July 6, 2011

Office of the Commissioner
Bureau of the Public Debt
9th Floor
799 9th Street NW
Washington, DC 20239-0001

Attention: Van Zeck
Commissioner of the Public Debt

Request for Exemption for Certain Provisions of the U.S. Securities Exchange Act of 1934 with Respect to ICE Trust U.S. LLC, its Clearing Members, and inter-dealer brokers

Ladies and Gentlemen:

ICE Trust U.S. LLC ("ICE Credit") hereby respectfully requests an exemption from the U.S. Department of the Treasury (the "Department"), pursuant to Section 15C(a)(5) of the U.S. Securities Exchange Act of 1934, as amended (the "Exchange Act"). Specifically, we request that the Department grant certain exemptive relief to ICE Credit, clearing members in ICE ("Clearing Members")[1], and inter-dealer brokers ("IDBs") from the provisions of Sections 15C(a), (b) and (d) of the Exchange Act (other than sub-subsection (d)(3)) and the rules and regulations of the Department thereunder applicable to government securities brokers and government securities dealers, to the extent such requirements, rules and regulations would otherwise be applicable to the activities of any of the foregoing in connection with the solicitation, offer, execution, termination, performance and related activities involving credit default swaps ("CDS") that reference government securities[2] entered into by such ICE Credit Clearing Members and submitted to ICE Credit for clearance and settlement. ICE Credit is currently not effecting transactions in CDS that reference government securities entered into by such ICE Credit Clearing Members and submitted

[1] Under the ICE Credit rules, which are publicly available online at https://www.theice.com/publicdocs/clear_us/ICE_Trust_Rules.pdf, Clearing Members are referred to as "Participants", which term is defined "as a person that has been approved by ICE Credit for the submission of an agreement or contract and that is party to an agreement with ICE Credit specifically relating to transactions in agreement or contract." Under ICE Credit rules, a Clearing Member must meet substantial eligibility criteria prior to being permitted to become a Clearing Member, which criteria include standards of business integrity, financial capacity, creditworthiness, operational capability, experience and competence as may be established by ICE Credit from time to time. A current list of Clearing Members is found at footnote 10.

[2] See Section 3(a)(42) of the Securities Exchange Act of 1934, as amended.

to ICE Credit for clearance and settlement. However, granting the relief requested herein will eliminate any uncertainty with respect to status of ICE Credit, its Clearing Members and IDBs.

Previously, the Department granted ICE Credit temporary exemptive relief in an order that was issued on March 6, 2009[3] and extended on December 3, 2009[4], January 28, 2010[5], March 7, 2010[6], and November 30, 2010[7]. In light of the changed circumstances described herein, we now seek a continuing exemption.

I. Introduction: ICE Credit operates as an exempt clearing agency for CDS, but ICE Credit and its Clearing Members will become subject to a comprehensive regulatory scheme as the result of the effectiveness of the Dodd-Frank Act.

1.1 ICE Credit operates as an exempt clearing agency for CDS

As you are aware, CDS are bilateral derivative instruments that can serve to hedge or transfer to another party the credit risk of an obligor (generally referred to as the "reference entity") or to gain exposure to the credit risk of the reference entity. In the usual case, the parties to the CDS specify (i) the reference entity, (ii) the credit-related events with respect to which protection or exposure is sought, (iii) the debt obligations (generally referred to as the "reference obligations") of which nonpayment will trigger settlement obligations, (iv) the assets or obligations, generally known as deliverable obligations, that may be delivered in settlement of the CDS, (v) the principal amount of deliverable obligations to be delivered on settlement, (vi) the amount and frequency of periodic fixed payments to be paid to the protection seller in exchange for the protection of the CDS, and/or (vi) the reference obligations or other assets that are used to value the amount of any cash settlement called for by the CDS.

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3 See Order Granting Exemptions From Certain Provisions of the Government Securities Act and Treasury's Government Securities Act Regulations in Connection With a Request on Behalf of ICE US Trust LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments," issued March 6, 2009, 74 Fed. Reg. 10647 (March 11, 2009).

4 See "Order Extending Exemptions From Certain Government Securities Act Provisions and Regulations in Connection With a Request on Behalf of ICE U.S. Trust LLC Related to Central Clearing of Credit Default Swaps," issued Dec. 3, 2009, 74 Fed. Reg. 64127 (Dec. 7, 2009).

5 See "Order Granting a Exemption From Certain Government Securities Act Provisions and Regulations in Connection With a Request From ICE Trust U.S. LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments," issued Jan. 28, 2010, 75 Fed. Reg. 4626 (Jan. 28, 2010).

6 See "Order Granting Exemptions From Certain Government Securities Act Provisions and Regulations in Connection With a Request From ICE Trust U.S. LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments," issued March 7, 2010, 75 Fed. Reg. 11627 (March 11, 2010).

7 See "Order Extending Exemptions From Certain Government Securities Act Provisions and Regulations in Connection With a Request on Behalf of ICE U.S. Trust LLC Related to Central Clearing of Credit Default Swaps," issued Nov. 30, 2010, 75 Fed. Reg. 75722 (Dec. 6, 2010).

It is estimated that, as of June 1, 2011, the outstanding notional amount of CDS in ICE Credit was approximately $666 billion.[8] The vast majority of the CDS market is comprised of institutional users of CDS, such as financial institutions.

On the basis of relief granted by the Securities and Exchange Commission (the "SEC"), ICE Credit has been operating as an exempt clearing agency with respect to CDS since March of 2009.[9]

1.2 ICE Credit and its Clearing Members will become subject to a comprehensive regulatory scheme as the result of the effectiveness of the Dodd-Frank Act

On July 21, 2010, the President signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). Title VII of the Dodd-Frank Act, when effective, will impose a comprehensive web of regulation on the derivatives markets, including the market for CDS. Specifically, the Dodd-Frank Act will:

- Subject a broad category of derivatives (generally defined as "swaps" or "security-based swaps") to regulation by the Commodity Futures Trading Commission ("CFTC") and/or the SEC, as applicable;
- Require clearing and exchange trading of many derivatives;
- Impose additional margin and capital requirements on uncleared derivatives;
- Establish a comprehensive framework for the registration and regulation of dealers and "major" non-dealer market participants;
- Prohibit proprietary trading in certain derivative instruments by some regulated financial institutions; and,
- Prohibit certain swap market participants from receiving federal assistance, a change that will force many (but not all) derivatives activities to be "pushed out" of insured banks into separately capitalized affiliates.

Importantly, the Dodd-Frank Act will require certain clearing organizations, including ICE Credit, to register with the CFTC in order to clear swaps and with the SEC in order to clear security-based swaps. Pursuant to Sections 725 and 763 of the Dodd-Frank Act, ICE Credit will, as of July 16, by operation of law cease to be an exempt clearing agency and become a registered clearing agency in respect of security-based swaps. Similarly, ICE Credit will as of that date become a derivatives clearing organization ("DCO") registered with the CFTC. Thereafter, ICE Credit will clear swaps and security-based swaps in accordance with the applicable CFTC and SEC regulations and requirements, respectively.

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[8] For a daily summary of the CDS volume and open interest, see https://www.theice.com/marketdata/reportcenter/reports.htm?reportId=98.

[9] See Release No. 34-59527, "Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with Request on Behalf of ICE US Trust LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments," issued March 6, 2009, 74 Fed. Reg. 10791 (March 12, 2009).

Similarly, upon the effectiveness of the Dodd-Frank Act, the laws and regulations applicable to ICE Credit and its Clearing Members will require that any Clearing Member that purchases, sells, or holds CDS positions for others (including for funds) must be registered as a futures commission merchant ("FCM") with the CFTC (for CDS that are swaps) and/or a SEC-registered broker-dealer or security-based swap dealer registered with the SEC (for CDS that are security-based swaps). Accordingly, ICE Credit plans to admit FCMs and SEC-registered broker-dealers as Clearing Members.

As a consequence of these major legislative and regulatory changes, ICE Credit and its Clearing Members will be subject to new and comprehensive regulation on all aspects of its CDS business.

II. Description of ICE Credit's current operations

2.1 Description of current ICE Credit business

ICE Credit is a New York-chartered limited purpose trust company and is currently a member of the Federal Reserve System that acts as a central counterparty for bilateral CDS. As described in our letter of December 3, 2009 (the "December 3 2009 Request"), ICE Credit acts as a central clearing party by accepting the rights and obligations under eligible CDS transactions entered into with its Clearing Members and submitted to ICE Credit in accordance with its rules (the "ICE Credit Rules"). Following acceptance of a CDS transaction for clearing, ICE Credit becomes the seller of credit protection with respect to the CDS purchaser, and the purchaser of credit protection with respect to the CDS seller. The Clearing Member parties to a CDS transaction thus face ICE Credit, rather than their respective original counterparties, in the performance of both the seller's and the purchaser's obligations in respect of a transaction.

2.1.1 Advantages of central clearing

Central clearing in this manner has several important market efficiency and investor protection benefits relative to the preexisting marketplace in which all CDS transactions had to be entered into and performed on a bilateral basis between the individual parties to the transaction:

- First, the substitution of a highly regulated central counterparty with significant financial resources substantially reduces the risk of counterparty default, representing both a systemic market benefit and an investor protection benefit for each party engaging in CDS transactions through ICE Credit.

- Second, the ICE Credit Rules allow a streamlined process for a party to a CDS transaction to move one of more pieces of the party's CDS portfolio from one Clearing Member to another. The "portability" that this represents will result in a more efficient CDS marketplace overall and in greater investor choice in the management of CDS portfolios. Portability is also a meaningful investor protection, in that at times of market or counterparty stress being "locked into" dealing with one's existing counterparty may be especially undesirable.

- Third, central clearing provides a robust mechanism for the segregation and protection of margin provided by market participants. This is an important additional overlay to existing practices in the CDS market, in which any segregation requirements for margin provided by funds must be agreed bilaterally (and thus may differ) from counterparty to counterparty.

- Finally, the central counterparty model improves transparency, in that information about all cleared transactions is centralized and webs of complex, back-to-back CDS transactions can be collapsed into a more rational structure. This likewise represents both a systemic market benefit and an investor protection benefit for each party engaging in CDS transactions through ICE Credit.

As of June 1, 2011, ICE Credit had cleared a notional amount of $666 billion of CDS on behalf of its 15 current Clearing Members.[10]

2.1.2 The Non-Member Framework: Expansion of ICE Credit business to include Clearing Members that are holding customer funds and securities

Initially, the clearing services of ICE Credit were limited to the clearance of proprietary positions in CDS for Clearing Members, as described in our letter of February 26, 2009 (the "February 26 2009 Request"). Commencing December 2009, ICE Credit made available a framework (the "Non-Member Framework") to provide access to ICE Credit's clearing services to clients of Clearing Members ("Third-Party Clients").[11]

The Non-Member Framework was designed to mirror the framework under which existing futures clearinghouses operate, with appropriate differences to reflect the nature of CDS and the identity and operation of its Clearing Members.

Under the Non-Member Framework, ICE Credit has no direct relationship with a Third-Party Client. Rather, a Third-Party Client must clear a CDS transaction through a Clearing Member. The resulting transactions between the Clearing Member and ICE Credit ("Client-Related Transactions") are kept separate from proprietary (or "house") cleared transactions of the Clearing Member. The ICE Credit Rules require Clearing Members to collect initial and mark-to-market (or "variation") margin from their respective Third-Party Clients for any CDS cleared by ICE Credit. Each Clearing Member is required under the Rules to collect from its Third-Party Client at least the minimum required amount of initial margin calculated on a daily basis under the ICE Credit risk model for that client's positions carried through that Clearing Member. In

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[10] The current Clearing Members are: Bank of America, N.A.; Barclays Bank PLC; BNP Paribas; Citibank N.A.; Credit Suisse International; Deutsche Bank AG, London Branch; Goldman Sachs International; HSBC Bank USA, N.A.; JPMorgan Chase Bank, N.A.; Merrill Lynch International; Morgan Stanley Capital Services, Inc.; Nomura International PLC; The Royal Bank of Scotland plc; UBS AG, London Branch, and Société Générale S.A.

[11] For the avoidance of doubt, only Clearing Members can directly access ICE Credit. A fund or any other Third-Party Client wishing to access ICE Credit thus would have to do so under an arrangement with one or more Clearing Members. Note, however, that funds, including registered investment companies, may on application become Clearing Members for their own proprietary account.

addition, the Clearing Member must collect the daily mark-to-market margin required for the client's positions, calculated on the basis of the end-of-day settlement price for the relevant cleared contracts as determined by ICE Credit under its procedures. The ICE Credit Rules also permit Clearing Members to require additional initial margin amounts from Third-Party Clients in the discretion of the Clearing Member to reflect the Clearing Member's individualized judgment of its credit risk exposure to that Third-Party Client. As would be expected, in the event of a default by a Third-Party Client, its Clearing Member will be entitled to apply margin posted by the Third-Party Client to satisfy its obligations to the Clearing Member.

Clearing Members, in turn, must post required initial margin received from a Third-Party Client in an omnibus segregated client account at ICE Credit or ICE Credit's subcustodian, promptly upon receipt.

In terms of variation margin, as in other clearinghouses, mark-to-market margin reflects daily gains or losses on positions. A daily gain or loss on one Third-Party Client's position will correspond to a loss or gain on another position carried with ICE Credit. Accordingly, mark-to-market margin provided by one Third-Party Client would be expected to be used by the Clearinghouse and/or Clearing Member to provide mark-to-market margin in favor of another Third-Party Client or Clearing Member.

2.1.3 Handling Clearing Member default: close-out and portability of defaulting positions

The ICE Credit Rules, like those of other clearing organizations, have detailed provisions addressing the actions to be taken by ICE Credit in the event of a Clearing Member default. Following such a default, ICE Credit will have the right to close out the positions of the defaulting Clearing Member with ICE Credit under the Rules.[12] ICE Credit is required to run this closing-out process separately for Client-Related Transactions and proprietary transactions, such that a separate net gain or loss will be determined for the Client-Related Transactions and for the proprietary transactions of the defaulting Clearing Member. Under the Rules, net gains on Client-Related Transactions may not be applied to net losses on proprietary transactions. Losses on closed-out transactions may only be satisfied from certain sources specified under the Rules.

In the case of losses to ICE Credit on Client-Related Transactions, ICE Credit will be entitled to apply the following assets to those losses, in order, (i) margin provided by a defaulting Third-Party Client, (ii) amounts received from Third-Party Clients on close-out of their transactions, (iii) margin posted by the defaulting Clearing Member with respect to its proprietary positions (to the extent not otherwise used for losses on those positions), (iv) the defaulting Clearing Member's contribution to the ICE Credit guaranty fund, (v) the initial margin posted by

[12] With respect to portability of Third-Party Client positions in the event of an ICE Clearing Member default, ICE Credit Rules permit ICE Credit to transfer, or arrange the transfer of, the defaulting ICE Clearing Member's Third-Party Client positions and related transactions and margin to a new ICE Clearing Member. In the event that ICE Credit is unable to transfer such positions, such positions would be liquidated. ICE Credit then would determine the close-out price for the positions .

Third-Party Clients, up to a specified cap (the "ICE Credit Net Customer Margin Requirement")[13], and (vi) contributions of other Clearing Members to the ICE Credit guaranty fund.

2.1.4 Role of Inter-Dealer Brokers

IDBs have key role in the current market structure for CDS. IDBs also have an important role in the efficient and effective implementation, and continued operation, of the CDS clearing services being offered by ICE Credit. It is anticipated that ICE Credit, as part of its regular day-to-day clearing procedures, will accept for clearing CDS transactions of the ICE Credit Clearing Members submitted or arranged by an IDB. As is the case in other fixed income markets, Clearing Members that want to enter into a CDS transaction that will subsequently be submitted to ICE Credit, instead of themselves locating another Clearing Member to transact with, may choose to submit one side of a CDS transaction to an inter-dealer broker, who will then locate another Clearing Member willing to take the opposite side of such CDS transaction.

Clearing Members may use the facilities of an inter-dealer broker to execute CDS, for example, to access liquidity more rapidly or to maintain pre-execution anonymity, and submit such transactions for clearance and settlement to ICE Credit. These inter-dealer brokers may be registered as SEC-registered broker-dealers or may be registered as SEC-registered broker-dealers and operating subject to Regulation ATS but may not be registered as a government securities dealer. To our knowledge, none of these inter-dealer brokers discipline their subscribers other than by exclusion from trading. The ability of Clearing Members to access IDBs for cleared CDS will ensure that a broader range of CDS transactions are submitted to and cleared by ICE Credit and will provide Clearing Members additional means through which to execute and submit CDS transactions for clearing. ICE Credit seeks to promote the use and activities of IDBs by CDS market participants as one means of promoting an orderly and efficient market for CDS.

As noted above, the IDBs for whom relief is sought herein would act in relation to ICE Credit CDS transactions only for Clearing Members.

2.2 Changes to ICE Credit's corporate and regulatory structure as a result of the Dodd-Frank Act

2.2.1 Changes to ICE Credit's corporate structure

[13] ICE Credit has a security interest in Third-Party Client initial margin posted to it by Clearing Members to permit ICE Credit to apply it to cover losses in case of a Clearing Member default on Client-Related Transactions in accordance with this priority of sources (but not in any event for losses on proprietary positions). ICE Credit may only use margin posted by nondefaulting Third-Party Clients on a pro rata basis in an aggregate amount up to the ICE Credit Net Customer Margin Requirement. The ICE Credit Net Customer Margin Requirement is determined by ICE Credit to reflect the net risk to ICE Credit from all Client-Related Transactions of all Third-Party Clients of a Clearing Member. Other Third-Party Client Margin held by ICE Credit beyond this net amount may not be used by ICE Credit, even if there are additional losses. Third-Party clients will be entitled to the return of initial margin not used by ICE Credit. ICE Credit may be required to modify the default waterfall, including clause (v), to conform to the final regulations adopted by the CFTC and SEC with respect to the segregation and permitted uses of Third-Party Client margin.

As part of its transition from regulation by the Federal Reserve System and the New York State Banking Department to regulation by the SEC and the CFTC, ICE Credit will reorganize its corporate structure. In this regard, ICE Credit will change from a New York-chartered limited purpose trust company to a Delaware limited liability company. In addition, ICE Credit will change its name from ICE Trust U.S. LLC to ICE Clear Credit LLC. These events are expected to occur on July 16, 2011. After that date, correspondence to or from ICE Trust U.S. LLC may be addressed to ICE Clear Credit LLC.[14]

2.2.2 Changes to ICE Credit's regulatory framework

As noted above, as the result of the effectiveness of Title VII of the Dodd-Frank Act, ICE Credit will by operation of law cease to be an exempt clearing agency and will become a registered clearing agency in respect of security-based swaps and a DCO in respect of swaps.

Similarly, the laws and regulations applicable to ICE Credit and its Clearing Members will require that Clearing Members holding customer funds and/or CDS positions for others be registered as FCMs with the CFTC (for CDS that are swaps) and/or a SEC-registered broker-dealer or security-based swap dealer registered with the SEC (for CDS that are security-based swaps). Accordingly, ICE Credit plans to admit FCMs and SEC-registered broker-dealers as Clearing Members.

As a consequence of these major legislative and regulatory changes, ICE Credit and its Clearing Members will be subject to new and comprehensive regulation on all aspects of its CDS business. This regulatory framework will include comprehensive regulation of the capitalization, books and records, systems, and margin and segregation requirements of both ICE Credit and of its Clearing Members.

With respect to ICE Credit, the regulatory framework will also include comprehensive oversight of ICE Credit's Rules, notably including the requirement that all changes to ICE Credit Rules be approved by the SEC in accordance with regulations promulgated under Section 19(b) of the Exchange Act and either self-certified with or approved by the CFTC in accordance with the Commodity Exchange Act. As well, upon its registration as a DCO, ICE Credit will be regulated by the CFTC and it will be subject to the 18 Core Principles set forth in Section 5b(c)(2) of the Commodity Exchange Act. As such, it will be subject to regular audit or risk reviews by the CFTC based on the Core Principles.

As a result, ICE Credit will be subject to regulation in respect of all aspects of its clearing activities, including in respect of eligibility requirements, margin required from Clearing Members, and the procedures relating to default. Notably, certain aspects of the Non-Member Framework are expected to change to reflect the use of FCM and SEC-registered broker-dealer Clearing Members for customer business rather than the existing financial institution clearing members. For example, clearing members will, after the implementation of the Dodd-Frank Act, hold margin assets of Third-Party Clients in segregation as required for margin of swap customers in new Section 4d(f) of the Commodity Exchange Act and new Section 3E(b) of the Exchange Act.

[14] This text may change depending on the execution date of the letter.

III. Proposed Exemption

3.1 Exemption of ICE Credit, Clearing Members and IDBs from the provisions of the Exchange Act governing registration

Under Exchange Act Section 15C(a)(5), the Secretary of the Department may "exempt any government securities broker or government securities dealer, or class of government securities brokers or government securities dealers, from any provision of" Sections 15C(a), (b) or (d) of the Exchange Act (other than sub-subsection (d)(3)) and the rules and regulations of the Department thereunder "if the Secretary finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this title."[15]

ICE Credit hereby requests that the Department grant an exemption to Clearing Members from the provisions of Sections 15C(a), (b) and (d) of the Exchange Act (other than sub-subsection (d)(3)) and the rules and regulations of the Department thereunder applicable to government securities brokers and government securities dealers, to the extent such requirements, rules and regulations would otherwise be applicable to the activities of any of the foregoing in connection with the solicitation, offer, execution, termination, performance and related activities involving CDS that reference government securities entered into by such IDBs with other ICE Credit Clearing Members and submitted to ICE Credit for clearance and settlement.

ICE Credit further requests that the Department grant an exemption to ICE Credit from the provisions of Sections 15C(a), (b) and (d) of the Exchange Act (other than sub-subsection (d)(3)) and the rules and regulations of the Department thereunder applicable to government securities brokers and government securities dealers, to the extent such requirements, rules and regulations would otherwise be applicable to the activities of any of the foregoing in connection with the solicitation, offer, execution, termination, performance and related activities involving CDS that reference government securities entered into by such IDBs with other ICE Credit Clearing Members and submitted to ICE Credit for clearance and settlement.

ICE Credit further requests that the Department grant an exemption to IDBs from the provisions of Sections 15C(a), (b) and (d) of the Exchange Act (other than sub-subsection (d)(3)) and the rules and regulations of the Department thereunder applicable to government securities brokers and government securities dealers, to the extent such requirements, rules and regulations would otherwise be applicable to the activities of any of the foregoing in connection with the solicitation, offer, execution, termination, performance and related activities involving CDS that reference government securities entered into by such IDBs with other ICE Credit Clearing Members and submitted to ICE Credit for clearance and settlement.

ICE Credit understands that any exemptive relief requested herein would be subject to compliance with conditions specified in the applicable order, which conditions may include that the Clearing Member shall be in material compliance with the Rules, and applicable laws and regulations, relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS.

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[15] Exchange Act Section 15C(a)(5).

3.2 Rationale for relief

CDS that reference government securities may not be exempt from the definition of "security" under the Exchange Act. As a result, and in the absence of relief, Clearing Members that are engaged in the business of effecting transactions in government securities may have to register as government securities dealers in accordance with Section 15C of the Exchange Act. We believe that relief is warranted in this regard because:

- *Government securities dealer registration is unnecessary for ICE Credit and for Clearing Members in light of the comprehensive regulatory scheme imposed by the Dodd-Frank Act.* Following the implementation of the Dodd-Frank Act, ICE Credit will be required to be registered as a clearing agency with the SEC and as a DCO with the CFTC. Clearing Members and IDBs effecting customer transactions in CDS may be registered as FCMs with the CFTC and as SEC-registered broker-dealers or securities-based swaps dealers with the SEC. These changes will impose comprehensive regulation on the CDS market. In particular, these changes will impose a regulatory framework that is being designed specifically for the CDS market in accordance with the instructions of Congress. Little would be gained by registration of Clearing Members or IDBs as government securities dealers, while the registration and regulation of Clearing Members and IDBs as government securities dealers would impose additional regulatory burdens on the CDS marketplace.

- *Government securities dealer registration for ICE Credit and for Clearing Members would not represent an efficient use of regulatory resources.* While the imposition of additional regulation on participants in the CDS market will be burdensome, such regulation would also require the expenditure of scarce regulatory resources by the Department. There is little to suggest that the expenditure of regulatory resources by the Department would add to the comprehensive regulation of CDS mandated by the Dodd-Frank Act. The considerable detail in which the regulatory framework is described in Title VII of the Dodd-Frank Act, however, suggests that Congress sought to regulate CDS through the operations of the SEC and CFTC. We note that, in accordance with Section 15C of the Exchange Act, the Department would still be able to request certain information from Clearing Members in accordance with Section 15C(d)(3) of the Exchange Act, and will therefore continue to have oversight authority to the extent required to investigate transactions in CDS that are government securities. The statutorily-mandated retention of jurisdiction in Section 15C(d)(3) of the Exchange Act permits the Department to focus its regulatory resources on specific transactions of interest.

- *Relief would reduce uncertainty as to the status of any debt that is or may be guaranteed by the Federal government.* In response to the extreme market events of 2008, the Federal government guaranteed certain corporate issues' debt obligations through various liquidity programs (the "Liquidity Programs"). ICE Credit believes that, while many such issuers have since retired their government-guaranteed debt, there may be certain corporate debt outstanding that qualifies as "government securities" until the final termination of the Liquidity Programs. The existence of such debt represents an uncertain situation for any

unwary Clearing Members or IDBs that are not otherwise registered as government securities dealers. Granting the relief requested will eliminate such uncertainty.

- *An exemption for ICE Credit and Clearing Members will promote certainty and efficiency.* In addition to the foregoing, we believe that the absence of an exemption for ICE Credit and for Clearing Members will create uncertainty in the CDS market. Specifically, in the absence of an exemption, a number of complex interpretive issues may arise as to the application of existing rules governing government securities dealers, including applicable definitions, to ICE Credit and/or to its Clearing Members. As noted above, these issues would arise in a context that (a) was not considered at the time of the Government Securities Act[16], (b) was not incorporated into the regulatory scheme designed in the Dodd-Frank Act, and (c) would require the expenditure of scarce regulatory resources to harmonize existing regulation with the current market structure in exchange for little or no benefit that is not already granted to the Department under Section 15(C) of the Exchange Act.

- *An exemption for IDBs is warranted to promote certainty and efficiency.* Based on the practical and market benefits that would be afforded by expanding the volume and types of CDS that may be accepted by ICE Credit for clearance and settlement, we believe that an exemption for IDBs is fully consistent with the standards for exemptive relief. In addition, we believe that the imposition of government securities dealer registration on IDBs would (a) bring uncertainty to the regulatory regime that Congress sought to implement through the Dodd-Frank Act, and (b) given the breadth and comprehensiveness of the regulatory regime, be unnecessary to protect investors in the CDS market or the integrity of the market itself.

We do not believe that the relief sought herein is in any way dependent on whether any particular CDS is or is not a government security for purposes of the Exchange Act, or as a result of any Liquidity Program that remains in place. For the reasons noted above, we believe that the relief sought herein is warranted because of the comprehensive changes mandated by the Dodd-Frank Act, to conserve scarce regulatory resources while preserving the regulatory authority granted by Section 15C(d)(3) of the Exchange Act, and to reduce the uncertainty that may exist in respect of any debt that may remain subject to any Liquidity Program.

For these reasons, we believe that granting an exemption is in the public interest and is consistent with the protection of investors, and that the requested extension is therefore appropriate.

IV. Conclusion

Based on the foregoing, we respectfully request that the Department grant, pursuant to Section 15C(a)(5) of the Exchange Act, for the avoidance of legal uncertainty, an exemption for ICE Credit, Clearing Members and IDBs from the provisions of Sections 15C(a), (b) and (d) of the Exchange Act (other than subsection (d)(3)) and the rules and regulations of the Department

[16] Government Securities Act of 1986, 17 C.F.R. §§ 450.1-.5.

thereunder, applicable to government securities brokers and government securities dealers, to the extent such requirements, rules and regulations would otherwise be applicable to their activities in connection with the offer, execution, termination, performance and related activities involving CDS entered into by such Clearing Members with other Clearing Members and submitted to ICE Credit for clearance and settlement.

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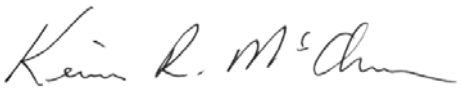
If you should have any questions or comments or require further information regarding this request for an exemption, please do not hesitate to contact the undersigned at (312) 836-6833 or kevin.mcclear@theice.com or Geoffrey B. Goldman (at (212) 848-4867 or geoffrey.goldman@shearman.com) or Russell D. Sacks (at (212) 848-7585 or rsacks@shearman.com) of our outside counsel, Shearman & Sterling LLP.

Very truly yours,



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