



November 29, 2010

Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Attention: Elizabeth Murphy  
Secretary

**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 order issued on March 5, 2010 ("ICE Trust Order"), which in turn extended the March 6, 2009<sup>1</sup> ("March Order") and December 4, 2009<sup>2</sup> orders in which U.S. Securities and Exchange Commission (the "Commission" or "SEC") exercised its authority under Sections 17A(b)(1) and 36(a)(1) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), to grant certain temporary exemptive relief to ICE Trust, clearing members of ICE Trust ("Clearing Members"), certain entities affiliated with ICE Trust Clearing Members<sup>3</sup> ("Affiliates") and inter-dealer brokers in connection with credit default swaps ("CDS") 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 its terms, the ICE Trust Order is set to expire on November 30, 2010.<sup>4</sup>

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<sup>1</sup> 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).

<sup>2</sup> See Release No. 34-61119, "Order Extending and Modifying Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with Request From ICE US Trust LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments," issued Dec. 4, 2009, 74 Fed. Reg. 65554 (Dec. 10, 2009).

<sup>3</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 is under common control with, a Clearing Member. In the Rules of ICE Trust, Clearing Members are referred to as Participants.

<sup>4</sup> See Release No. 34-61662, "Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with Request From ICE US Trust LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments," issued March 5, 2010, 75 Fed. Reg. 11589 (March 11, 2010).

## I. Introduction: Request for extension of existing order

We believe that extension of the ICE Trust Order is prudent under the circumstances. In short, we believe that the ICE Trust Order continues to be an important Commission action that has allowed the Commission, 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 U.S. Treasury 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>5</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 pending effectiveness of the Dodd-Frank Act requirements 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 Exchange Act relief of the kind provided by that Order 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 Commission'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 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>6</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

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<sup>5</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>.

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

creating regulatory uncertainty with respect to the significant amounts of current open interest.

- *ICE Trust is achieving the Commission'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. ICE Trust is comprehensively regulated by state and federal banking supervisors, and by the Commission, and is expected to become regulated by the CFTC. In addition, Commission Staff have inspected and examined the operations of ICE Trust in on-site and telephone meetings.

## II. Additional facts and representations

ICE Trust represents to the Commission 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 March 5, 2010, remain true in all material respects.

ICE Trust continues to use the end-of-day process described in the ICE Trust Order,<sup>7</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 ICE Trust Order.<sup>8</sup> 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 DCO.<sup>9</sup> As part of the transition to DCO status, ICE Trust expects to admit as clearing members

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<sup>7</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.

<sup>8</sup> In addition to the procedures implementing required trades on random days for CDS indices and the required trade process described in our letter of March 5, 2010 with respect to single name CDS, ICE Trust regularly monitors the quality of the respective firm’s EOD price submissions. On a regular basis, ICE Trust: (1) performs a statistical analysis with respect to the dispersion of price submissions; (2) reviews the number of “Advisory Trades” for each firm; and (3) reviews any instances where firms have either submitted late prices or failed to submit prices. When appropriate, ICE Trust management contacts firms to discuss the quality of their price submissions. In addition, on a regular basis, ICE Trust management reviews the default spread widths (DSW) and the daily trade results (“Advisory” and “Firm”) with the Trading Advisory Committee (TAC) and the ICE Trust Risk Committee.

<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>.

for customer clearing futures commission merchants registered with the CFTC (which may be registered broker-dealers) and may introduce related changes to its rules. Accordingly, ICE Trust requests relief for Futures Commission Merchants that become clearing members similar to the relief for Futures Commission Merchants found in SEC Release 34-61803 (Mar. 30, 2010), 75 Fed. Reg. 17181 (Apr. 5, 2010).

### III. Conclusion

Based on the foregoing, we respectfully request that the Commission to extend the temporary exemptive relief order issued on March 5, 2010. Following the passage of the Dodd-Frank Act and given that the Commission is actively engaged in the rulemaking and implementation process, we respectfully request the extension of the ICE Trust Order.

For these reasons, we believe that the ICE Trust Order continues 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: Hon. Mary Schapiro  
Hon. Kathleen L. Casey  
Hon. Elisse B. Walter  
Hon. Luis A. Aguilar  
Hon. Troy A. Parades  
Robert W. Cook, Esq.

cc: Johnathan Short, Esq.  
Christopher Edmonds