



Kevin R. McClear
General Counsel
227 W. Monroe Street
Suite 1500
Chicago, Illinois 60606
312.786.5763
Fax 312.223.0067

February 23, 2010

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 Extension: Exemption for Certain Provisions of the U.S. Securities Exchange Act of 1934 with Respect to ICE Trust U.S. LLC and its Clearing Members

Ladies and Gentlemen:

ICE Trust U.S. LLC (formerly ICE US Trust LLC) ("ICE Trust") hereby respectfully requests an extension of the temporary exemptive relief in the order that was issued on March 6, 2009¹ and extended on December 3, 2009² and January 28, 2010³ ("ICE Trust Orders"), in which 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"), granted certain temporary exemptive relief to clearing members in ICE Trust ("Clearing Members"), certain entities affiliated with ICE Trust Clearing Member⁴ ("Affiliates") and inter-dealer brokers from the provisions of

¹ See Order Granting Temporary 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).

² See "Order Extending Temporary 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).

³ See "Order Granting a Temporary 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).

⁴ For purposes of this request, an affiliate means an entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or in under common control with, a Clearing Member. In the Rules of ICE Trust, Clearing Members are referred to as Participants.

Sections 15C(a), (b) and (d) of the Exchange Act (other than 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 offer, execution, termination, clearance, settlement, performance and related activities involving credit default swaps (“CDS”) that reference government securities entered into by such ICE Trust Clearing Members (or their Affiliates) with other ICE Trust Clearing Members and submitted to ICE Trust for clearance and settlement.

By their terms, the ICE Trust Orders are set to expire on March 7, 2010.

I. Introduction: Request for extension of existing orders

We believe that extension of the ICE Trust Orders is prudent under the circumstances. In short, we believe that the ICE Trust Orders are an important Department action that has allowed the Department, together with the financial industry, to advance the goal of central clearing of credit default swaps pending proposed Administration and Congressional action to require such clearing. In this regard, many Congressional leaders, the Department, the Board of Governors of the Federal Reserve System, and the President’s Working Group on Financial Markets have all emphasized the need for prompt implementation of a clearing solution for CDS.⁵ We believe that the ICE Trust Orders should be extended because:

- *ICE Trust is currently operational.* ICE Trust has completed the costly business of establishing and commencing business as a central counterparty (“CCP”) for CDS. Expiry of the ICE Trust Orders in the absence of Securities Exchange Act relief of the kind provided by those Orders will jeopardize the ability of ICE Trust to continue operations. Any regulatory risk to the use of ICE Trust as a CCP could create a significant barrier to the Department’s goal of encouraging the use of CCPs in the clearing of CDS. To date, the products eligible for clearing at ICE Trust include CDS transactions involving certain of the CDX North American Investment Grade, High Yield and Crossover indices and single-name CDS contracts that meet ICE Trust’s risk management and other criteria. Since the date of the March 2009 Order, ICE Trust has cleared approximately \$3.5 trillion in notional amount of CDX contracts. In addition, ICE Trust has cleared approximately \$10.3 billion in notional amount of single-name CDS contracts.⁶

- *ICE Trust is achieving the Department’s goals.* As an operational entity, ICE Trust significantly reduces the credit and operational risks associated with the CDS

⁵ See Policy Objectives for the OTC Derivatives Market, The President’s Working Group on Financial Markets (November 14, 2008), <http://www.ustreas.gov/press/releases/reports/policyobjectives.pdf>. See also Policy Statement on Financial Market Developments, The President’s Working Group on Financial Markets (March 13, 2008), http://www.treas.gov/press/releases/reports/pwgpolicystatemktturmoil_03122008.pdf; Progress Update on March Policy Statement on Financial Market Developments, The President’s Working Group on Financial Markets (October 2008), <http://www.treas.gov/press/releases/reports/q4progress%20update.pdf>.

⁶ For a daily summary of the CDS volume and open interest, see <https://www.theice.com/marketdata/reports/ReportCenter.shtml>.

activities of its Clearing Members, thereby achieving the very effects that were intended by the ICE Trust Orders. It would be premature to allow the ICE Trust Orders to expire in the absence of a clear framework for continuing this service.

- *ICE Trust is transparent to regulators.* The operations of ICE Trust are transparent to multiple regulators and do not warrant the expiration of the ICE Trust Orders. Not only do the terms of the ICE Trust Orders provide the Department and other regulatory agencies with adequate authority to monitor ICE Trust's activities, but ICE Trust is also comprehensively monitored and regulated by state and federal banking supervisors, applying a bank regulatory framework.

II. Additional facts and representations

In addition, ICE Trust represents to the Department that there have been no other material changes to the operations of ICE Trust, and that the representations made by ICE Trust in the ICE Trust Orders remain true in all material respects, and ICE Trust has completed or will complete those undertakings made in its request letter with respect to the ICE Trust Orders.

ICE Trust continues to use the end-of-day process described in the order dated December 3, 2009 ("December Order"),⁷ and represents that there have been no material changes to the end-of-day settlement price calculation or to the procedure relating to required trading described in the December Order. The daily submission requirements and end-of-day settlement price calculation process for single-name CDS are fundamentally the same as the existing process for index CDS. In its request letter of December 3, 2009 (the "Request Letter"), ICE Trust stated that it anticipated implementing certain changes to this process in connection with the clearing of single-name CDS.⁸ Commencing on or about March 1, 2010, ICE Trust intends to implement these changes. Specifically, ICE Trust will implement required trading for single-name CDS on a daily basis, rather than the random-day basis that applies to index CDS. On each business day ICE Trust will require trading for a set percentage (initially set at approximately 10%) of the randomly selected cleared single-name reference entities.⁹ ICE Trust will apply a filter that first selects for required trading the most liquid "cross points" on a curve generated for each such reference entity. ICE Trust will also apply a notional ceiling with respect to the amount of required trades in CDS on the selected reference entities for any given day.

As described in the Request Letter, ICE Trust has no rule requiring an executing dealer for purposes of Client transactions to be a Clearing Member. As an operational matter, ICE Trust currently has one authorized trade processing platform for submission of Client trades, ICE Link. Currently, ICE Link's systems do not provide mechanisms by which an executing dealer that is not a Clearing Member could submit a trade for clearance at ICE Trust. As noted in the Request Letter, however, ICE Trust Rules provide for open access to ICE Trust's clearing systems for all

⁷ See the ICE Trust Order at Section II.C. In 2009, ICE Trust adopted procedures implementing required trades on 30 random days within each 12-month period.

⁸ See Letter from Kevin McClear, General Counsel, ICE Trust U.S. LLC, to Van Zeck, Commissioner of the Public Debt, December 3, 2009 at page 5.

⁹ Single Name Reference Entities is a term defined at Rule 26B.

reasonably qualified execution venues and trade processing platforms.¹⁰ Accordingly, ICE Trust remains committed to work with reasonably qualified execution venues and authorized trade processing platforms to facilitate functionality for submission of trades by executing dealers that are not Clearing Members if there is interest in that functionality.

III. Conclusion

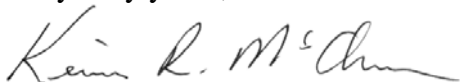
Based on the foregoing, we respectfully request that the Department issue extension of the temporary exemptive relief in the order that was issued on March 6, 2009 and extended on December 3, 2009 and January 28, 2010. Given that Congress and the Department are actively working towards regulatory reform that includes the regulation of CDS CCPs, we respectfully request the extension of the ICE Trust Orders indefinitely, or until such time as law or regulation superseding the Orders are passed by Congress or adopted by the Department and becomes effective.

For these reasons, we believe that the ICE Trust Orders continue to be in the public interest and is consistent with the protection of investors, and that the requested extension is therefore appropriate.

* * *

If you should have any questions or comments or require further information regarding this request for an extension to the ICE Trust Orders, please do not hesitate to contact the undersigned at (312) 786-5763 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,



Kevin McClear

cc: Lori Santamorena
Heidilynne Schultheiss
Josh Kans, SEC
James Eastman, SEC

cc: Johnathan Short, Esq.
Jessica Bertoldi, Esq.

¹⁰ ICE Trust Rule 314 provides that:

“ICE Trust shall ensure that there shall be open access to the clearing system operated by ICE Trust pursuant to these Rules for all execution venues and trade processing platforms. ICE Trust may impose (a) reasonable criteria to determine whether an execution venue has the capability to deliver the necessary quality of service to be granted access to ICE Trust and (b) reasonable criteria to determine whether a trade processing platform has the capability to deliver the necessary quality of service to be granted access to ICE Trust and connected through the ICE Trust application programming interface; *provided* that in each case such criteria shall not unreasonably inhibit such open access.”