclusion does not meaningfully narrow the scope of the definition for two reasons:

⁶ <https://www.sec.gov/files/rules/proposed/2024/bsa-1.pdf>, page 63

1. For the exclusion to apply, the investment adviser should form a reasonable belief that it knows the true identity of the customer, which means that the investment adviser would need to conduct some form of review of its existing customers in order to reach such reasonable belief.
2. According to the Proposal a person becomes a customer each time the person opens a new account with an investment adviser and therefore, the verification requirements will apply each time the customer opens an account.⁷

As stated above, ICE does not believe that the SEC and FinCEN have supplied sufficient evidence on why any advisory business that does not design, market or sell investment strategies, hold or manage assets, or provide personalized investment advice should be covered under this Proposal or articulated the benefit from CIPs being applied to Customers that do not receive such service. Accordingly, ICE believes the costs imposed by the Proposal on investment advisers that do not provide such services would outweigh any benefits.

IV. The 6-Month proposed implementation period is insufficient

With regard to the proposed implementation period, we believe a significantly longer implementation period of at least 18 months is necessary for any investment adviser to put in place compliant procedures and controls. Implementing the type of program as described in the Proposal requires a significant amount of time, effort and coordination amongst multiple disciplines within a financial services firm to incorporate such a program and communicate with customers who will need to provide certain identification and verification information. These new requirements may also require hiring and training employees, which can be time consuming.

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

Respectfully submitted,



⁷ <https://www.sec.gov/files/rules/proposed/2024/bsa-1.pdf>, page 14

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