



9 April 2021

Submitted electronically to IM-Rules@sec.gov

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

Re: Cross Trading

ICE Data Pricing & Reference Data, LLC (“PRD”) appreciates the opportunity to comment on the Division of Investment Management’s “Staff Statement on Investment Company Cross Trading” dated March 11, 2021 (the “Statement”). The Statement outlines general topics that the SEC Staff expects to consider in connection with any recommendations to the Commission on changes to Rule 17a-7 (“Rule 17a-7”) under the Investment Company Act of 1940 (the “Investment Company Act”).

As discussed below, PRD believes that, with the advancements in technology, the increase in transparency and the adoption of Investment Company Act Rule 2a-5 (“Rule 2a-5”),¹ which provides structure and clarity with respect to funds’ obligations to oversee their pricing vendors, the time is right for the Commission to modernize Rule 17a-7. Accordingly, we encourage the Commission to propose changes to Rule 17a-7 to remove the term “for which market quotations are readily available” from Rule 17a-7(a) and align the requirements in Rule 17a-7(b)(4) with those recently adopted in Rule 2a-5. Such changes can strengthen funds’ protection of their shareholders, while reducing fund and investor costs to cross trade most fixed income securities, so long as the transactions are consistent with an adviser’s fiduciary duty obligations under the Investment Advisers Act of 1940 (the “Advisers Act”), including the duty of loyalty and the duty to seek best execution.

Background on ICE Data Pricing & Reference Data

PRD is registered as an investment adviser with the Commission under the Advisers Act and is in the business of, among other things, providing clients with evaluated pricing and other information for fixed-income securities. PRD has been providing its clients with evaluated pricing for more than 50 years, now offering evaluated prices for approximately 2.8 million financial instruments, including fixed income securities such as sovereign, corporate and municipal bonds,

¹ Rule 2a-5 addresses valuation practices and the role of the board of directors with respect to the fair value of the investments of a registered investment company or business development company. The rule establishes requirements for determining fair value in good faith for purposes of the Investment Company Act and where this determination will involve assessing and managing material risks associated with fair value determinations; selecting, applying and testing fair value methodologies; and overseeing and evaluating any pricing services used. See Investment Company Act Release No. 34128 (Dec. 3, 2020), available at <https://www.sec.gov/rules/final/2020/ic-34128.pdf>.



structured products and leveraged loans, and non-U.S. equity securities. Our evaluated prices are market-based measurements that are processed through a rules-based pricing application and represent our good faith determination as to what the holder may receive in an orderly transaction for an institutional round lot position under current market conditions. The rules-based logic utilizes standard valuation techniques that vary by asset class and maximizes the use of relevant observable inputs, including quoted prices for similar assets, benchmark yield curves and market corroborated inputs.

PRD's customers include no fewer than 1550 investment advisers and related fund companies who use our evaluated pricing services for a variety of purposes, such as net asset value calculations, investment and risk analysis, and portfolio management. Our evaluations may also be used by registered investment companies in connection with effecting cross trades of municipal securities under Rule 17a-7 in reliance on certain no action letters, namely *United Municipal Bond Fund* and *Federated Municipal Funds* collectively, the "Muni No-Action Letters").² In the Muni No-Action Letters, the SEC Staff permitted cross trades between registered investment companies in municipal securities for which market quotations were not readily available and the funds used a price provided by an independent pricing service to effect the cross trades. In the *United Municipal Bond Fund Letter*, the funds were using the prices provided by an independent pricing service to value their municipal bonds for net asset value determination under Rule 2a-4. In the *Federated Municipal Funds Letter*, the SEC Staff noted that an investment adviser must also consider its duty to seek best execution and its duty of loyalty to each fund in connection with 17a-7 transactions.

ICE Data Pricing & Reference Data Supports Modernizing Rule 17a-7 to Permit Funds to Cross Trade Most Fixed Income Securities

We have long supported expanding the ability for funds to engage in cross trades under Rule 17a-7 and continue to believe that broad changes in market structure and a technological evolution support funds' ability to cross trade in additional classes of fixed income securities, where the cross trade price is based on an evaluated price that the fund also uses to value securities under Investment Company Act Section 2(a)(41) and Rule 2a-4 thereunder.³ PRD encourages the Commission to modernize Rule 17a-7 to permit funds to cross trade most fixed income securities, so long as the transactions are consistent with an adviser's fiduciary duty obligations under the Advisers Act, including the duty of loyalty and the duty to seek best execution.

² See No-Action Letter by Staff in the Division of Investment Management to United Municipal Bond Fund, Inc. and United High Income Fund, Inc., dated January 27, 1995, <https://www.sec.gov/divisions/investment/noaction/1995/unitedmunicipal012795.pdf> ("United Municipal Bond Fund Letter"); No-Action Letter by Staff in the Division of Investment Management to Federated Municipal Funds, dated November 20, 2006, <https://www.sec.gov/divisions/investment/noaction/2006/fmf112006.htm> ("Federated Municipal Funds Letter").

³ See Letter from Andrew Hausman, President, PRD to Brent J. Fields, Secretary, Commission, dated Dec. 18, 2015 (comment letter on Commission proposal on liquidity risk management programs, swing pricing, among other things in Release No. 33-9922) ("PRD 2015 Comment Letter").



Public Disclosure of Pricing Information in Fixed Income Markets Have Changed Dramatically Since Rule 17a-7 Adoption in 1966

When Rule 17a-7 was adopted, there were no public reporting systems for fixed income securities and use of pricing vendors was not as common as it is today. In 1995, when the Staff issued *United Municipal Bond Fund*, the Municipal Securities Rulemaking Board (“MSRB”) program for making pricing information available to investors had just been adopted and was taken into consideration by SEC Staff when granting the relief.

Public trade reporting systems have expanded their coverage of fixed income instruments and asset classes over time and today include systems operated by the MSRB and the Financial Industry Regulatory Authority (“FINRA”). More specifically, public sources of fixed income transaction data include, in the U.S., FINRA® TRACE® for U.S. Corporate bonds, EMMA® for U.S. Municipal bonds, and FINRA Securitized Products Dissemination Service™ (SPDS™) for U.S. Agency Pass-Throughs, Mortgage-Backed Securities Traded To Be Announced (TBA), and U.S. Asset-Backed Securities. For other U.S. structured products, FINRA and ICE Data Services, Inc.⁴ have created a suite of aggregated data products for Asset and Mortgage backed securities.⁵ In Europe, regulations such as MiFID II require trade reporting, adding to transparency in the market. As indicated by the SEC Staff in the *United Municipal Bond Fund* no-action letter, “[w]e expect that such information⁶ will be utilized by pricing services and persons charged with evaluating the performance of pricing services as it becomes available.” Pricing vendors, including PRD, have incorporated the information disseminated by the public transaction reporting systems into the evaluated pricing methodologies and have added coverage, transparency tools, and intra-day, contemporaneous evaluations to the products and services made available to clients. As PRD has previously commented,⁷ the expansion of public trade reporting systems to additional asset classes, provides another factor in support of expanding the use of evaluated prices provided by independent pricing vendors for 17a-7 transactions.

Not All Evaluated Prices are a Black Box

Pricing vendors, including PRD, offer contemporaneous bid, mid and ask evaluations to help funds and advisers with their obligations to assign financial instruments to the fair value hierarchy under GAAP and international accounting standards. Pricing vendors typically offer a broad range of market data and services to support their fund and adviser clients to meet transparency standards, such as those set forth in the oversight, testing and reporting framework under Rule 2a-5. These data provided by pricing vendors could also help support fund and adviser clients’ obligations under a

⁴ ICE Data Services Inc. (f/k/a Interactive Data Corporation)

⁵ <https://www.finra.org/filing-reporting/trace/structured-product-activity-reports-and-tables>

⁶ See footnote 1 to No-Action Letter by Staff in the Division of Investment Management to United Municipal Bond Fund, Inc. and United High Income Fund, Inc., dated January 27, 1995, <https://www.sec.gov/divisions/investment/noaction/1995/unitedmunicipal012795.pdf>.

⁷ See PRD 2015 Comment Letter, supra note 3.



revised Rule 17a-7, allowing for cross trading of a broader scope of fixed income securities. For example, PRD's summary of inputs by asset class documentation provides to clients a description, for each asset class, of the methodology, the evaluated pricing application and model, and inputs that may be used. Many pricing vendors, including PRD, now offer web-based applications to their clients that increase transparency into fixed income markets and their evaluated prices and that provide workflow tools to improve operational efficiency and support pricing, trade execution and compliance functions.

The ongoing advances in technology and wide availability of transaction data allow for funds and pricing vendors to validate the quality of such third party evaluated prices to confirm they are reflective of the market, including through back testing analysis.

ICE Data Pricing & Reference Data Supports the Removal of the Term "for which market quotations are readily available" from Rule 17a-7 and Modernizing Rule 17a-7(b)(4)

In the release adopting Investment Company Act Rule 2a-5 (the "Adopting Release"), the SEC stated that evaluated prices by themselves are not readily available market quotations because they are not based upon unadjusted quoted prices from active markets for identical investments.⁸ While the Adopting Release states that the definition of readily available market quotations will apply in all contexts under the Investment Company Act and the rules thereunder, including Rule 17a-7, we recommend that the Commission consider eliminating the term "for which market quotations are readily available" from Rule 17a-7(a). In addition, we recommend that the Commission revise Rule 17a-7(b)(4) to more closely align to recently adopted Rule 2a-5 as we believe that Rule 2a-5 provides a comprehensive framework on oversight and testing which could be instructive to Rule 17a-7(b)(4) changes.

Under Rule 2a-5, evaluated prices can be utilized as an input in the fair valuation of fund assets. In the Rule 2a-5 Adopting Release, the Commission supported having a consistent definition of the term "readily available market quotations" in all contexts, including in Rule 17a-7, to ensure that there is an independent basis for determining the value of securities. We believe that contemporaneous, evaluated mid-prices would provide an independent basis for the prices of funds' cross trades. The potential for the prices of cross trade transactions to be impacted by conflicts of interest can be mitigated through mechanisms such as those recommended by FIMSAC,⁹ including post-trade oversight, board of directors oversight, policies and procedures for independent pricing sources, the use of electronic trading platforms and a requirement to report cross trades to the existing trade reporting systems.

⁸ See Investment Company Act Release No. 34128 (Dec. 3, 2020), available at <https://www.sec.gov/rules/final/2020/ic-34128.pdf>.

⁹ See FIMSAC Recommendation Regarding Modernizing Rule 17a-7 under the 1940 Act" (June 1, 2020), available at <https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-recommendation-internal-fund-cross.pdf>.





Conclusion

PRD appreciates the opportunity to present our views on Rule 17a-7. We believe that with the advancements in technology, the increase in transparency and the adoption of Rule 2a-5, which provides structure and clarity with respect to funds' obligations to oversee their pricing vendors, the time is right to modernize Rule 17a-7. For the reasons discussed in this letter, we encourage the Commission to propose changes to Rule 17a-7 by removing the term "for which market quotations are readily available" from Rule 17a-7(a) and modernizing Rule 17a-7(b)(4).

Sincerely,

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