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

December 3, 2009

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

Supplemental Request for Exemption from Certain Provisions of the U.S. Securities Exchange Act of 1934 with Respect to ICE Trust U.S. LLC and its Clearing Members and Request for Extension of the March 6, 2009 Order

Ladies and Gentlemen:

ICE Trust U.S. LLC (formerly ICE US Trust LLC) ("ICE Trust") hereby respectfully requests supplemental exemptive relief to the March 6, 2009 order[1] 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 ICE Trust, clearing members in ICE Trust ("Clearing Members"), certain entities affiliated with ICE Trust Clearing Members[2] ("Affiliates") and inter-dealer brokers from the provisions of Sections 15C(a), (b) and (d) of the Exchange Act (other than subsection (d)(3))

---

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) ("ICE Trust Order").

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.

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") 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. We also hereby request the extension of the ICE Trust Order, which by its term is scheduled to expire on December 6, 2009.

I. Introduction: Request for expansion of existing order

ICE Trust requests that the Department issue a supplemental exemptive order or rule order pursuant to Section 15C(a)(5) of the Exchange Act, for the avoidance of uncertainty, (i) to include Client-Member Transactions and the Non-Member Framework (each as described and defined herein), and (ii) to exempt any Clearing Member from any requirement that it comply with provisions of the Exchange Act governing government securities transactions, to the extent such provisions would otherwise be applicable to such Clearing Member, in connection with the receiving or holding of funds or securities from other persons for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS on the terms and subject to the conditions described at Section 8.2 of this request. ICE Trust also hereby requests an extension of the ICE Trust Order.

ICE Trust represents to the Department that, except for the Non-Member Framework and other changes described herein and/or noticed to the Department in accordance with the ICE Trust Order, there will be 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.

This supplemental request is without prejudice to, and is not intended to limit, ICE Trust's, the ICE Trust Clearing Members' and the other specified applicants' eligibility for or reliance on any other statutory or regulatory basis for relief from the provisions of the Exchange Act in connection with the activities contemplated by this request.

This supplemental request consists of nine Sections, including this introductory Section I. Sections II proposes the extension of the existing exemptive order, which extension can be formulated separately or together with the request noted in Section VIII. Sections III-VI provide a description of ICE Trust's current activity and a description of ICE Trust's proposed framework for the clearance of CDS on behalf of customers of Clearing Members ("Clients"),[3] including for providing segregation of initial margin of non-members, protection against default of Clearing Members, and portability of non-member positions and its proposed clearing

[3] Permissible Clients include sole proprietorships, partnerships, limited liability companies, associations, firms, trusts, corporations or other entities, as the context may require. Clients will not, however, be natural persons.

activities. Section VII describes the application of the non-member framework in a Clearing Member insolvency. Section VIII describes the basis for the exemptive relief requested. Section IX concludes the request. We refer to our original request letter, dated February 26, 2009, for the description of other aspects of the organization and operation of ICE Trust.

We have included with this request the exhibits listed in the Exhibit Index hereto.

II. Request for Extension of the ICE Trust Order

We hereby respectfully request an extension to the ICE Trust Order. By its terms, the ICE Trust Order is set to expire on December 6, 2009.

We believe that extension of the ICE Trust Order is prudent under the circumstances. The ICE Trust Order is an important Department action that has allowed the financial industry to advance the goal of centralized clearing of credit default swaps. Allowing the ICE Trust Order to expire could jeopardize this progress. In this regard, many Congressional leaders, the Department[4], the Board of Governors of the Federal Reserve System, and the President's Working Group on Financial Markets[5] have all emphasized the need for prompt implementation of a clearing solution for CDS. We believe that the ICE Trust Order should be extended because:

- ICE Trust has expended considerable effort and resources to commence business as a central counterparty ("CCP") for CDS. Clearing Members have also taken similar steps. 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 Clearing Members to use the clearing solution of ICE Trust. Allowing the ICE Trust Order to expire would create uncertainty as to the regulatory status of cleared trades and clearing participants, which could create a significant barrier to the Department's goal of encouraging the use of CCPs in the clearing of CDS.

- As an operational entity, ICE Trust reduces the credit and operational risks associated with the CDS activities of its Clearing Members. It would be premature to allow the order to expire at this stage in the development of ICE and ICE Trust,

---

4 Letter from Timothy F. Geithner to the Honorable Harry Reid, United States Senate (May 13, 2009) available at http://www.financialstability.gov/docs/OTCletter.pdf.

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.

particularly given the goal of the Department and other regulators to expand the availability of CDS clearing.

- 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.

Based on the foregoing, we respectfully request that the Department issue an extension of the ICE Trust Order.

III. ICE Trust's Framework for Segregation of Initial Margin of Non-Members

3.1 Introduction

Since March 9, 2009, ICE Trust has been operating as an exempt clearing agency for CDS. In accordance with the ICE Trust Order, the clearing services of ICE Trust have been limited to the clearance of Clearing Members' proprietary positions in CDS. Specifically, during this initial phase, ICE Trust has acted as a CCP for Clearing Members[6] by accepting, through novation, the rights and obligations under eligible CDS transactions entered into between Clearing Members and submitted to ICE Trust in accordance with the ICE Trust rules (the "Rules"). Upon acceptance and novation of a CDS transaction, ICE Trust becomes the seller of credit protection to the Clearing Member that is the buyer under the CDS, and the buyer of credit protection to the Clearing Member that is the seller under the CDS. Clearing Members thus face ICE Trust, rather than their original bilateral counterparty, for cleared transactions. Pursuant to its risk management methodology and procedures, ICE Trust currently collects initial margin and mark-to-market margin from each Clearing Member to secure the obligations of that Clearing Member to ICE Trust under cleared transactions. In addition, ICE Trust has established a guaranty fund, with contributions both from ICE and Clearing Members, that provides additional financial protection in the case of a Clearing Member default.

Under the Order issued by the Securities and Exchange Commission (the "SEC") on March 6, 2009, ICE Trust is exempt from registration as a clearing agency under Section 17A of the Exchange Act, subject to eight specific conditions.[7] In particular, that Order's conditions require ICE Trust to (i) provide certain information to the public, (ii) make and keep certain books and records, and make those records and ICE Trust premises available to SEC inspection and (iii) affirmatively provide certain information to the SEC, including disciplinary information,

---

6 ICE Trust currently has 13 Clearing Members. Clearing Members at launch were: Bank of America, Barclays Capital, Citibank, Credit Suisse, Deutsche Bank, Goldman Sachs, J.P. Morgan, Merrill Lynch, Morgan Stanley and UBS. HSBC and Royal Bank of Scotland joined ICE Trust as Clearing Members in May 2009. BNP Paribas became a Clearing Member in September 2009.

7 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).

information regarding ICE Trust's rules, and risk assessment and system outage information. In addition, the SEC's Order also exempts ICE Trust and its clearing members is exempt from exchange registration under the Exchange Act, and also exempts clearing members and certain eligible contract participants submitting CDS to clearing members from dealer registration obligations under the Exchange Act. Concurrent with the SEC's Order, the ICE Trust Order exempts clearing members and certain eligible contract participants from registration as government securities dealers under Section 15C of the Exchange Act.

As of October 30, 2009, ICE Trust had cleared approximately $2.64 trillion in notional amount of CDS contracts.[8] 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. ICE Trust intends in the near future to expand the scope of cleared products to include single-name CDS contracts that meet ICE Trust's risk management and other criteria, subject to regulatory approvals.

Since the issuance of the ICE Trust Order, there has been no material change to the organizational structure of ICE Trust. ICE Trust continues to be subject to the principal supervision of the New York State Banking Department (the "NYBD") and the Federal Reserve Bank of New York (the "FRBNY"). In addition, ICE Trust continues to operate pursuant to exemptive relief from the SEC. Since it began operations, ICE Trust has been subject to examination, including on-site examination, by each of the NYBD, FRBNY and the SEC. These examinations have addressed numerous aspects of ICE Trust's activities, including compliance with safety and soundness requirements.

ICE Trust now intends to expand its clearing services to include the clearance of Client positions by Clearing Members. In consultation with Clearing Members and with prospective institutional investors that have shown interest in acting as Clients, ICE Trust has developed a framework (the "Non-Member Framework") for providing clearing services in respect of Client transactions, and now seeks the modification of the Order to permit this expansion.

The Non-Member Framework has been designed to protect Clients, particularly with respect to their initial margin, from a default by a Clearing Member, taking into account the regulatory and insolvency framework applicable to the Clearing Member. In addition, the Non-Member Framework, and central clearing of CDS in general, protect Clients by enhancing the financial stability of the CDS markets as a whole, including the stability of the Clearing Members with which they trade. The establishment of minimum margin requirements across all Clients and Clearing Members and a mechanism for segregation of Client initial margin are key components of this added stability.

Under the ICE Trust Order, Clearing Members are exempt from certain provisions of the Exchange Act, including the broker-dealer registration requirements contained therein. Although ICE Trust believes that its Clearing Members should continue to benefit from this exemption

---

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

under the Non-Member Framework, it is mindful of the requirements applicable to government securities brokers and government securities dealers in connection with customer business, including the requirements of Rule 15c3-3 under the Exchange Act. Consistent with the policies underlying such requirements, ICE Trust has designed the Non-Member Framework to provide a robust program for the segregation of Client assets that are posted by Clients as initial margin to secure their obligations for cleared transactions. This program is described in detail herein.

In developing the Non-Member Framework, ICE Trust has carefully weighed the positions expressed by both Clients and Clearing Members. ICE Trust has sought to provide a robust Client protection framework while avoiding unnecessary costs and providing institutional market participants some flexibility as to how they choose to structure their clearing arrangements.

3.2 Basic Non-Member Framework

ICE Trust is developing a framework that provides certain protections of clearing for CDS transactions entered into by Clients, including the segregation of at least the minimum required initial margin posted by Clients in segregated accounts and provisions to enhance the transferability, or "portability," of such transactions in the event of a Clearing Member insolvency.[9]

Under the Non-Member Framework, the Rules distinguish between Client-generated positions ("Client Positions") and house positions ("House Positions") for each Clearing Member. Client Positions are cleared CDS transactions between ICE Trust and the Clearing Member that are offset or mirrored on a back-to-back basis by a CDS transaction between the Clearing Member and a Client (a "Client-Member Transaction"). House Positions are all other cleared CDS transactions between the Clearing Member, or any Affiliate, and ICE Trust, including so-called "house" or "proprietary" transactions.

Notwithstanding this distinction, both Client and House Positions are principal-to-principal transactions between the Clearing Member and ICE Trust. In addition, Client-Member Transactions are principal-to-principal transactions between the Clearing Member and the Client. ICE Trust will have no direct relationship with, or liability to, Clients, in respect of Client Positions, Client-Member Transactions or otherwise, except as described herein.

ICE Trust will record each Client Position submitted by a Clearing Member to ICE Trust, and will permit Clearing Members to identify and close out offsetting Client Positions that reflect positions corresponding to the same Client. Notwithstanding that ICE Trust may in this manner retain records of "gross" Client Positions across different Clients, the obligations of each of ICE

[9] ICE Trust rules will not preclude a Client from trading CDS with a Member on a strictly bilateral, non-cleared basis. Where such transactions meet the criteria set forth in Section 3A of the Exchange Act, they will be largely excluded from the provisions of that Act.

Trust and the Clearing Member to the other at any time in respect of Client Positions shall be determined on a net basis.

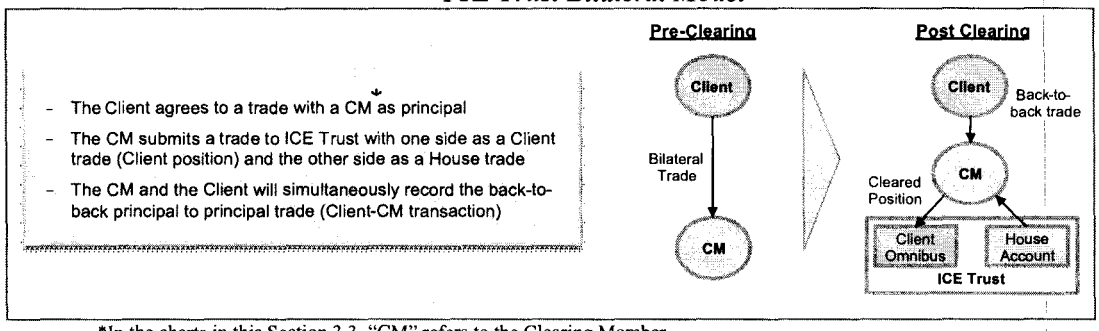
3.3 Submission of Client Positions to ICE Trust

Client Positions may be submitted for clearing in two ways: through a "bilateral model" and a "prime broker model" or "designated clearing member model" ("DCM" model), as described below. In order to have related Client Positions registered in ICE Trust, the Client is required to have one or more designated Clearing Members that have agreed to act as the Client's clearing member. Under either model, ICE Trust will accept all CDS that meet the standards set forth in its Rules[10], unless ICE Trust determines in good faith and in the exercise of prudent risk management standards that it should not accept the transaction.

3.3.1 Bilateral Model

Under the Bilateral Model, the Client would execute a trade with a Clearing Member, acting as principal. The Clearing Member submits a back-to-back trade to ICE Trust. Upon acceptance, this would be treated by ICE Trust as two positions, a Client Position that mirrors that Client-Member Transaction and an (exactly offsetting) House Position, as shown in the diagram below.

ICE Trust Bilateral Model



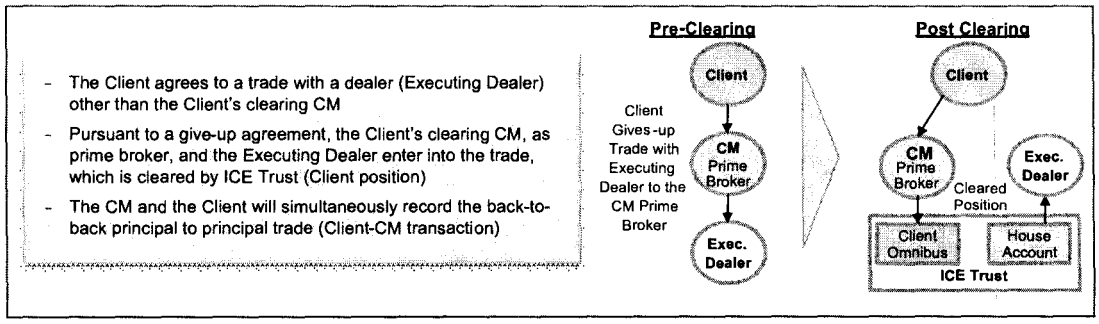
*In the charts in this Section 3.3, "CM" refers to the Clearing Member.

10 The relevant rules are Rules 301, 302, 309, and 313. Under either model, the treatment of a trade that is not accepted for clearing will depend on the underlying arrangement between the parties. ICE Trust expects that, initially, transactions involving Clients that are to be submitted for clearing will likely be submitted through the "DCM" model discussed below and will be subject to a set of "DCM Standard Terms" published by ICE Trust. The DCM Standard Terms will provide procedures and timing requirements for submission of a transaction to clearing, and will include a series of fallbacks in the event a trade is not cleared. For example, if a trade agreed to between a Client and an Executing Dealer subject to the DCM Standard Terms is not cleared, depending on the circumstances, it may remain a bilateral, uncleared transaction between Client and Executing Dealer under bilateral ISDA documentation or may be "broken," resulting in a termination payment owed by either Client or Executing Dealer to the other. A copy of the DCM Annex is attached as **Exhibit B**. The "bilateral" model described below is expected to be used initially for back-loading of existing transactions into central clearing.

3.3.2 Clearing Member as a Prime Broker

Under the "Prime Broker" or "DCM" model, the Client agrees to a trade with a Clearing Member or other executing dealer (the "Executing Dealer") other than the Client's Clearing Member. Pursuant to a give-up or similar agreement, the Client's Clearing Member, as prime broker, and the Executing Dealer (or, if the Executing Dealer is not a Clearing Member, its Clearing Member) enter into the trade, which is submitted to ICE Trust for clearing.[11] The Clearing Member and the Client would simultaneously enter into an offsetting principal trade, which would be a Client-Member Transaction. The leg of the cleared transaction between ICE Trust and the Client's Clearing Member would be treated as a Client Position, as shown in the diagram below.[12]

ICE Trust Prime Broker Model



ICE Trust expects that transactions under the DCM model will be submitted to ICE Trust through one or more "authorized trade processing platforms" pursuant to the DCM Standard Terms. The authorized trade processing platform will facilitate the affirmation of the trade terms by the Client, Executing Dealer and DCM and the electronic submission of the affirmed trade to ICE Trust for clearing. For example, under this approach, when a Client and Executing Dealer agree the terms of a conforming transaction (including that the transaction should be submitted to ICE Trust for clearing), the Executing Dealer will submit the terms of the trade to the authorized

---

11 As noted above, the DCM Standard Terms offer one form of such a give-up arrangement. Under the DCM Standard Terms, once the proposed trade has been affirmed by all parties (Client, Executing Dealer and DCM) and has been accepted by ICE Trust, the transaction legs between ICE Trust and each of the Executing Dealer and DCM and between the DCM and Client will be established simultaneously.

12 In this scenario, the opposite leg between ICE Trust and the Executing Dealer would be a House Position. If the Executing Dealer were clearing through another Clearing Member, the leg between ICE Trust and the Executing Dealer's Member would be a Client Position, and there would be an offsetting Client-Member Transaction between the Executing Dealer and its Clearing Member. If the Executing Dealer is the same legal entity as the prime broker, the result would be the same as in the bilateral model. ICE Trust has no rule requiring an Executing Dealer to be a Clearing Member. Based on market feedback, ICE Trust anticipates that, initially, executing dealers will be Clearing Members. Currently, none of the authorized trade processing platforms permit, as an operational matter, an arrangement by which an Executing Dealer that is not a Clearing Member could submit a trade for clearance at ICE Trust. ICE Trust Rules, however, do provide for open access to ICE Trust's clearing systems for all execution venues and trade processing platforms. See Rule 314.

trade processing platform, which will then forward those terms to the Client for affirmation. Once the Client has affirmed the trade, the platform will forward those terms to the DCM designated by the Client for affirmation by that DCM. Once all three parties have affirmed the transaction, it will be submitted to ICE Trust for clearing. Pursuant to the Rules, ICE Trust will determine whether to accept or reject the submitted trade in accordance with its risk management policies and procedures.[13] It is expected that the platform would also submit notice of the acceptance or rejection of the trade by ICE Trust to the relevant parties. ICE Trust expects to enter into arrangements to accept transactions from multiple authorized trade processing platforms, and under the Rules ICE Trust has committed to ensure that there will be open access to ICE Trust's clearing system for platforms that meet ICE Trust's reasonable qualifications and criteria to provide the necessary services. Authorized trade processing platforms may provide additional back-office or similar services to Clearing Members and Clients as agreed among such parties.

Regardless of whether it was originally submitted under the bilateral model or prime broker model, if a Client-Member Transaction is terminated because of a default by the Client or otherwise, the related Client Position would by its terms remain in effect, but the Clearing Member will be entitled under the Rules to enter into a liquidating trade with another Clearing Member that would be submitted for clearing. Such a liquidating trade, which might otherwise be treated as a House trade, would offset and close out the Client Position. Alternatively, the Rules permit a Clearing Member in that situation to elect to have the Client Position converted into a House Position. In that case, margin would be moved from the Custodial Client Omnibus Margin Account, as described at Section 3.5 below, to the House Account or returned to the Clearing Member for distribution to the Client, as appropriate.

3.4 Margin Requirements

As noted above, a key aspect of central clearing for CDS is the collection of margin from Clearing Members and Clients and, in the case of Clients, establishment of minimum margin requirements and a mechanism for segregation of Client initial margin. The establishment of robust margin policies and procedures at the clearing house level protects both Clients and Clearing Members in respect of transactions in Cleared CDS. The program for segregation and safekeeping of Customer assets that are held by ICE Trust as the initial margin of customers has been designed to achieve robust segregation of margin required to be posted in accordance with the Rules. A copy of the Rules, marked to show the addition of Rules in contemplation of Customer clearing, is attached to this request as **Exhibit A**.

---

[13] For trades submitted to ICE Trust under the DCM model, ICE Trust plans to accept or reject the transaction on an intraday basis, and the relevant positions between ICE Trust and each of the DCM and Executing Dealer will be established upon acceptance of the trade for clearing. ICE Trust has developed a risk filter for purposes of making this intraday determination. The risk filter will permit Clearing Members to submit transactions for acceptance on an intraday basis up to a daily limit that takes into account any excess margin of the relevant Member held with ICE Trust, any excess guaranty fund contribution of the relevant Member with ICE Trust and an additional amount based on a specified percentage of the Member's relevant margin on deposit with ICE Trust.

3.4.1 Client Margining

Under the Rules, each Clearing Member must obtain initial[14] and variation margin from its Client for Client-Member Transactions in an amount at least equal to ICE Trust requirements for the related Client Positions.[15] Each Clearing Member will be required under the Rules to obtain such margin on a "gross" basis (that is, in determining the minimum margin for Client-Member Transactions cleared through ICE Trust, the Clearing Member will be permitted to net across multiple transactions of the same Client cleared through ICE Trust, but not across transactions of different Clients cleared through ICE Trust). Such margin will be pledged by the relevant Client in favor of the Clearing Member. Under the Rules, such margin must not be subject to liens or other encumbrances in favor of third parties, including affiliates of the Clearing Member.

The gross initial margin collected from a Client is referred to herein as "ICE Gross Margin." The Clearing Member must receive such ICE Gross Margin in segregation from its own assets, including as applicable, a segregated client omnibus account (or individual segregated client accounts) on its own books or the books of a custodian (which may be an affiliate), pursuant to which the Clearing Member will receive the ICE Gross Margin (whether cash or securities) from Clients in an agent or custodial capacity.[16] Such accounts will be held for the benefit of the Client(s), not the Clearing Member. Each Clearing Member must transfer or rehypothecate the ICE Gross Margin to ICE Trust for credit to the Custodial Client Omnibus Margin Account (as defined below) within the time required by the Rules.[17] In the case of any

---

14 Initial margin includes so-called "special margin", which is additional initial margin that ICE Trust may require at any time in its sole discretion. See Rule 403(c).

15 Acceptable margin posted in respect of the ICE Net Margin Requirement (as defined below) for Client Positions includes only cash in specified currencies and G-7 government debt for initial margin and only cash for mark-to-market margin. As discussed below, this is a narrower range of assets than will be permitted for ICE Custodial Margin. ICE Trust rules may impose a percentage limitation on margin other than U.S. dollar cash, as is currently the case for House margin. Clearing Members will be required to cover any end-of-day margin deficit with U.S. dollars by the following morning, and ICE Trust will have the discretion to require and collect additional margin, both at the end of the day and intraday, as it deems necessary.

16 The Clearing Member must reflect such margin in its books and records as being received in a custodial capacity and held in segregation from other assets of the Clearing Member, in a manner generally consistent with CFTC Rule 1.20.

17 ICE Gross Margin will be required to be transferred or rehypothecated to ICE Trust within the time period specified by ICE Trust Rules, and in any event promptly upon receipt. See Rule 405(e). A Clearing Member and Client may agree that the Clearing Member will invest or exchange ICE Gross Margin in or for another asset eligible under the Rules, which will become the Client's property and be posted to ICE Trust. For example, the Client and Clearing Member may agree between themselves that cash collateral posted to the Clearing Member by the Client may be invested in U.S. Treasury securities and posted to ICE Trust as such. As noted below, eligible assets for this purpose are expected to be limited to high-quality instruments of the type allowed under CFTC Rule 1.25. Permitted investments under that Rule include obligations of the United States and obligations fully guaranteed as to principal and interest by the United

delay in transferring initial margin to ICE Trust, such margin must be segregated by the Clearing Member and may not otherwise be used pending transfer to ICE Trust.

Variation margin posted by a Client may be transferred freely, and it would be expected that such margin may be used to satisfy the Clearing Member's variation margin requirements at ICE Trust in respect of Client Positions.[18] ICE Trust similarly may owe variation margin to Clearing Members with positions that have moved in their favor.[19] The amount of variation margin required to be provided to or by a Client is determined by or on behalf of each Clearing Member daily for that Client's portfolio on the basis of ICE Trust's end-of-day settlement price determination for the relevant contract.[20]

ICE Trust would make available to Clearing Members information sufficient for Clearing Members to determine their Clients' minimum margin requirements in respect of Client-Member Transactions.

Clearing Members may require Clients to post additional margin beyond the ICE Gross Margin requirement ("CP Additional Margin"), as agreed between the Clearing Member and the Client. CP Additional Margin may be held in a manner to be agreed between the Client and Clearing Member, and may (but need not) be held in the Custodial Client Omnibus Margin Account. ICE Trust believes that Clients, who must under the Rules be sophisticated institutional investors, may wish to negotiate a variety of types of arrangements for CP Additional Margin with Clearing Members, and while ICE Trust believes that it should provide Clearing Members with an outlet for holding such CP Additional Margin, ICE Trust does not believe that Clients or Clearing Members would necessarily prefer that CP Additional Margin be held in particular asset classes, or in particular locations. For example, Clients and Clearing Members may negotiate that CP Additional Margin will secure obligations in addition to Cleared CDS. Clients and Clearing Members may also negotiate the custody of CP Additional Margin at an independent third-party custodian or at the CM. ICE Trust does not believe that a one-size-fits-all approach would work well for CP Additional Margin.

3.4.2 Clearing Member Margining

ICE Trust will determine a net initial margin requirement for each Clearing Member with respect to all Client Positions of the Clearing Member (including positions related to different

---

States, high-quality corporate notes or bonds, and high-quality general obligations of a sovereign nation, and high-quality general obligations of any State or of any political subdivision thereof.

18 See Rule 404 and Section 3(b) of the ISDA Standard Annex (as defined in Section IV below).

19 Under the ISDA Standard Annex, the Clearing Member will have a corresponding obligation to provide variation margin in favor of Clients. See Section 3(b) of the ISDA Standard Annex.

20 See Rule 307.

Clients) ("ICE Net Margin Requirement").[21] The Clearing Member may satisfy the ICE Net Margin Requirement using ICE Gross Margin posted by Clients or (in limited circumstances, such as where the ICE Gross Margin has not yet been received, or is not in the appropriate form to be used with respect to the ICE Net Margin Requirement) proprietary assets of the Clearing Member.[22] In the case of a Clearing Member default, ICE Trust will be permitted to use ICE Gross Margin posted to the Custodial Client Omnibus Margin Account to the extent of the ICE Net Margin Requirement to satisfy losses solely relating to Client Positions, subject to the order of sources noted at Section V of this request. ICE Trust will not be permitted to use other ICE Gross Margin (the "ICE Custodial Margin") except in limited circumstances, in which the Client itself is in default, and as such its role with respect to ICE Custodial Margin is in effect custodial.[23] Shortfalls in the portion of the Custodial Client Omnibus Margin Account corresponding to the ICE Net Margin Requirement resulting from such use of margin will be shared pro rata among the Clients of the defaulting Clearing Member based on their ICE Gross Margin requirements.

The Clearing Member will be required under the Rules to maintain accurate records of the identity of Clients, the margin assets posted by each such Clients and the transfer of such assets to the Custodial Client Omnibus Margin Account at ICE Trust and any investment of such margin therein.[24]

3.5 Client Margin Accounts and Use of Margin

ICE Trust maintains separate margin accounts, and performs separate margin calculations, for each Clearing Member for House Positions and Client Positions. Initial margin for House Positions is posted to the house account ("House Account") on a net basis and held as under the current Rules. The initial margin required for Client Positions of a Clearing Member is posted to a segregated client omnibus account (the "Custodial Client Omnibus Margin Account")

---

21 We note in this regard that ICE Trust's exposure to the Clearing Member, and the Clearing Member's exposure to ICE Trust, in respect of Client Positions will similarly be determined on a net basis across all Client Positions of the Clearing Member.

22 Under the ICE Trust Rules, the Clearing Member will be required to transfer ICE Gross Margin to ICE Trust promptly upon receipt. It is expected that ICE Gross Margin will be transferred or rehypothecated to ICE Trust on the business day of receipt by the Clearing Member, although this may not be feasible in all circumstances where Client margin is secured toward the end of the business day. A Clearing Member and Client may agree that the Clearing Member will invest or exchange ICE Gross Margin in or for another eligible margin asset, which will become the Client's property and which will be posted to ICE Trust.

23 Subject to regulatory approvals, ICE Custodial Margin may consist of a broader range of investments than assets satisfying the ICE Net Margin Requirement, which ICE Trust may need to access in the event of a Clearing Member default. With respect to ICE Custodial Margin, ICE Trust contemplates a range of permitted investments generally consistent with those allowed under CFTC Rule 1.25. The allocation of income from such investments would be subject to agreement between the Clearing Member and its Clients (in a manner consistent with the segregation framework).

24 Pursuant to its Rules, ICE Trust will implement a program designed to monitor Clearing Members' compliance with the segregation framework described herein.

for that Clearing Member. The Custodial Client Omnibus Margin Account is held by ICE Trust, or its subcustodian, for the benefit of all Clients of the relevant Clearing Member (or for the Clearing Member as agent or custodian on behalf of such Clients), and is segregated from any other assets of the Clearing Member, including assets in the House Account. As described above, a Clearing Member must transfer or rehypothecate to the Custodial Client Omnibus Margin Account ICE Gross Margin posted to the Clearing Member by the Client under the related Client-Member Transaction.

The Custodial Client Omnibus Margin Account consists of a cash collateral subaccount for cash margin and a custody subaccount for securities collateral. The cash collateral subaccount will be maintained by ICE Trust and will contain initial margin posted as cash by the Clearing Member in respect of Client Positions (including cash posted to the Clearing Member by the Clearing Member's Clients in respect of related Client-Member Transactions and transferred by the Clearing Member to ICE Trust in respect of such Client Positions). Cash in the cash collateral subaccount may be applied by ICE Trust to the obligations of the Clearing Member in respect of Client Positions. The custody subaccount of the Custodial Client Omnibus Margin Account will hold any non-cash assets posted by the Clearing Member in respect of Client Positions (including non-cash assets posted by the Clearing Member's Clients in respect of related Client-Member Transactions to the Clearing Member as margin and rehypothecated by the Clearing Member to ICE Trust in respect of such Client Positions). It will be held by ICE Trust, as custodian, or by one or more outside financial institutions as subcustodian for ICE Trust. The Custodial Client Omnibus Margin Account and the assets therein will secure the Clearing Member's obligations to ICE Trust in respect of Client Positions, but, except in limited circumstances involving the margin of a defaulting Client, ICE Trust will only be permitted to apply a portion of the assets in the Custodial Client Omnibus Margin Account equal to the ICE Net Margin Requirement.

Pursuant to the Rules, each Clearing Member will be deemed to agree that with respect to Client property transferred or rehypothecated to the Custodial Client Omnibus Margin Account, (i) cash so transferred will become property of ICE Trust (with ICE Trust being obligated to return such cash as provided in the Rules for the benefit of the relevant Client, or the Clearing Member as agent or custodian thereof) and (ii) non-cash assets so rehypothecated will remain the property of the relevant Clients, subject to a security interest in favor of the Clearing Member (and ICE Trust, as applicable).

The Clearing Member will be required to maintain records showing the amount and form of excess margin (i.e., margin in excess of the ICE Net Margin Requirement) held in the Custodial Client Omnibus Margin Account for the benefit of each relevant Client ("Client Excess Margin Amount"). Upon the termination of a Client-Member Transaction, the Clearing Member will be permitted to withdraw up to the Client Excess Margin Amount for that Client and apply it to amounts, if any, owed by the Client under the Client-Member Transaction. Only the defaulting Client's Client Excess Margin Amount may be so used; margin posted by other Clients may not be used by the Clearing Member. The Clearing Member will also be permitted to withdraw amounts from the Custodial Client Omnibus Margin Account (not to exceed the

Client Excess Margin Amount) when required to be returned to the Client under the Client-Member Transaction. The Clearing Member will not otherwise be permitted to use or rehypothecate amounts in the Custodial Client Omnibus Margin Account.

In the case of a default by a Clearing Member, ICE Trust will be permitted to apply assets in the Custodial Client Omnibus Margin Account in an amount not to exceed the ICE Net Margin Requirement to losses arising from Client Positions, subject to the order of sources described in Section V below. In addition, ICE Trust may apply excess margin of a defaulting Client (but not other Clients) held in the Custodial Client Omnibus Margin Account to satisfy amounts owed by the defaulting Clearing Member in respect of Client Positions (to the extent of the defaulting Client's obligation to the Clearing Member).

IV. Client-Member Transaction Documentation

Client-Member Transactions will be documented pursuant to a negotiated ISDA Master Agreement between the Client and Clearing Member, together with a standard annex in the form approved by ICE Trust under the Rules ("Standard Annex").[25] Under the Standard Annex, Client-Member Transactions will as a general matter be treated separately from other derivatives between the Client and the Clearing Member ("Other Trades"). Specifically, Client-Member Transactions will be subject to the separate ICE Trust margin requirements discussed above. In addition, the Standard Annex will include a standard definition of a default by a Clearing Member, which will be based on a determination by ICE Trust under the Rules that a Clearing Member is in default.[26] The Standard Annex will also specify procedures for the exercise of remedies in case of a Clearing Member default. If Default Portability Rules (as described below) are to apply, the Standard Annex will include an agreement and consent on the part of the Client, for the benefit of ICE Trust, for ICE Trust to transfer Client-Member Transactions to a new Clearing Member following default or otherwise reestablish replacement transactions with the new Clearing Member. The Client will also agree not to exercise termination rights during the Transfer Period, as defined below.

---

25 As noted above, the treatment of transactions prior to acceptance for clearing will be governed by the DCM Standard Terms.

26 The Standard Annex would not have a standard definition for Client defaults, which would be subject to bilateral agreement between the parties, as is current practice for OTC derivatives.

The Standard Annex will also provide that certain specified events, including a failure by the Clearing Member to perform a payment or delivery obligation under a Client-Member Transaction will constitute an event of default with respect to the Clearing Member, regardless of whether the Clearing Member is otherwise determined to be in default under the Rules. Such a failure would, however, permit ICE Trust to declare the Clearing Member in default under the Rules. If ICE Trust makes such a declaration, the default procedures described herein would apply. If ICE Trust does not declare the Clearing Member to be in Default, the Client will be permitted to exercise its bilateral contractual termination remedies against the Clearing Member, although the default procedures of the Rules would not apply. In any event, the Client would not have any direct remedy against ICE Trust.

In the event the Client-Member Transaction is terminated as a result of a Clearing Member default, the termination value will be equal to the termination value of the related Client Position as determined by ICE Trust. To facilitate portability, in the event of a Clearing Member default, termination amounts owed by a Client in respect of Client-Member Transactions will not be netted against termination amounts owed in respect of Other Trades.

V. Default Rules

The Rules provide for separate treatment of Client and House Positions in the case of a default.[27] The determination of whether a Clearing Member is in default under the Rules is the same with respect to both types of positions.

ICE Trust will undertake the close-out process ("Close-Out Process") under the Rules separately in respect of House Positions and Client Positions, such that a separate net termination amount will be calculated in respect of the close-out of Client Positions and House Positions.[28]

The Rules prohibit netting between Client Positions and House Positions, except as described below. If a net amount was owed to the Clearing Member in respect of Client Positions, ICE Trust would not offset that amount against any amount owed by the Clearing Member to ICE Trust in respect of House Positions. On the other hand, if a net amount was owed by the Clearing Member in respect of Client Positions, ICE Trust would be entitled to offset against that obligation any amount owed to the Clearing Member in respect of House Positions.

Pursuant to the Rules, net losses to ICE Trust arising from Client Positions (after application of available variation margin) may be paid from the following sources, in order: (i) any margin of a defaulting Client of the Member held in the Custodial Client Omnibus Margin Account, to the extent of that Client's obligations to the defaulting Clearing Member; (ii) amounts received from Clients under their Client-Member Transactions; (iii) the defaulting Clearing Member's House margin, (iv) the defaulting Clearing Member's guaranty fund contribution ("Guaranty Fund Contribution"),[29] (v) the defaulting Clearing Member's Custodial Client Omnibus Margin Account, up to the amount of the ICE Net Margin Requirement,[30] and

---

27 See Rule 20-605(a).

28 ICE Trust would not undertake the Close-Out Process where the defaulting Clearing Member's receiver, such as the Federal Deposit Insurance Corporation, or similar authority transfers the relevant positions to another non-defaulting entity in accordance with applicable law.

29 Where ICE Trust faces net losses from both Client Positions and House Positions, available amounts from the defaulting Clearing Member's House margin will be applied first to satisfy net losses from House Positions and thereafter to net losses from Client Positions.

30 Pursuant to the Rules and the Standard Annex, any loss in the Custodial Client Omnibus Margin Account resulting from application of margin therein by ICE Trust under the Rules as a result of a Clearing Member default would be allocated among Clients as described in Section 7.3 below.

(vi) other Guaranty Fund Contributions.[31] Net losses to ICE Trust arising from House Positions may be paid from the following sources, in order: (i) the defaulting Member's House margin, (ii) the defaulting Member's Guaranty Fund Contribution, and (iii) other Guaranty Fund Contributions.

Thus, ICE Trust only will be permitted to apply margin in a Custodial Client Omnibus Margin Account to satisfy obligations of the Member in respect of Client Positions. Such margin could not be used to satisfy obligations in respect of House Positions. Margin in the House Account could potentially be applied to satisfy obligations to ICE Trust in respect of Client Positions.

VI. Certain Rules Regarding Portability of Positions and Margin

6.1 Pre-Default Portability

The Rules require a Clearing Member, at a Client's request, to agree to transfer Client-Member Transactions and related Client Positions to another Clearing Member, subject to the satisfaction of certain conditions under the Rules. The Client is responsible for obtaining a new Clearing Member to accept the positions to be transferred, and a Clearing Member is not required to accept the transfer of positions to it upon a Client request. In connection with the transfer of positions, ICE Trust can also move margin from the Custodial Client Omnibus Margin Account of the transferor Clearing Member to the corresponding accounts of the transferee Clearing Member.

6.2 Post-Default Portability

The Rules also include certain procedures to enhance portability of Client Positions, Client-Member Transactions and margin in the case of a Clearing Member default ("Default Portability Rules"). As a general matter, pursuant to these Rules, ICE Trust would seek to find a replacement transaction for Client Positions of the defaulting Clearing Member (the "Defaulting Clearing Member") with another Clearing Member (the "New Clearing Member") also willing to take on the related Client-Member Transactions.[32] Clearing Members will not be obligated to accept a transfer, or enter into a replacement, of Client-Member Transactions.

The Rules will permit ICE Trust to transfer, or arrange the transfer of, Client Positions of a Defaulting Clearing Member together with related Client-Member Transactions (and margin) to a New Clearing Member as part of the Close-Out Process, to the extent such a transfer by ICE Trust is permissible under applicable law (including the insolvency law applicable to the relevant

---

31 To the extent ICE Trust, pursuant to its Close-Out Process, is able to close out and/or replace transactions of the defaulting Clearing Member without loss to ICE Trust, application of these assets would be unnecessary.

32 These procedures would only apply in situations where the Defaulting Member's regulator, receiver, trustee or other applicable insolvency administrator did not otherwise transfer or arrange the transfer of the relevant positions.

Defaulting Clearing Member). In such case, following a Clearing Member default, ICE Trust would exercise its rights in the Close-Out Process to terminate the relevant Client Positions with the Defaulting Clearing Member and seek to obtain replacement transactions with a New Clearing Member. The Rules would also permit ICE Trust, within a specified period[33] (the "Transfer Period") following the default, to transfer the related Client-Member Transactions and related margin to the New Clearing Member, which would assume the obligations under the Client Member Transactions.[34]

Alternatively, ICE Trust would have the right under the Rules to achieve effectively the same result through procedures for the termination of existing transactions and establishment of new positions with the New Clearing Member ("ICE Trust Termination/Replacement Procedures"). In the case of a Clearing Member default, ICE Trust may exercise its rights to terminate the Client Positions with the Defaulting Clearing Member and enter into a replacement transaction with a New Clearing Member as part of the Close-Out Process. Both ICE Trust Rules and the Standard Annex for Client-Member Transactions would permit ICE Trust to procure such New Clearing Member to re-establish the Client-Member Transactions on the same terms (the "Replacement Client-Member Transactions"). Upon entering into the Replacement Client-Member Transactions, (i) the old Client-Member Transaction would be automatically terminated under the terms of the Standard Annex and (ii) under the terms of both ICE Trust Rules and the old Client-Member Transaction, no net termination payment would be owed by ICE Trust to the Defaulting Clearing Member in respect of the related Client Position, or by the Defaulting Clearing Member to the Client in respect of such Client-Member Transaction. The net result would be the reestablishment of the relevant Client Position and related Client-Member Transaction with a New Clearing Member. In the case of either a transfer or termination and replacement, ICE Trust would transfer the appropriate initial margin from the Custodial Client Omnibus Margin Account to the applicable accounts for the New Clearing Member.

The Rules permit ICE Trust to attempt to transfer or replace some or all of the relevant Client-Member Transactions. The Standard Annex will permit Clients to elect whether they want their Client-Member Transactions to be subject to the Default Portability Rules. Clients may also specify one or more "backup" Clearing Members to which they are willing to have positions transferred in the event their primary Clearing Member defaults.

In implementing the Default Portability Rules, ICE Trust will rely on information provided by Clearing Members as to the identity, positions and margin of Clients, although ICE Trust will generally not have a direct relationship with those Clients. Clearing Members will generally be expected to provide such information to ICE Trust on a daily basis.

---

33 This time period will be limited to three business days or fewer, as determined by ICE Trust.

34 This right of transfer, as well as the liquidation procedures described in Section 6.3 below, will be enhanced by a pledge by each Clearing Member of its rights under the Client-Member Transactions (and related margin) to secure first the Clearing Member's obligations to ICE Trust under the related Client Positions, and second, the Clearing Member's obligations to other Clients under other Client-Member Transactions. See Footnote 36 below.

6.3 Liquidation

If ICE Trust did not effect a transfer or termination and replacement under the Default Portability Rules within the Transfer Period, including because no Clearing Member was willing to accept, transfer or enter into replacement transactions, the Standard Annex provides for the termination of the relevant Client-Member Transactions in accordance with their terms.[35] In that case, ICE Trust will determine the close-out price for Client Positions pursuant to its close-out procedures, which may involve auction or allocation of the relevant positions. Under the Standard Annex, the same close-out price will apply to the related Client-Member Transaction.

Where a Client owes the Clearing Member on a net basis in respect of the Client's Client-Member Transactions, that Client's margin in the Custodial Client Omnibus Margin Account will be applied to satisfy that obligation, and will thereupon be available to pay amounts owed to ICE Trust in respect of the related Client Positions and to other Clients in respect of their Client-Member Transactions.[36] Clients owed by the Clearing Member on a net basis will have a claim for that amount, together with their pro rata share of margin being used to satisfy the ICE Net Margin Requirement (a "Net Termination Claim"), such pro rata share being based on the total margin requirement of the Client's Clearing Member. An amount of proceeds equal to the sum of (i) the remaining amount of the ICE Net Margin Requirement after application by ICE Trust together with any net amounts paid by ICE Trust in respect of the termination of Client Positions, and (ii) any termination amounts paid by Clients not applied by ICE Trust, and (iii) the amount of any Client's excess margin applied to a Client's obligations will be available for distribution to Clients in respect of their Net Termination Claims. In the event such proceeds are insufficient to pay all Net Termination Claims, Clients will share in such proceeds pro rata based on their respective Net Termination Claims.[37]

---

35 Alternatively, the Client may opt out of the applicable portability provisions of the Standard Annex, in which case the Client-Member Transactions will be similarly terminated. Under the Standard Annex, the election as to whether these portability provisions apply is made by the Client and not by the Clearing Member.

36 See Footnote 36 below.

37 In the case of Clearing Member default, pro rata sharing of proceeds is effected on a net basis. For example, in a scenario where a Clearing Member's Clients A, B and C each have posted $10 in ICE Gross Margin, ICE Trust will have $30 in the Custodial Client Omnibus Margin Account. For purposes of this example, assume that the ICE Net Margin Requirement is $15 (with each Client having a pro rata contribution of $5). In this scenario, as a result of the application of the Closing-out Process following a Clearing Member default, the Clients' termination values are that Client A owes $25 to the Clearing Member, Client B is owed $8 by the Clearing Member, and Client C is owed $3 by the Clearing Member. The Net Termination Claim (or payable) of each Client is determined based on the termination value of its transactions and its margin: thus, Client A has a net termination payable of $15 after applying its $10 of margin to the $25 termination value; Client B has a net termination claim of $13 (representing the Client's termination value of $8 and its $5 share of the Net Margin Requirement; and Client C has a net termination claim of $8 (representing the Client's termination value of $3 and its $5 share of the Net Margin Requirement). Both the second and third Clients also have a separate claim for $5 in respect of their excess ICE Gross Margin. The amount of available Client distribution proceeds for payment of Net Termination Claims will be the amount in the Custodial Client Omnibus Margin Account up to the ICE Net Margin Requirement plus any net termination amount owed to the Clearing Member (including such amounts paid

Each Client will be separately entitled to the return of the amount of its remaining excess margin in the Custodial Client Omnibus Margin Account, except to the extent such margin is applied to satisfy its obligations to the Clearing Member.[38] Clients will share in the assets in the Custodial Client Omnibus Margin Account in proportion to the amount of their claims described above, but Clients will not be entitled to the return of specific assets in the Custodial Client Omnibus Margin Account.

VII. Application of Non-Member Framework in a Clearing Member Insolvency

ICE Trust has obtained advice from counsel in relevant jurisdictions as to the implementation of its Rules in the event of a Clearing Member's insolvency. The Clearing Members are subject to different insolvency regimes depending on the type of organization and jurisdiction. In the United States, for example, a insolvent Clearing Member that is an insured U.S. bank would generally be subject to a receivership proceeding under the Federal Deposit Insurance Act. A Clearing Member that is an uninsured federal branch of a foreign bank would be subject to a receivership proceeding administered by the Office of the Comptroller of the Currency, and a state-chartered branch of a foreign bank would be subject to an insolvency proceeding administered by a state banking department. A Clearing Member that is not otherwise regulated would be subject to a proceeding under the U.S. Bankruptcy Code. Although differences exist across all of these insolvency frameworks, there are certain common principles relevant to the treatment of cleared CDS. In particular, ICE Trust is of the view based on advice of counsel that U.S. insolvency laws generally will uphold the contractual right of a party to a derivative contract, such as a CDS, to terminate, apply collateral, and net obligations in the case of the insolvency of its counterparty. They also generally accept the principle that assets held by an insolvent entity for the benefit of other parties do not become part of the insolvency estate.

Accordingly, ICE Trust is of the view based on advice of counsel that, in the context of an insolvent U.S. Clearing Member, U.S. insolvency laws would thus permit ICE Trust to

---

through application of a Client's excess margin), minus any amount owed to ICE Trust. The available Client distribution amounts are distributed by the Clearing Member (or its receiver): Client B receives $13 and Client C receives $8, each to cover their respective net termination claims. Each of Clients B and C also receives $5 in respect of their excess ICE Gross Margin. Note that in this regard there is no loss-sharing with respect to ICE Custodial Margin. If the available Client distribution amount is insufficient to pay such claims, the Clients will share in such amount pro rata based on the amount of their claims.

38 Pursuant to this Standard Annex, where the Clearing Member is in default and the Client owes a net termination payable, amounts owed to the Clearing Member cannot be netted with amounts owed to the Client in respect of any non-cleared Client position. Funds owed by the Client to the Clearing Member in respect of a net termination payable secure the obligations of the Clearing Member in favor of ICE Trust and as such will be paid directly to ICE Trust. This restriction on netting is intended to protect ICE Trust by ensuring that such amounts are received by ICE Trust and can be applied by ICE Trust to losses on Client Positions. Where the Clearing Member is in default and the Client has a Net Termination Claim against the Clearing Member, the Client may net the amount owed to the Client against amounts owed by the Client in respect of a non-cleared position.

exercise its rights under the Rules to effect the Close-out Process by terminating and netting Client-Related Positions and applying collateral pledged to ICE Trust.[39] Client-Member Transactions could similarly be terminated. The segregation provisions of the Rules and the Standard Annex are further designed to provide, consistent with applicable U.S. insolvency law regimes, that the Client would be entitled to the return of its initial margin held at the Clearinghouse remaining after the application of amounts owed by the Member to the Clearinghouse in respect of Client Positions and by the Client to the Member in respect of the related Client-Member Transaction.

ICE Trust is also of the view based on advice of counsel that the insolvency laws of relevant foreign jurisdictions (such as the United Kingdom), while different in many respects, also recognize the enforcement of contractual rights to terminate derivatives contracts and apply relevant collateral. Similarly, the Rules and Standard Annex are designed to provide for the protection of Client margin consistent with those insolvency laws.

VIII. Proposed Supplemental Exemptive Relief

8.1 Exemption of Clearing Members from the Provisions of the Exchange Act Governing Securities Transactions

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 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."[40]

As noted above, ICE Trust will establish a framework that will provide certain protections to Clients that enter into cleared CDS Contracts, particularly segregation of the initial margin posted by the Clients, and provisions that enhance the portability of such CDS transactions in the event of a Clearing Member's insolvency. The goal is to extend some of the benefits of clearing for CDS to Clients, in a manner consistent with industry commitments to

---

[39] In the case of the receivership of a Clearing Member that is a U.S. bank or a Federal branch of a non-U.S. bank, the Federal Deposit Insurance Corporation or the Office of the Comptroller of the Currency, as the case may be, as receiver, would be entitled to attempt to transfer all (but not less than all) of the Client Positions, Client-Member Transactions and related margin assets to another financial institution (including a non-defaulting Member). ICE Trust would not be permitted to exercise its own termination rights during the one-business-day period following appointment of the receiver.

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

regulators[41] and the desire expressed by regulators to expand the use of clearing in derivative markets.

Clearing CDS through CCPs is an express policy goal of the Administration, as recently expressed by the release of the Department's proposed legislation relating to the regulation of OTC derivatives.[42] In this regard, as noted above, 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. Central clearing of CDS mainly provides for an orderly market with a decrease in the probability of settlement failure, a greater likelihood that the market can withstand the failure of any one participant, and general overall integrity.

Regulators, as well as market participants, have also emphasized the need to extend these benefits to buy-side market participants and other persons that are not themselves Clearing Members in a manner that protects Client margin assets. ICE Trust has designed its Non-Member Framework with this goal in mind, while recognizing, and taking advantage of, the existing structure of CDS markets and the nature and regulatory status of its Clearing Members.

From the perspective of the public interest, this framework is consistent with the Department's mandate to require that intermediaries in government securities transactions that receive or hold funds and securities on behalf of others comply with standards that safeguard the interests of the customers. The approach taken in the Non-Member Framework, in ICE Trust's view, provides a robust level of segregation of Client assets from Clearing Member assets in the event of a CDS default. As with the relief granted in the March 2009 order, ICE Trust believes that an exemption from government securities broker-dealer registration for Clearing Members is appropriate in the context of non-member clearing.

Requiring Clearing Members that receive or hold funds and securities on behalf of Clients in connection with transactions in non-excluded CDS to register as government securities broker-dealers may deter the use of central CCPs in CDS transactions, to the detriment of the markets and market participants generally.

Not only do we see little or no benefit accruing to investors or the general public from such a requirement, we believe the resulting commitment of regulatory resources would be inefficient and would not be justified by a cost-benefit analysis. Of greatest concern, however, is that the burdens such a requirement would entail would likely erect a significant obstacle to achieving the benefits sought to be achieved by ICE Trust's proposed Non-Member Framework

---

41 See Commitment Letter from Major Financial Market Participants to The Honorable William C. Dudley, President of the Federal Reserve Bank of New York, (June 2, 2009), available at http://www.newyorkfed.org/newsevents/news/markets/2009/060209letter.pdf.

42 The Administration's proposed legislation relating to the regulation of OTC derivatives is available at http://ustreas.gov/press/releases/tg261.htm.

and the goals of regulators and market participants to provide access to clearing to buy-side firms.

We also note that the conditions and protections in the ICE Trust Order would continue to apply, including with respect to protections against market abuses, such as market manipulation and insider trading.

Based on these considerations and the conditions described at Section 8.2 below, we believe the additional exemptive relief sought herein pursuant to Section 15C(a)(5) of the Exchange Act fully satisfies the relevant conditions for exemption under Sections 15C(a), (b) and (d) (other than subsection (d)(3)).[43]

8.2 Conditions to Exemptive Relief

As a condition to the exemptive relief requested herein, ICE Trust represents that before offering the Non-Member Framework, ICE Trust will adopt 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.

ICE Trust understands that any exemptive relief requested herein would be subject to compliance with conditions specified in the 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.

IX. Conclusion

Based on the foregoing, we respectfully request that the Department issue a supplemental exemptive order or rule order pursuant to Section 15C(a)(5) of the Exchange Act, for the avoidance of uncertainty, (i) to include Client-Member Transactions and the Non-Member Framework, and (ii) exempting any Clearing Member from any requirement that it comply with provisions of the Exchange Act governing securities transactions, to the extent such provisions would otherwise be applicable to such Clearing Member, in connection with the receiving or holding of funds or securities from other persons for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS on the terms and subject to the conditions described in this request.

We also request an extension to the ICE Trust Order. 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 pending Congressional and Department

[43] ICE Trust acknowledges that future changes in the law applicable to CDS may affect the relief granted herein.

action. To the extent this extension is granted separately from the request to expand the ICE Trust Order, we respectfully request harmonization of the expiry dates, if any, of such prospective orders.

We believe that the granting of the foregoing supplemental exemptive relief will continue to foster an important and much needed innovation in the CDS market that promises many risk mitigating benefits not only for the Clearing Members and their Clients directly involved but also for other financial market participants and investors generally. Moreover, we believe that these benefits can be provided without prejudicing the interests of any constituency or imposing inappropriate financial or regulatory risks. Accordingly, we believe that the requested relief is appropriate, in the public interest, and is consistent with the protection of investors.

* * *

If you should have any questions or comments or require further information regarding this supplemental request for exemptive relief, 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.

Public Exhibit Index

Exhibit	Item
Exhibit A	Rules, marked to show the addition of Rules in contemplation of Customer clearing
Exhibit B	DCM Annex