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Via Electronic Submission

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Financial Data Transparency Act Joint Data Standards

Dear Mr. Kirkpatrick and Ms. Countryman:

Intercontinental Exchange Inc., on behalf of itself and its subsidiaries (collectively, “ICE”), appreciates the opportunity to comment on the Joint Data Standards¹ proposal pursuant to the Financial Data Transparency Act of 2022 (“FDTA”) (“Proposed Rule”).² Section 5811 of the FDTA adds new Section 124 to the Financial Stability Act and directs various Agencies³ jointly to issue regulations establishing data standards for (1) certain collections of information reported to each Agency by financial entities under the jurisdiction of the Agency, and (2) the data collected from the Agencies on behalf of the Financial Stability Oversight Council (“FSOC”).⁴

ICE is a leading global provider of technology and data to a broad range of customers including financial institutions, corporations and government entities. Our products,

¹ Financial Data Transparency Act Joint Data Standards, Notice of Proposed Rulemaking, 89 Fed. Reg. 67,890 (Aug. 22, 2024).

² Public Law 117-263, title LVIII, 136 Stat. 2395, 3421 (2022).

³ “Agencies” includes the Commodity Futures Trading Commission (“CFTC”); Securities and Exchange Commission (“SEC”); Office of the Comptroller of the Currency; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; National Credit Union Administration; Consumer Financial Protection Bureau; Federal Housing Finance Agency; and Department of the Treasury. Proposed Rule, 89 Fed. Reg. at 67,893-94.

⁴ 12 U.S.C. 5334.

which span major asset classes including futures, equities, fixed income and U.S. residential mortgages, provide our customers with access to mission critical tools that are designed to increase asset class transparency and workflow efficiency. ICE operates regulated marketplaces for the listing, trading and clearing of a broad array of derivatives contracts and financial securities, such as commodities, interest rates, foreign exchange and equities as well as corporate and exchange-traded funds, or ETFs. We operate multiple trading venues, including 13 regulated exchanges and six clearing houses, which are strategically positioned in major market centers around the world, including the U.S., U.K., European Union, or EU, Canada, Asia Pacific and the Middle East.

As an operator of regulated markets, clearing houses, and provider of reference data, ICE is keenly interested in the issues raised by the Proposed Rule. ICE supports the goals of Congress in enacting the FDTA and the Agencies' collective efforts to implement Congress' objectives.

Concerns with the Proposed Rule

Notwithstanding the worthy goals of the FDTA, we think that the proposed standards contain some considerable flaws that, if not corrected now, could impair the ability of the Agencies to meet the goals that Congress has set out for them in the statute.

The Proposed Rule Lacks an Adequate Assessment of Potential Costs and Benefits

The Proposed Rule is noticeably lacking in an assessment of the potential costs and benefits of the proposed actions suggested. We think that the lack of such an analysis is a significant oversight, as it impairs the ability of the Agencies to evaluate and assess the potential effectiveness and drawbacks of proposed actions. Indeed, several of the Agencies are required to evaluate costs and benefits. The SEC, for example, must consider the effect of a new rule on "efficiency, competition, and capital formation."⁵ The CFTC must consider the costs and benefits of a proposed action along five dimensions: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.⁶ The SEC has repeatedly been cautioned by the courts that it must "apprise itself—and hence the public and the Congress—of the economic consequences of a proposed regulation."⁷ Furthermore, the costs and benefits of a proposed rule cannot truly be assessed unless the Agencies consider the "baseline" or the current status of joint data standards among the agencies. Without understanding the status quo, one cannot properly assess what changes a

⁵ 15 U.S.C. 78c(f), 78w(a)(2), 80a-2(c).

⁶ 7 U.S.C. 19(a)(2).

⁷ *Chamber of Commerce v. SEC*, 421 F.3d 133, 144 (D.C. Cir. 2005); see also *Business Roundtable v. SEC*, 647 F.3d 1144 (D.C. Cir. 2011) (vacating SEC final rule on proxy access for failure to properly consider the costs and benefits of the rule); *Michigan v. EPA*, 576 U.S. 743, 753 (2015) (holding that a statutory requirement that an agency determine whether "regulation is appropriate and necessary" is not "an invitation to ignore cost").

proposed change in action will take.⁸ In addition, the Proposed Rule discusses the assessment required by a several statutes and executive orders,⁹ but does not include the cost-benefit analysis that is standard in SEC and CFTC rules.

This oversight is arbitrary and capricious and is most conspicuous in the Proposed Rule's proposal to establish the Financial Instrument Global Identifier ("FIGI") as the identifier of financial instruments. The Proposed Rule's discussion of FIGI consists of one paragraph of mostly description about what FIGI is:

For an identifier of financial instruments, the Agencies propose to establish the Financial Instrument Global Identifier (FIGI) established by the Object Management Group, which is an open-membership standards consortium. The FIGI is an international identifier for all classes of financial instruments, including, but not limited to, securities and digital assets. It is a global non-proprietary identifier available under an open license. The FIGI provides free and open access and coverage across all global asset classes, real-time availability, and flexibility for use in multiple functions. The FIGI also can be used for asset classes that do not normally have a global identifier, including loans. The FIGI has been implemented as a U.S. standard (X9.145) by the ANSI Accredited Standards Committee X9 organization. For the identification of securities, the Agencies also considered [Committee on Uniform Securities Identification Procedures (CUSIP)] and the [International Securities Identification Number (ISIN)] (which includes the CUSIP). While these identifiers are widely used, they are proprietary and not available under an open license in the United States.¹⁰

This is insufficient discussion to satisfy the Agencies' legal obligations. There is no meaningful discussion about what identifiers are currently used for financial instruments and lacks discussion on how a rule requiring the use of FIGI would impact financial markets. The Proposed Rule does not provide any analysis of the potential economic impact, nor provides sufficient justification or benefits. This glaring oversight is

⁸ See *American Equity Inv. Life Ins. Co. v. SEC*, 613 F.3d 166, 178 (D.C. Cir. 2010) (vacating SEC final rule regulating fixed indexed annuities in part because the SEC "did not assess the baseline level of price transparency and information disclosure under state law").

⁹ Proposed Rule, 89 Fed. Reg. at 67,899-905 (including analyses under the Paperwork Reduction Act, Regulatory Flexibility Act, Section 722 of the Gramm-Leach Bliley Act, the Riegle Community Development and Regulatory Improvement Act of 1994, the Unfunded Mandates Reform Act of 1995, Providing Accountability Through Transparency Act of 2023, Executive Order 13132 on Federalism, and the Small Business Regulatory Enforcement Fairness Act of 1996).

¹⁰ Proposed Rule, 89 Fed. Reg. at 67,897. CUSIPs are used in the U.S. and Canada, and ISINs are used internationally. For more on CUSIPs and ISINs, see <https://www.cusip.com/identifiers.html> ("Derived from the Committee on Uniform Security Identification Procedures, CUSIPs are 9-character identifiers that capture an issue's important differentiating characteristics for issuers and their financial instruments in the U.S. and Canada.") and <https://www.isin.org/> ("ISINs uniquely identify a security -- its structure is defined in ISO 6166. Securities for which ISINs are issued include bonds, commercial paper, equities and warrants. The ISIN code is a 12-character alpha-numerical code.").

particularly troubling because the requirement of FIGI could have potentially negative impacts on a variety of market participants and the public.

First, the designation of FIGI as the standardized identifier for Agency reporting would be disruptive to market participants, a disruption that would have monetary and other costs. ICE Data Services is one of the leading providers of reference data on financial instruments. When many of our clients request our terms and conditions data, they are not prepared to key on the FIGI as the primary identifier and many would require non-trivial development work to update their systems and their connectivity to enable mapping between FIGI and more commonly used identifiers. For example, this change may require the broad client base to recode their primary identifiers—despite the fact that CUSIP and ISIN have long been established as the primary identifiers. We do not believe the Proposal supplied sufficient industry benefits to justify the costs associated with changing this well-established workflow.

Second, although certain aspects of the FIGI are open-sourced, there is a limited set of descriptive data available before a paid subscription is required. In that sense, FIGI is not truly open-source.

Third, the Proposed Rule cites “real-time availability” as one of the benefits of the FIGI. For newly issued financial instruments, we believe there may be a delay in access to the limited information described above, especially depending on what channel or access point is used to retrieve the information.

The Proposed Rule fails to discuss any of this information, and we therefore believe the Proposed Rule’s approach is fundamentally flawed.

Establishment of the Census Tract Reporting Identifier

The Agencies request comment as to whether to establish an additional common identifier for Census Tract reporting as part of the joint standards. ICE supports the establishment of this 11-digit identifier established by the U.S. Census Bureau as a standard identifier for reporting to the Agencies.

As an expert in geospatial mapping, ICE leverages multiple information sources to identify specific plots of land across the United States. We believe that for geospatial mapping, Census Tract identifiers are the right standard. We observe that currently reports often utilize zip codes to identify locations and establishing Census Tract identifiers as a standard will greatly improve the usability of the information reported for the reasons outlined below.

Census Tract identifiers have numerous benefits over zip codes for geospatial mapping. Zip codes have a tendency to change over time whereas Census Tracts are more stable year over year. Moreover, in the rare instances where Census Tracts are updated, the U.S. Census Bureau publishes a full and clean metadata set supporting the boundary translations in geometry files published by the Bureau. In addition, Census

Tracts, by definition, are always subsets of counties or county-equivalent boundaries (i.e., always within a State) whereas zip codes are not cleanly nested inside any other legal or political boundaries as they are constructed to establish postal routes. Finally, Census Tracts have the added benefit of better alignment with statistical analysis as they are designed to approximate consistent population sizes from tract to tract. Zip codes can range from having a few hundred residents to greater than 100,000 residents which does not bode as well for statistical analysis and comparisons. As a result, ICE would support the establishment of the U.S. Census Bureau's Census Tract identifiers as a standardized identifier for Agency reporting under this Financial Data Transparency Act.

The Proposed Rule may Undermine Data Limitations

The Proposed Rule would create joint data standards for information collected by nine financial regulators but even if the data is in the same format, the Agencies may not share all information between them. ICE believes that the existing data limitations on each Agency should not be impacted by the proposed change. For example, the SEC and CFTC entered into a Memorandum of Understanding to allow the SEC to share data from Form PF with the CFTC. The need for Memorandums of Understanding or other agreements "to document the unique arrangements established for the sharing and use"¹¹ of otherwise confidential information remains.

ICE also notes that although some level of uniformity would be helpful, it would not be realistic to create absolute uniformity across the Agencies. In order for the Agencies to deal with unique circumstances, the rule should be drafted to provide the Agencies with the flexibility to deviate from the joint data standards where appropriate.

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ICE appreciates the opportunity to comment on the Proposed Rule. ICE supports both the goals Congress set forth in enacting the FDTA and the Agencies' collective efforts to implement the FDTA's. We look forward to engaging with you on this important issue.

Sincerely,



Martha Redding

¹¹ Memorandum of Understanding between the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission Regarding the Use of Form PF Data, February 8, 2024, page 3. "Form PF is the confidential reporting form for certain SEC-registered investment advisers to private funds, including advisers that are Dual-Registrant Filers." *Id.*, at 2.