



March 31, 2023

Vanessa A. Countryman
Office of the Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
Rule-comments@sec.gov

Re: File Number S7-32-22: Regulation Best Execution (“Proposal”)

Dear Ms. Countryman,

Intercontinental Exchange, Inc., on behalf of itself and its subsidiaries (collectively, “ICE”), appreciates the opportunity to comment on the Proposal by the Securities and Exchange Commission (“**Commission**” or “**SEC**”).¹

We provide our comments on the application of the Proposal to the fixed income markets from ICE’s perspective as a provider of evaluated pricing, execution quality scoring tools, as well as other portfolio data and analytics services. We are appreciative of the opportunity to share our perspectives with the Commission.

I. Background on the ICE’s Fixed Income Data and Execution Service

ICE, through its Fixed Income and Data Services business, offers a suite of pricing, evaluation, market data, analytics, and related services. Among the services offered by ICE is its Best Execution service, a statistical distribution approach for measuring bond trade execution quality. Our Best Execution service utilizes ICE’s evaluated prices to help clients monitor trade activities and help measure execution quality across counterparties, trading venues as well as a growing number of trading protocols on those venues. Among other things, the service enables users to score or rank the execution of a trade versus other comparable trades. This score represents the percentage of trades that were executed at a less favorable level within the

¹ Regulation Best Execution, Exchange Act Release No. 34-96496 (December 14, 2022), 88 Fed. Reg. 5440 (January 27, 2023).



selected universe compared to our Continuous Evaluated Prices (“CEPTM”),² or other relevant reference price. This service is also used by clients to help them meet regulatory obligations.

ICE’s subsidiaries include ICE Bonds Securities Corporation (“ICE Bonds”), a broker-dealer registered with the Commission and a member of the Financial Industry Regulatory Authority. ICE Bonds is the operator of two alternative trading systems (ICE BondPoint and ICE TMC) for the trading of fixed income products, including corporate, municipal, and U.S. Treasury and agency securities.

II. Modernization of the Fixed Income Marketplace

The Proposal would cover non-exchange traded securities and highlights that the identification of material potential liquidity sources is different for OTC securities than listed securities and may include “ATS and non-ATS electronic trading systems, RFQ systems, and other auction mechanisms. Material potential liquidity sources in these fixed income markets could also include interdealer brokers and other broker-dealers willing to be a counterparty upon request.”³ The Proposal further states that a broker-dealer’s own principal trading desk may be a liquidity source. With respect to the proposed requirement to identify these sources and obtain relevant data, the SEC indicated that, for these types of securities, it is also appropriate to obtain data “from information sources that do not provide execution services, such as price aggregator services or evaluated pricing services.”⁴

ICE agrees that the markets for fixed income and cash equity securities are substantially different. However, notwithstanding these differences, ICE does not believe that the fixed income markets require meaningfully different approaches to quantitatively measure execution quality given technological advancements noted further below. The electronification of the execution of fixed income securities has led to significant increases in the volume of real time market data. Numerous data feeds with dealers providing bid and ask levels, as well as several trade data sources, are available. ICE leverages these data along with quotes and other market information to produce its CEP for approximately 2.6 million fixed income securities. It is this CEP data that ICE uses in its Best Execution service, which clients can use to define a price at which a security should trade based on a comprehensive set of market information across a large percentage of the fixed income marketplace.

² CEP supports intraday workflows with our innovative, rules-based pricing applications. Overseen by a team of evaluators, our fixed income evaluations systematically capture and incorporate market information and are designed to be responsive to market conditions.

³ *Id.* at 74.

⁴ *Id.* at 75.

Proposed Rule 1101(a)(2) would require a firm to determine the best market for customer orders by *“(i) assessing reasonably accessible and timely information with respect to the best displayed prices, opportunities for price improvement, including midpoint executions, and order exposure opportunities that may result in the most favorable price; (ii) assessing the attributes of customer orders and considering the trading characteristics of the security, the size of the order, the likelihood of execution, the accessibility of the market, and any customer instructions.”*⁵ The SEC notes that the concept of ‘best displayed prices’ would be applicable to the fixed income market as well, even without the transparency of the exchange-traded equity markets as a result of Reg NMS (i.e. publication of the NBBO).

By using the term ‘best displayed prices’, the SEC implies that a displayed quotation is a superior benchmark to a contemporaneous and independent evaluated price. ICE has run numerous backtests and analyses that confirm that is often not the case. Therefore, ICE believes contemporaneous and independent evaluations can serve as a better benchmark for measuring execution quality than certain best displayed prices (e.g., quotations displayed on an execution venue).

In the fixed income markets, certain markets are not readily accessible to all market participants. As a third-party evaluations provider, ICE will have access to the broadest range of displayed prices and other relevant non-displayed prices, especially compared to market participants with limited access to best displayed prices. In other words, pricing providers such as ICE maximize the scope of venues used as inputs into the calculation of evaluated pricing, making them a better benchmark for fixed income prices in many cases than displayed quotations.

Finally, the Proposal discusses the application of Proposed Rule 1101(b) (i.e., regarding additional requirements around conflicted transactions) to the corporate and municipal bond markets and government securities markets. This proposed rule outlines the proposed requirements to evaluate a broader range of markets and retention of records of any data feeds or other pricing information (e.g., ATS feeds, responses to RFQs, transaction prices, and evaluated pricing information) that can be used to demonstrate the firm’s basis for believing its compliance with the best execution standard. The SEC acknowledges that *“market participants in the corporate and municipal bond markets and the government securities markets are increasingly utilizing technology to trade these securities, and electronic trading is growing.”*⁶

ICE agrees and believes that there are additional advancements in technology in the industry that can support a dealer’s compliance with its duty of best execution in the fixed income market. With the availability of ICE’s CEP and similar offerings in the pricing provider community, market participants today have access to event-driven and continuously updated

⁵ *Id.* at 80.

⁶ Proposal, *supra* note 1, at 25.

fixed income evaluations from independent, third-party sources. These evaluations allow market participants to measure median mark-ups and mark-downs for fixed income securities by product type, sector, term to maturity, and transaction size buckets, among others. For example, Figures 1 through 3 below show the median mark-up/mark-down tables that ICE makes available to clients for 10-Year investment grade (“IG”) corporate bonds, energy sector corporate bonds across all tenors, and 5+Year IG tax-exempt revenue municipal bonds respectively.

Figure 1: 10-Year IG Corporate Mark-Up/Down Table



Figure 2: Energy Sector Corporate Mark-Up/Down Table

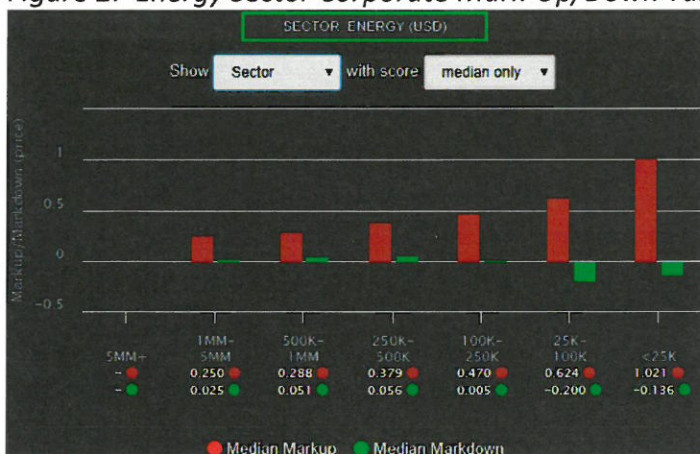
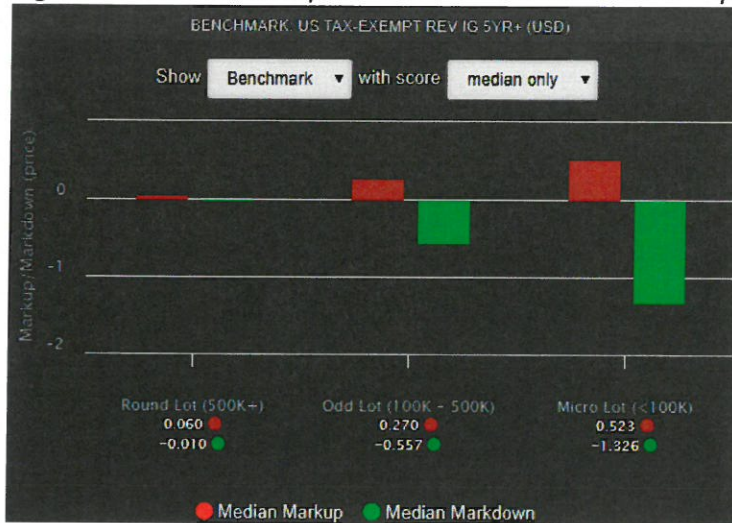


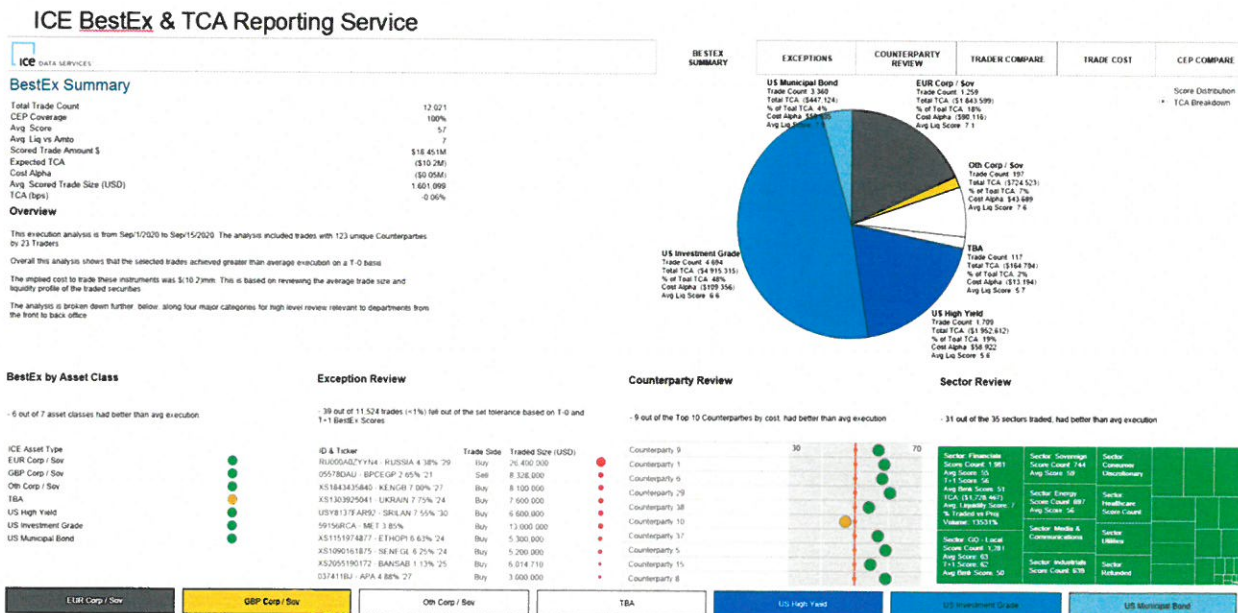


Figure 3: UX Tax-Exempt 5+Year Term Revenue Municipal Bond Mark-Up/Down Table



These fixed income evaluations and additional analytical data have also allowed ICE to develop best execution and transaction cost analytical (“TCA”) tools for the fixed income markets that allow for aggregated quantitative analysis. Tools such as these are often the foundation of our clients’ fixed income best execution policies and procedures, with exception review analysis occurring on the most significant outliers of our clients’ overall trading activities. For example, Figure 4 below shows a dashboard available to clients using a redacted and anonymized trade blotter.

Figure 4: ICE Best Execution and TCA Reporting Dashboard (Sample Portfolio with Mock Data)



ICE believes the Commission should clarify that fixed income broker-dealers may continue to rely on the type of third-party best execution data as described above to measure their execution quality under “prevailing market conditions” (as required under Proposed Rule 1100). These data can assist dealers under multiple aspects of the Proposal, including:

- Proposed Rule 1101(a)(1): Allowing such data to inform their policies and procedures, and using said data in their order handling processes.
- Proposed Rule 1101(a)(2): Allowing such data to assist in quantitatively assessing the best market determination for particular order types, which goes above-and-beyond the best displayed price requirement.
- Proposed Rule 1101(c): Permitting third-party generated reports to satisfy the execution quality review requirement, as our reports can be tailored to individual client views and needs.
- Proposed Rule 1102: Explicitly permitting third-party generated dashboards to serve as the basis for annual reporting requirements to senior management providing an overview of the efficiency of the existing program and any identified deficiencies.

In summary, we believe benchmarking best execution analysis against prices such as ICE CEP is an efficient workflow for broker-dealers while providing better retail investor protection than requiring a dealer to search for additional venues and protocols on a case-by-case basis that could potentially provide enhanced execution.

IV. Execution Quality Analysis: Frequency and Granularity

The SEC would require broker-dealers to review the execution quality of their customer orders at least quarterly. ICE believes this is an appropriate frequency to perform this level of analysis, affording each dealer the ability to assess the effectiveness of their policies and procedures.

In the Proposal, with regards to the fixed income markets, the SEC states that “a broker-dealer’s best execution policies and procedures may provide for more individualized handling of customer orders in corporate and municipal bonds and government securities than in equities securities. Accordingly, the broker-dealer’s documentation for conflicted retail transaction in corporate and municipal bonds and government securities would need to reflect the more individualized best execution process.”⁷

ICE believes that dealers’ use of third-party evaluated pricing and best execution services may alleviate the need for more individualized best execution processes, even for conflicted transactions. Fixed Income Best Execution services, such as those offered by ICE, permit broker-dealers to perform effective analysis at an aggregated level by execution methodology,



by counterparty, by individual trader, etc. as compared to trade-by-trade analysis. Our clients extract significantly more value from these multiple cross-sectional views into their trading activities than they can obtain from any individual trade-by-trade analysis, especially given the sheer size of the fixed income market (i.e., millions of tradeable securities compared to tens of thousands in the equity markets).

Further supporting our views, the CFA Institute's Trade Management Guidelines point out that, *"seeking Best Execution on a trade-by-trade basis generally not quantifiable. Therefore, it is not feasible to evaluate Best Execution on a trade-by-trade basis. Instead, the (CFA) Guidelines focus on establishing processes, disclosures, and documentation, which together, form a systematic, repeatable, and demonstrable approach to seeking Best Execution in the aggregate."*⁸

Therefore, in conjunction with the ICE recommendations above, we believe it is important for the SEC to allow dealers the flexibility to analyze their data from the fixed income markets in the level of granularity which is appropriate for their facts and circumstances, similarly to what will be permitted in the equity market.

Further, ICE believes that this Proposal creates an opportunity for the SEC to encourage modernization of the "prevailing market price" ("**PMP**") definition found in existing FINRA and MSRB rules relating to best execution. As it exists today, PMP requires an antiquated waterfall approach to determine a prevailing, contemporaneous price that does not recognize the benefits of industry technological improvements, such as the existence of CEP and similar evaluations that are often better representations of prevailing market price.⁹ If the Commission were to move forward with encouraging a PMP definition modernization, then proposed Rule 1100 could be updated to leverage the PMP term as an acceptable benchmark to measure one's execution quality against.

V. Institutional Customer Definition

In the Proposal, the Commission asks whether it should define the term "institutional customer," and if so, how should it be defined.¹⁰

ICE supports the Commission's stated objective for its Proposal to create a rule that is generally consistent with the existing best execution standards set forth in FINRA Rule 5310 (Best

⁸ See <https://www.cfainstitute.org/-/media/documents/code/other-codes-standards/trade-management-guidelines.ashx> at 3.

⁹ ICE has performed out-of-sample analysis comparing PMP waterfall prices and our CEP compared to next trade information in those situations where the prices differed, and statistically CEP is a better estimate of next trade price than PMP.

¹⁰ Proposal at 5453.



Execution and Inter-positioning) and MSRB Rule G-18 (Best Execution).¹¹ For this reason, ICE recommends that the Commission’s definition of “institutional customer” align with the definition of “institutional account” in FINRA Rule 4512(c) and the MSRB’s Rule D-15(a) (“Nature of the Customer” element) definition of “Sophisticated Municipal Market Professional.”¹²

Additionally, the Commission requests comment as to whether an institutional customer should be required to provide an affirmation to the broker-dealer concerning its exercise of independent judgment in evaluating the quality of execution of its transactions with the broker-dealer. ICE does not believe there should be an affirmation requirement since the type of clients that would satisfy the definition of “institutional account” under FINRA Rule 4512(c) are inherently sophisticated and capable of evaluating investment risks and market value independently.

VII. Transition Periods

The Proposal has a notable omission of discussion around a transition period. Under the Economic Analysis, specifically Section D for Reasonable Alternatives includes a discussion for “Staggered Compliance Dates” considered, including consideration of a longer compliance period for smaller broker-dealers. ICE believes that at least 24 months is needed as a transition period given the operational challenges associated with the Proposal.

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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 "Amanda Hindlian".

Amanda Hindlian
President, ICE Fixed Income and Data Services

¹¹ Proposal at 5452.

¹² The language used to define a “sophisticated municipal market professional” under MSRB Rule D-15(a) and an “institutional account” under FINRA Rule 4512(c) are generally the same.