February 20, 2023

European Securities and Markets Authority
201-203 Rue de Bercy
75012 Paris, France
ESMA 34-472-373

Consultation Paper on Guidelines on Funds’ Names using ESG or Sustainability-Related Terms

To Whom It May Concern:

Intercontinental Exchange, Inc. (“ICE”), on behalf of itself and its subsidiaries, appreciates the opportunity to respond to European Securities and Market Authority’s (“ESMA”) consultation paper on guidelines on funds’ names using ESG or sustainability-related terms.[[1]](#footnote-2) ICE shares its thoughts as a provider of climate and ESG data that our clients find useful in the identification, measurement, and management of their climate-related financial risks, and measurement and management of their impact investments. ICE’s data can be used by funds in aligning investments with naming convention.

Background on ICE

ICE offers a range of cross asset data and tools that provide a comprehensive view of sustainability issues across the market to help market participants uncover opportunities, manage risk, create impact, and meet compliance needs. ICE’s products include:

* **ICE’s Impact Bond Classification Service** offers data that aligns with industry-recognized impact bond frameworks including green, social, sustainable, transition and sustainability linked bonds. Clients can supplement the Classification Service data with ICE’s Impact Bond Use of Proceeds, which provides project details, proceeds allocation reports and impact metrics. Clients can use this data to support security selection and management of investments.
* **ICE’s ESG Company Data** provides granular data across over 560 attributes and indicators on companies that is collected and quality controlled by ICE, to offer updated information on ESG risks and opportunities. The data covers a comprehensive set of datapoints such as greenhouse gas (GHG) emissions, board and workforce diversity. A proprietary security mapping service allows the data to be available across over 1.4 million corporate fixed income securities and more than 33,000 equities. **ICE’s regulatory solutions** aid clients in complying with the EU’s Sustainable Finance Disclosure Directive (SFDR), the Task-Force for Climate-Related Disclosures (TCFD), EU Taxonomy and European ESG Template (EET).
* **ICE’s Climate Physical Risk Data** applies geospatial climate, economic and demographic data to specific U.S. municipalities, MBS pools, and related fixed income securities, allowing users to understand the risk of climate hazards such as heat stress, wildfire, flooding, hurricane, and drought on specific securities. ICE’s data covers 98% of the ~$4T in outstanding U.S. municipal debt and ~95% coverage of the U.S. MBS universe.
* **ICE’s Climate Transition Analytics** **Data and Tools** integrates climate data and science-aligned analytics at a company, sector, and portfolio level, allowing users to identify, measure and understand climate transition factors within portfolio and loan books. We have the capability to model data to expand the coverage to public and private companies (as utilized by the European Central Bank (“ECB”)).  ICE’s Emission Reduction Targets Data includes targets aligned with the Science-Based Targets Initiative (SBTi) temperature scoring methodology. ICE has extensive experience working with regulators and participating in industrywide initiatives. On the topic of analysing climate-related risk, ICE has supported ESMA, the ECB, the Central Bank of Portugal, and the International Monetary Fund, among others. For example, we provided the ECB with ICE Climate Transition Data and expertise for the publication of their September 2021 Occasional Paper Series titled “ECB Economy-wide Climate Stress Test,”[[2]](#footnote-3) and continue to work with them on methodological updates to the climate risk stress testing framework (e.g., the introduction of the NGFS[[3]](#footnote-4) Phase 3 scenarios). We are also participating in the UK FCA initiated Data and Ratings Working Group, to support the introduction of a code of conduct for ESG solution providers. More broadly we have commented on a number of other papers and proposals made by regulators and governments including the FCA Sustainability Disclosure Requirements and Investment Labels proposal and the SEC's ESG Disclosures or Investment Advisors and Investment Companies proposal.[[4]](#footnote-5)

ICE’s solutions, engagement with regulators, and feedback from clients makes us well positioned to share our view on ESMA’s Consultation Paper on Funds’ Names using ESG or Sustainability-Related Terms.

We have identified the specific question numbers in our responses below:

*Q2. Do you agree with the proposed threshold of 80% of the minimum proportion of investments for the use of any ESG-, or impact-related words in the name of a fund? If not, please explain why and provide an alternative proposal.*
ICE believes that ESMA should coordinate with regulators in other jurisdictions (e.g., the UK FCA and the US SEC) to provide a consistent, global approach.  It would not be in the best interest of investors nor fund manufacturers if one jurisdiction had a 70% threshold while others had an 80% threshold.

*Q3. Do you agree to include an additional threshold of at least 50% of minimum proportion of sustainable investments for the use of the word “sustainable” or any other sustainability-related term in the name of the fund? If not, please explain why and provide an alternative proposal.*
ICE believes that this aspect of the proposal could be confusing to investors, in particular, for retail investors. We believe that the distinction between the investments in assets ‘aligned with E/S characteristics’ and those in assets in ‘sustainable investments as defined under SFDR’ is going be too complex to data model, to explain to investors, and would arguably offer no discernible benefit to investors if the minimum proportion of investments threshold is already met. We would additionally suggest that requiring both thresholds may be too restrictive. Example 4 provided in the Consultation Paper (i.e., the Sustainable Society Fund which invests 80+% of its investments aligned with E/S characteristics, but only 20% of its assets in sustainable investments as defined under SFDR) is a good example of this restrictiveness. Even though the fund is 80% invested in assets aligned with E/S characteristics, it still cannot use any sustainable nomenclature in its name, which does not seem appropriate.

*Q4. Do you think that there are alternative ways to construct the threshold mechanism? If yes, please explain your alternative proposal.*
We believe it would be beneficial if a fund were allowed to continue to use the word sustainable (or similar terms) in its name if it meets the higher threshold alone, not both. We do not believe that the two thresholds would be valuable to end users (in particular, retail), as investors are unlikely to be able to discern the difference between the two thresholds. We also believe that the benefits of global alignment in having a single threshold, such as with the SEC and FCA approach outweighs solely SFDR alignment when we consider the provision of a global data service to international customers.

In addition, although we appreciate ESMA’s efforts to align its proposal with the SFDR terminology and definitions, we believe that ESMA should additionally consider aligning to requirements for product distributors under MiFID II and the Insurance Distribution Directive As the fund labels are likely to be used by distributors to target relevant investor preferences, thresholds should match ESMA’s MiFID II guidance.

*Q6. Do you agree with the need for minimum safeguards for investment funds with an ESG- or sustainability-related term in their name? Should such safeguards be based on the exclusion criteria such as Commission Delegated Regulation (EU) 2020/1818 Article 12(1)-(2)? If not, explain why and provide an alternative proposal.*
ICE is supportive of the application of the Benchmark Regulation screening criteria on investment products. However, our client outreach indicates that it is overly prescriptive to expect such screening to be applied to 100% of all planned investments including cash and derivatives, as there may be investment products used for hedging purposes (and other reasons) which cannot be screened in this manner, such as real estate or index derivatives. Such exceptions should be provisioned for in the proposed rules.

*Q7. Do you think that, for the purpose of these Guidelines, derivatives should be subject to specific provisions for calculating thresholds? A) Would you suggest the use of the notional value or the market value for the purpose of the calculation of the minimum proportion of investment? B) Are there any other measures you would recommend for derivatives for the calculation of the minimum proportion of investments?*
ICE believes that ESMA should coordinate with other jurisdiction’s regulators (e.g., US SEC and UK FCA) on this topic.  The global nature of the derivative markets means that any proposals on these instruments should require this coordination. ICE believes that certain derivative contracts (e.g., Interest Rate products) must remain out-of-scope.   There are also complexities around the calculation being based on the notional versus the market value of the instrument.   We believe ESMA, in coordination with other jurisdictions, should perform extensive market outreach before bringing proposals to address this in level 1 text.

*Q8. Do you agree that funds designating an index as a reference benchmark should also consider the same requirements for funds’ names as any other fund? If not, explain why and provide an alternative proposal.*

ICE agrees that all funds should be subject to the proposed naming requirements, regardless of whether the fund designates an index as a reference benchmark or not. Absent such application, many funds would not be subject to the naming requirements. This requirement is necessary in recognition of the role of the fund’s adviser in selecting investments for the fund and that the fund may not hold all constituents of an index.

*Q10. Do you agree of having specific provisions for “impact” or impact-related names in these Guidelines?*
ICE generally supports this aspect of the proposal.   We believe that for Impact Funds, which, by definition, have the intention of generating positive and measurable (environmental or social) impact, it is appropriate that funds make targeted investments intended to meet the stated impact intentions and to justify the label being used. ICE seeks clarification from ESMA on the proposal wording that a fund should ‘generate positive and **measurable** social or environmental impact’. We would like to understand how ESMA would expect funds to measure such impact and whether this measurement would be disclosed in product periodic reports or elsewhere. We believe this information will be important for our fund distribution customers to use in their operations and as such ICE will be required to collect and disseminate such data.

*Q11. Should there be specific provisions for “transition” or transition-related names in these Guidelines? If yes, what should they be?*
 ICE is supportive of the development of transition funds. Although under the definition of ‘sustainable investment’ (article 2(17)) of the SFDR it appears that there is limited scope for manufacturers to include transitioning investment products /investees in the context of a fund under Article 8, such instruments are an important tool in funding the energy transition.

Bodies such as the Network for Greening the Financial System (whose aim is to mobilise mainstream finance to support transition to a low carbon economy) suggest the use of scenarios and target setting. Forward looking metrics, such as those offered by ICE, which show where a portfolio is currently positioned against a given climate target (e.g., Net Zero 2050), are a useful mechanism to measure decarbonisation progress, and the future decarbonisation required for a portfolio to meet specific climate targets.

Given the tools available to fund managers described above and the current limitations of SFDR, we would recommend that ESMA reviews the UK FCA proposal[[5]](#footnote-6)which has a sustainable improver fund label, which would include transition funds.

*Q12. The proposals in this consultation paper relate to investment funds’ names in light of specific sectoral concerns. However, considering the SFDR disclosures apply also to other sectors, do you think that these proposals may have implications for other sectors and, if so, would you see merit in having similar guidance for other financial products?*
ICE provides clients access to information around different investment vehicles such as funds and structured products, utilising tools such as EETs. Users of this data would see consistency to having the ESMA Funds’ Naming proposal also being applied to other investment vehicles such as structured products which are within the scope of SFDR, particularly those investment vehicles with cash instrument underlying assets.

*Q13. Do you agree with having a transitional period of 6 months from the date of the application of the Guidelines for existing funds? If not, please explain why and provide an alternative proposal.*
ICE believes it would be more appropriate to provide a transitional period of 12 months to give funds time to get their compliance programmes formalised and in place and adjust their existing funds names if required.

*Q14. Should the naming-related provisions be extended to closed-ended funds which have terminated their subscription period before the application date of the Guidelines? If not, please explain your answer.*
In our opinion, no. The provisions should not extend to funds that are no longer taking on new investors.

**Conclusion**

ICE appreciates the opportunity to share our thoughts on this important topic, and hope that our recommendations are helpful as ESMA finalises its framework for preventing greenwashing through the proposed requirements on funds’ naming conventions.

Respectfully submitted,



Anthony Belcher, Vice President, Sustainable Finance
Intercontinental Exchange, Inc.

1. https://www.esma.europa.eu/sites/default/files/library/esma34-472-373\_guidelines\_on\_funds\_names.pdf [↑](#footnote-ref-2)
2. Alogoskoufis, S., Dunz, N., Emambakhsh, T., Hennig, T., Kaijser, M., Kouratzoglou, C., … Salleo, C. (Sept. 2021). *Occasional Paper Series: ECB economy-wide climate stress test - Methodology and results (*No 281). European Central Bank. <https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op281~05a7735b1c.sv.pdf>. Please note that ICE acquired Urgentem in 2022, the entity cited in this ECB paper. [↑](#footnote-ref-3)
3. Network for Greening the Financial System. Information on the NGFS Phase 2 scenarios is available at <https://www.ngfs.net/ngfs-scenarios-portal/> [↑](#footnote-ref-4)
4. https://www.sec.gov/comments/s7-17-22/s71722-20138241-308320.pdf [↑](#footnote-ref-5)
5. https://www.fca.org.uk/publication/consultation/cp22-20.pdf [↑](#footnote-ref-6)