



November 26, 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 (“ICE Trust”) hereby respectfully requests an extension of the temporary exemptive relief in the order that was issued on March 6, 2009<sup>1</sup> and extended on December 3, 2009<sup>2</sup>, January 28, 2010<sup>3</sup>, and March 7, 2010<sup>4</sup> (collectively, the “ICE Trust Order”), 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 Member<sup>5</sup> (“Affiliates”) and inter-

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> See “Order Granting Temporary 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).

<sup>5</sup> 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.

dealer brokers 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 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 Order is set to expire on November 30, 2010.

## **I. Introduction: Request for extension of existing orders**

We believe that extension of the ICE Trust Order is prudent under the circumstances. In short, we believe that the ICE Trust Order is 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 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.<sup>6</sup>

Further, Congress has acted: on July 21, 2010, the President signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). Title VII of the Dodd-Frank Act, when effective, will impose clearing requirements for some derivatives and require certain clearing organizations to register with the CFTC in order to clear swaps and with the SEC in order to clear security-based swaps (unless exempted from those requirements).

We believe that the ICE Trust Order 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 Order in the absence of Securities Exchange Act of 1934, as amended, relief of the kind provided by the Order may 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

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<sup>6</sup> 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](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>.

management and other criteria. Since the date of the March 2009 Order, ICE Trust has cleared approximately \$7.3 trillion in notional amount of CDX contracts. In addition, ICE Trust has cleared approximately \$461.5 billion in notional amount of single-name CDS contracts.<sup>7</sup> As of October 22, 2010, there is approximately \$294.5 billion in current open interest of CDX contracts and \$237.9 billion in current open interest of single-name CDS contracts. ICE Trust believes the extension is warranted to avoid creating regulatory uncertainty with respect to the significant amounts of current open interest.

- *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 activities of its Clearing Members, thereby achieving the very effects that were intended by the ICE Trust Order. It would be premature to allow the ICE Trust Order to expire while the implementation of the new framework under the Dodd-Frank Act is still in progress.

- *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 Order. Not only do the terms of the ICE Trust Order 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 material changes to the operations of ICE Trust, and that the representations made by ICE Trust in connection with the ICE Trust Order, and in our letter of February 23, 2010, remain true in all material respects.

ICE Trust continues to use the end-of-day process described in the order dated December 3, 2009 ("December Order"),<sup>8</sup> 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.

On November 12, 2010 ICE Trust applied to the CFTC for registration as a derivatives clearing organization ("DCO") in advance of the Dodd-Frank Act implementation date to facilitate implementation of the Dodd-Frank Act requirements. On November 17, 2010 the CFTC issued a request for public comment on ICE Trust's application for registration as a

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<sup>7</sup> For a daily summary of the CDS volume and open interest, see <https://www.theice.com/marketdata/reports/ReportCenter.shtml>.

<sup>8</sup> 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.

DCO.<sup>9</sup> As part of the transition to DCO status, ICE Trust expects to admit as clearing members for customer clearing futures commission merchants registered with the CFTC (which may be registered as government securities brokers or government securities dealers) and may introduce related changes to its rules.

### III. Conclusion

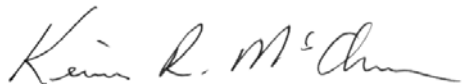
Based on the foregoing, we respectfully request that the Department issue extension of the temporary exemptive relief in the order that was issued on March 6, 2009 and extended on December 3, 2009, January 28, 2010, and March 7, 2010. In light of the passage of the Dodd-Frank Act, we respectfully request the extension of the ICE Trust Order.

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

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If you should have any questions or comments or require further information regarding this request for an extension to the ICE Trust Order, 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,



Kevin McClear

cc: Lori Santamorena  
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Joseph Kamnik, SEC  
Haime Workie, SEC

Sarah Josephson, CFTC  
Julie Mohr, CFTC

cc: Johnathan Short, Esq.  
Christopher Edmonds

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<sup>9</sup> Press Release, CFTC, "CFTC Requests Public Comment on an Application by ICE Trust U.S. LLC for Registration as a Derivatives Clearing Organization," (Nov. 17, 2010), *available at* <http://www.cftc.gov/PressRoom/PressReleases/pr5936-10.html>.