

December 4, 2020

VIA EMAIL

Timothy Henseler, Esq.
Chief, Office of Enforcement Liaison
Division of Corporate Finance
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: *In the Matter of ICE Data Pricing & Reference Data, LLC*

Dear Mr. Henseler:

We are writing on behalf of Intercontinental Exchange, Inc. (“ICE”) in connection with ICE Data Pricing & Reference Data, LLC’s (“PRD”) settlement with the United States Securities and Exchange Commission (“SEC” or “Commission”) relating to *In the Matter of ICE Data Pricing & Reference Data, LLC*. The settlement will result in an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (the “Advisers Act”), Making Findings, and Imposing Remedial Sanctions and a Cease-and Desist Order (the “Order”) against PRD for violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

PRD, formerly known as Interactive Data Pricing & Reference Data LLC (a subsidiary of Interactive Data Corporation), is a wholly owned subsidiary of ICE, a public company whose securities trade on the New York Stock Exchange and is a reporting company under the Securities Exchange Act of 1934. ICE qualifies as a “well-known seasoned issuer” (“WKSI”) as defined in Rule 405 under the Securities Act of 1933 (“Securities Act”). We respectfully request a waiver from the Division of Corporation Finance (the “Division”), acting pursuant to its delegated authority, or the Commission itself determining that it is not necessary under the circumstances that ICE would be considered an “ineligible user,” as defined by Rule 405 under the Securities Act, as a result of the Commission entering the Order, which is described below. Consistent with the framework outlined in the Division’s *Revised Statement on Well-Known Seasoned Issuer Waivers* (April 24, 2014) (“Revised Statement”), there is good cause for the Division, on behalf of the Commission, or the Commission itself to grant the requested waiver, as discussed below.

We request that the determination that ICE not be considered an ineligible issuer be made effective upon entry of the Order.

I. BACKGROUND

PRD has submitted an Offer of Settlement that agrees to the Order without admitting or denying the findings, which was presented by the staff to the Commission.

PRD is registered with the Commission as an investment adviser. PRD is a wholly owned indirect subsidiary of ICE. PRD provides institutions, investment funds, and other types of financial services customers with global securities pricing, evaluations, reference data, analytics data, and corporate actions data. PRD's clients use PRD's securities pricing service for a variety of purposes, including for reporting valuations of securities and in corporate books and records, for investment decisions, and to comply with generally accepted accounting principles. PRD has teams of evaluators that oversee and monitor the daily operation of PRD's securities pricing applications and models. PRD provides independent evaluations for the vast majority of the 2.8 million fixed-income securities for which it provides pricing information. Historically, for approximately 46,000 of these securities, however, PRD's applications and models were unable to produce an evaluation and instead PRD provided its clients a single broker-quoted price that it received from a quote provider. PRD discontinued its provision of single broker-quoted prices entirely on September 30, 2020. PRD does not hold or manage assets for its clients.

The Order arises in connection with PRD's policies and procedures related to the provision of single broker quotes and, precisely, the quality controls implemented in those policies and procedures. Specifically, the Order finds that from at least 2015 through 2019, PRD did not have adequate policies and procedures to address the risk that single broker-quoted prices would not reflect market value, and its quality controls were not effectively or consistently implemented.

The Order finds that PRD willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires registered investment advisers to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the federal securities laws. Without admitting or denying the findings in the Order, except as to the Commission's jurisdiction over PRD and the subject matter of the proceeding, PRD consented to the issuance of the Order and to (i) cease and desist from committing or causing any violations and any future violations of these provisions, (ii) be censured, and (iii) pay a civil money penalty in the amount of \$8 million.

II. DISCUSSION

A WKSI is eligible to utilize many important reforms in the securities offering and communication processes that the Commission adopted in 2005. Among other things, a WKSI can register securities for offer and sale under an automatic shelf registration statement, which becomes effective upon filing and is also eligible for the other benefits of the streamlined

registration process, such as the ability to file automatically effective post-effective amendments to register additional securities and pay registration filing fees on a “pay as you go” basis. Furthermore, a WKSI is also able to communicate more freely than a non-WKSI during the offering process, including through the use of non-term sheet free writing prospectuses.

The Commission also created another category of issuer under Rule 405 – the “ineligible issuer.” A company that is an “ineligible issuer” loses all of the benefits bestowed on a WKSI, including, and most importantly, the ability to utilize an automatic shelf registration statement and to use free writing prospectuses (except in limited circumstances). An issuer is an ineligible issuer if “[w]ithin the past three years . . . the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws; (B) requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws; or (C) determines that the person violated the anti-fraud provisions of the federal securities laws.”¹

The entry of the Order against PRD renders ICE an ineligible issuer under Rule 405. As a result, absent a waiver from the disqualification, ICE would no longer be able to utilize the benefits of WKSI status.

The Commission retains the authority under Rule 405 to determine “upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.”² The Commission has delegated the authority to the Division to make such a determination.³ In the Revised Statement, the Division stated that it will consider the following factors in determining whether to grant a waiver:

- the nature of the violation and whether it involved disclosure for which the issuer or any of its subsidiaries was responsible or calls into question the ability of the issuer to produce reliable disclosure currently and in the future;
- whether the misconduct involved a criminal conviction or scienter-based violation;
- who was responsible for the misconduct and what was the duration of the misconduct;
- what remedial steps the issuer took; and
- the impact if the waiver request is denied.

¹ 17 C.F.R. 230.405(1)(vi).

² 17 C.F.R. 230.405(2).

³ 17 C.F.R. § 200.30-1(a)(10).

For the reasons set forth below, we respectfully submit that there is good cause for the Division, on behalf of the Commission, or the Commission itself, to grant the waiver and determine that it is not necessary for the public interest or the protection of investors that ICE be considered an ineligible issuer.

A. Nature of the Violation and Whether the Violation Casts Doubt on the Ability of the Issuer to Produce Reliable Disclosures to Investors

No conduct described in the Order pertains at all to activities undertaken by ICE in connection with its role as an issuer of securities (or any disclosure related thereto) or involves fraud in connection with ICE's offerings of securities; rather the conduct described in the Order that gives rise to the ineligibility to ICE relates only to PRD, a subsidiary of ICE, not to ICE itself, does not involve any intentional misconduct by ICE or PRD, and certainly does not involve any fraud by ICE. Accordingly, none of the conduct described in the Order relates in any way to ICE's current or future disclosures as an issuer of securities. As described above, the Order will find that from at least 2015 through 2019, PRD had policies and procedures concerning quality controls for unchanged values and daily tolerance, that were not reasonably designed or implemented.

There is no connection between the misconduct concerning single broker-quoted securities described in the Order and disclosures prepared by ICE as an issuer of securities or in its filings with the Commission. As detailed above, the provision of single broker-quoted prices was a very small portion of PRD's business. And, while PRD's disclosures concerning single broker quotes in the relevant time period referenced the quality controls at issue in the Order, the disclosures throughout the relevant time period also specified that the provision of single broker quotes was not a part of PRD's advisory business, and as such was distinct from its provision of evaluated prices.

When ICE issues securities in registered offerings, including for the purposes of satisfying regulatory capital requirements or addressing funding needs, ICE utilizes its WKSII shelf registration statement. ICE's WKSII shelf registration statements incorporate by reference ICE's most recent annual report on Form 10-K and its current and periodic reports. As required by SEC rules, ICE has established and maintains a system of disclosure controls and procedures designed to ensure that it is able to timely record, process, summarize and report information (financial and otherwise) required in its public reports and communicates this information to management. Further to these controls and procedures, ICE has established a committee comprised of senior ICE personnel responsible for significant disclosure and control areas and for oversight of the accuracy and timeliness of the disclosures made by ICE in its public reports filed with the SEC. External attendees also include ICE's independent auditors and, in furtherance of ICE's due diligence efforts and best practices, outside disclosure counsel, and designated underwriters' counsel is invited to review drafts of ICE's periodic reports and participate in certain drafting sessions. Among other responsibilities, this committee and other senior officers responsible for disclosure and control areas help determine disclosure obligations on a timely basis. The committee also reviews ICE's disclosure controls and procedures on a quarterly basis to determine the effectiveness thereof. ICE also has implemented other processes

to assist it and its officers with its certification and disclosure requirements, including receipt of “back-up” certifications. Such disclosure controls and procedures were not implicated in any way in the processes by which PRD provided or disclosed its policies and procedures concerning single broker-quoted prices.

ICE respectfully submits that it has robust and disciplined processes, including processes related to compliance, governance and the drafting of current and periodic reports, surrounding its offerings and issuances of securities under its WKSJ shelf registration statement and otherwise. In consultation with outside counsel, ICE has designed its securities offering procedures to comply with the federal securities laws.

None of the conduct described in the Order relates to ICE’s offering process, ICE’s disclosure controls and procedures or disclosures made by ICE as an issuer of securities, and therefore should not implicate in any way the ability of ICE to issue reliable disclosures to investors going forward.

B. The Order Is Not Criminal in Nature and Does Not Involve Scier-Based Fraud

The Revised Statement indicated that the Division “will review whether the conduct involved a criminal conviction or scier-based violation as opposed to a civil or administrative non-scier based violation.” Here, the Order does not concern any criminal conduct, and only involves non-scier based provisions. And, as such, ICE is not subject to the higher burden articulated in the Revised Statement.

C. The Persons Responsible for the Misconduct and the Duration of the Misconduct

The Commission has not charged any individuals associated with PRD or ICE with violations in connection with the conduct underlying the Order, and we understand that no such charges are forthcoming. Additionally, the Order references conduct between 2015 and 2019, when PRD began implementing the remedial steps described below.

D. Remedial Steps

As noted by the Commission in the Order, PRD has voluntarily taken remedial steps to address the conduct at issue in the Order. Specifically, beginning over a year ago, in July 2019, PRD implemented the following remedial actions:

- PRD stopped providing single broker-quoted prices for securities in all asset classes except index-linked notes and index-linked CDs;
- PRD only provided single broker-quoted prices for securities quoted by the issuer or underwriter of the index-linked note or index-linked CD;
- PRD only provided single broker-quoted prices for securities if the issuer or underwriter of the index-linked note or index-linked CD agreed to provide a broker quote on a daily basis;

Finally, on December 16, 2019, PRD informed its clients that it would discontinue provision of single broker-quoted prices entirely and, after one delay to accommodate widespread client requests for additional time to transition their systems and find alternative pricing providers, did so on September 30, 2020.

PRD thus has taken concrete and substantial steps to remediate the conduct at issue in the Order, including voluntarily discontinuing this business line completely.

E. Previous Actions

ICE has previously been granted a waiver regarding its WKSI status in *In the Matter of New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc.* (March 6, 2018), in which the Commission found a violation of Section 17(a)(2) of the Securities Act in connection with the implementation of a market-wide regulatory halt which caused stock prices to be inaccurately marked as “automated” when in actuality the quotations were not automated due to a temporary connectivity issue prior to the planned mid-day shut-down of the exchanges.

There is no relationship at all between the subject of this matter and the actions underlying the previously-granted waiver request which concerned completely different ICE subsidiaries under a different regulatory regime. Finally, as detailed above, there is no concern of potential recurrence of any violation here as PRD has taken substantial and extensive remedial steps related to the provision of single broker-quoted prices, including discontinuing this business line entirely.

F. Impact on Issuer if Request is Denied

The Division’s Revised Statement indicates that it will “assess whether the loss of WKSI status would be a disproportionate hardship in light of the nature of the issuer’s conduct.” Given the conduct attributed to PRD in the Order, we respectfully submit that the impact of ICE being designated an ineligible issuer, resulting in the loss of WKSI status for ICE, would be unduly severe.

ICE is a global financial institution that is a leading operator of exchanges and clearing houses around the world and a leading provider of data and listing services. ICE is continually investing in technology to better its markets and its businesses. For ICE, the automatic shelf registration process provides an important means of access to the capital markets, which is an essential source of funding for its global operations, in a timely and efficient manner. Consequently, the ability to avail itself of automatic shelf registration and the other benefits available to a WKSI is extremely important to ICE’s ability to raise capital, conduct its operations and operate client-facing businesses.

As an ineligible issuer, ICE would, among other things, lose the ability to:

- file automatic shelf registration statements for an indeterminate amount of securities, offer additional securities of the classes covered by a registration

statement without a new filing, and include information through prospectus supplements filings or incorporated Exchange Act reports;

- “pay as you go” for the filing fee payment process;
- qualify a new indenture under the Trust Indenture Act of 1939 without filing or having the Commission declare effective a new registration statement; and
- use free writing prospectuses unreservedly.

In the last five years, ICE has availed itself of WKSII status on multiple occasions to raise capital as part of its efforts to expand its services to the market. In 2015, it relied on its WKSII status to make secondary offerings of common shares in connection with its acquisitions of a provider of financial market data, analytics, and related trading solutions, and a provider of a technology platform for electronic and hybrid trade execution. ICE also relied on its WKSII status to issue \$2,500,000,000 of senior notes in 2015, \$1,000,000,000 of senior notes in 2017, and \$2,250,000,000 of senior notes in 2018. In connection with ICE’s acquisition of Ellie Mae, ICE relied on its WKSII status to sell \$6,500,000,000 in senior notes in August 2020 and register \$1,750,000,000 of common stock for sale in September 2020.

The ability to avail itself of these benefits is extremely important to ICE’s ability to raise capital efficiently and conduct its operations. Denial of this request would result in a disproportionate hardship to ICE, since the violation described in the Order did not concern the company’s financial disclosure, was not based on criminal conduct or involve scienter, occurred in a very small line of business at a subsidiary, and was fully remediated as of September 30, 2020 when the business line was completely discontinued. Applying ineligible issuer status to ICE would not be necessary to achieve the purpose of the Order and would be unduly severe.

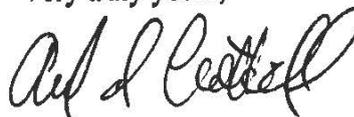
III. CONCLUSION

We respectfully submit that the Division, on behalf of the Commission, or the Commission itself should grant the request for this waiver because the Order does not find violations of scienter-based fraud or involve criminal conduct; the Order does not find disclosure violations by ICE; and PRD has undertaken extensive remedial actions concerning its provision of single broker-quoted securities, including ceasing the provision of these prices altogether as of September 30, 2020. Additionally, PRD has cooperated with the Division of Enforcement in connection with its investigation. In light of these considerations, ICE respectfully submits that it has shown good cause that subjecting ICE to ineligible issuer status is not necessary or appropriate, is not in the public interest, and would disserve the Commission’s mission to protect investors and promote capital formation. Accordingly, we request that the Division, on behalf of the Commission, or the Commission itself make the determination that there is good cause for ICE not to be considered an ineligible issuer under Rule 405 as a result of the Order entered in this matter.

Timothy Henseler, Esq.
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If you have any questions regarding any of the foregoing, please do not hesitate to contact me at (212) 728-8281.

Very truly yours,

A handwritten signature in black ink, appearing to read "Amelia A. Cottrell". The signature is fluid and cursive, with the first name being the most prominent.

Amelia A. Cottrell

cc (by email): Erin Wilson (WilsonE@sec.gov)