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March 5, 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 December 4, 2009 ("ICE Trust Order"), in which the 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 supplemental exemptive relief to the March 6, 2009 order ("March 2009 Order")¹ in which SEC granted certain temporary exemptive relief to ICE Trust, clearing members in ICE Trust ("Clearing Members"), certain entities affiliated with ICE Trust Clearing Members² ("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.

¹ 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).

² 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.

By its terms, the ICE Trust Order is set to expire on March 7, 2010.³

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 is 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 proposed 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.⁴ 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 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 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.⁵
- *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

³ 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).

⁴ 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>.

⁵ For a daily summary of the CDS volume and open interest, see <https://www.theice.com/marketdata/reports/ReportCenter.shtml>.

Trust Order 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 Order. ICE Trust is comprehensively regulated by state and federal banking supervisors, and by the Commission, applying a regulatory framework that the Commission has recognized as substantially similar to the framework administered by the Commission under Section 17A of the Exchange Act, and under the terms of the ICE Trust Order. In addition, Commission Staff have inspected and examined the operations of ICE Trust in on-site and telephone meetings.

II. Additional facts and representations

As a condition to the exemptive relief requested herein, ICE Trust represents that it has adopted a requirement that Clearing Members are regulated by: (i) a signatory to the International Organization of Securities Commissions Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, or (ii) a signatory to a bilateral arrangement with the Commission for enforcement cooperation. In addition, ICE Trust represents to the Commission 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 Order 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 Order.

ICE Trust continues to use the end-of-day process described in the ICE Trust Order,⁶ 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.⁷ 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 4, 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 On February 15, 2010, ICE Trust commenced implementing these changes. Specifically, on

⁶ 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.

In addition to the procedures implementing required trades on random days for CDS indices and the required trade process described herein 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.

⁸ See Letter from Kevin McClear, General Counsel, ICE Trust U.S. LLC, to Elizabeth Murphy, Secretary, Commission, December 4, 2009 at footnote 7.

February 15, 2010, ICE Trust began required trading, on a daily basis, for the 100 basis point coupon for certain single-name CDS (and one tenor), rather than the random-day basis that applies to index CDS.⁹ On each business day ICE Trust requires trading for a set percentage (initially set at approximately 10%) of randomly selected cleared single-name reference entities.¹⁰ ICE Trust will apply a filter that first selects for required trading the most traded “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.¹¹

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 reasonably qualified execution venues and trade processing platforms.¹² 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 Commission issue extension of the temporary exemptive relief order issued on December 4, 2009. Given that Congress and the Commission are actively working towards regulatory reform that includes the regulation of CDS CCPs, we respectfully request the extension of the ICE Trust Order indefinitely, or until such time as law or regulation superseding the Order is passed by Congress or adopted by the Commission and becomes effective.

⁹ As ICE Trust rolls out additional single names, it will include the additional single names in the required trading process. ICE Trust also anticipates including the other coupons and tenors commencing sometime in mid to late-March.

¹⁰ Single Name Reference Entities is a term defined at Rule 26B.

¹¹ The current notional ceiling is ten million (10,000,000) dollars per single name reference entity (a reference entity includes all of the coupons and tenors). The notional ceiling for the most traded “cross point” on the tenor curve of a particular reference entity is five million (5,000,000) dollars. The notional ceilings for the other “cross points” on the tenor curve is two million five hundred thousand (2,500,000) dollars.

¹² 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.”

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) 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: Hon. Mary Schapiro
Hon. Kathleen L. Casey
Hon. Elisse B. Walter
Hon. Luis A. Aguilar
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cc: Johnathan Short, Esq.
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