

**MEMO# 23305**

March 9, 2009

# **SEC Issues Approval for ICE Trust to Operate as Central Counterparty for Swaps**

[23305]

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TO: SEC RULES MEMBERS No. 26-09  
EQUITY MARKETS ADVISORY COMMITTEE No. 10-09    RE: SEC ISSUES APPROVAL FOR ICE TRUST TO OPERATE AS CENTRAL COUNTERPARTY FOR SWAPS

The Securities and Exchange Commission approved conditional exemptions that will allow ICE US Trust LLC ("ICE Trust") [\[1\]](#) to operate as a central counterparty for clearing credit default swaps. [\[2\]](#) ICE Trust will be the first U.S.-based clearinghouse owner to guarantee trades in the market for credit-default swaps ("CDS"). ICE Trust also received approval from the Federal Reserve Board, which will oversee the clearinghouse. [\[3\]](#)

According to the order, initially, ICE Trust's business will be limited to the provision of clearing services for the over-the-counter CDS market. ICE Trust membership will be open to all qualifying buy-side and sell-side institutions, and all CDS market participants will have the ability to access ICE Trust. Membership will be available to institutions that meet the financial and eligibility standards set forth in the rules of the clearing house. Each member firm will provide ICE Trust with authority to obtain their respective transaction information for the purpose of novating existing CDS contracts for clearing using ICE Trust's connectivity to The Depository Trust & Clearing Corporation, where CDS positions are currently warehoused.

The temporary exemptions are subject to a number of conditions. Among them, ICE Trust must, directly or indirectly, make available to the public on terms that are fair and reasonable: (1) all end-of-day settlement prices and any other prices with respect to

cleared CDS [4] that ICE Trust may establish to calculate mark-to-market margin requirements for ICE Trust participants; and (2) any other pricing or valuation information with respect to cleared CDS as is published or distributed by ICE Trust. ICE Trust also must establish adequate safeguards and procedures to protect participants' confidential trading information. The temporary exemptions will expire on December 7, 2009.

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#### **endnotes**

[1] Exemptive relief was requested by the IntercontinentalExchange ("ICE") and The Clearing Corporation ("TCC") on behalf of ICE Trust. On March 6, ICE announced the closing of its acquisition of TCC, which was approved by the Federal Trade Commission ("FTC") and the U.S. Department of Justice ("DOJ"). TCC developed the CDS risk management framework, operational processes, and infrastructure for ICE Trust's clearing operations.

[2] See 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, SEC Release No. 59527, March 6, 2009. The approval order may be found on the SEC's Web site at <http://www.sec.gov/rules/exorders/2009/34-59527.pdf>.

[3] This approval, combined with the approvals from the FTC, DOJ, New York State Banking Department, and the SEC, marked the completion of the required regulatory reviews prior to the launch of ICE Trust.

[4] "Cleared CDS" is a defined term for purposes of the exemptive order. See *supra* note 2 at footnote 21.