

*Respondents:* Businesses or other for-profits.

*Estimated Total Burden Hours:* 509,895 hours.

*Clearance Officer:* R. Joseph Durbala, (202) 622-3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Shagufta Ahmed, (202) 395-7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Celina M. Elphage,**

*Treasury PRA Clearance Officer.*

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BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Order Extending Temporary Exemptions From Certain Government Securities Act Provisions and Regulations in Connection With a Request From ICE Trust U.S. LLC Related to Central Clearing of Credit Default Swaps

**AGENCY:** Department of the Treasury, Office of the Under Secretary for Domestic Finance.

**ACTION:** Notice of extension of temporary exemptions.

**SUMMARY:** The Department of the Treasury (Treasury) is extending its March 6, 2009 order providing temporary exemptions from certain Government Securities Act of 1986 (GSA) provisions and regulations in connection with a request from ICE Trust U.S. LLC (ICE Trust, formerly ICE US Trust LLC) related to the central clearing of credit default swaps (CDS) that reference government securities. This extension of temporary exemptions is consistent with an extension of temporary exemptions the Securities and Exchange Commission (SEC) recently granted to ICE Trust related to the central clearing of CDS.<sup>1</sup>

**DATES:** *Effective Date:* December 7, 2009.

**FOR FURTHER INFORMATION CONTACT:** Lori Santamorena, Lee Grandy, or Kevin Hawkins; Bureau of the Public Debt, Department of the Treasury, at 202-504-3632.

<sup>1</sup> See the SEC's Web site at <http://www.sec.gov> for the recent Securities Exchange Act Release. Order Extending and Modifying Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection with Request on Behalf of ICE Trust U.S. LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments. See <http://www.sec.gov>. The SEC's order relates only to and is necessary only for CDS that are not swap agreements under Section 206A of the Gramm-Leach-Bliley Act.

**SUPPLEMENTARY INFORMATION:** The following is Treasury's order extending the temporary exemptions:

#### I. Introduction

On March 6, 2009, the SEC issued to ICE Trust, certain participants in ICE Trust, and others exemptions from certain provisions of the Securities Exchange Act of 1934 (Exchange Act).<sup>2</sup> The SEC's exemptions did not cover the Exchange Act provisions applicable to government securities.<sup>3</sup> Also, on March 6, 2009, Treasury issued an order that granted temporary exemptions that were consistent with certain of the temporary exemptions granted by the SEC.<sup>4</sup> Specifically, the March 6, 2009 order granted to (1) ICE Trust, (2) certain participants in ICE Trust (ICE Trust Participants)<sup>5</sup> that are not registered or noticed government securities brokers and government securities dealers<sup>6</sup> under section 15C(a)(1) of the Exchange Act, and (3) certain eligible contract

<sup>2</sup> Securities Exchange Act Release No. 34-59527 (March 6, 2009). 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. See <http://www.sec.gov>. The SEC's order relates only to and is necessary only for CDS that are not swap agreements under Section 206A of the Gramm-Leach-Bliley Act.

<sup>3</sup> The term *government securities* is defined at 15 U.S.C. 78c(a)(42). As with the March 6, 2009 order, Treasury is not making a determination in this order as to whether particular CDS are "government securities."

<sup>4</sup> 74 FR 10647, March 11, 2009, 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 (March 6, 2009 order).

<sup>5</sup> For purposes of this Order, *ICE Trust Participant* means any participant in ICE Trust that submits CDS that reference a government security to ICE Trust for clearance and settlement exclusively (i) for its own account or (ii) for the account of an affiliate that controls, is controlled by, or is under common control with the participant in ICE Trust.

<sup>6</sup> As used in this order, *registered or noticed government securities brokers and government securities dealers* encompass all brokers, dealers, and entities required to register or file notice pursuant to Section 15C(a)(1) of the Exchange Act. The GSA regulations apply to all classes of government securities brokers and government securities dealers required to register or file notice pursuant to Section 15C(a)(1) of the Exchange Act. This encompasses registered brokers and dealers (including OTC derivatives dealers), registered government securities brokers and registered government securities dealers (those specialized government securities brokers and government securities dealers that conduct a business in only government or other exempted securities (other than municipal securities)), and financial institutions that are required to file notice as government securities brokers and government securities dealers. The GSA regulations also address futures commission merchants that are government securities brokers or government securities dealers, but these entities are not covered in this order.

participants (ECPs)<sup>7</sup> temporary exemptions until December 6, 2009, from certain GSA provisions and regulations.<sup>8</sup> The exemption applied to these entities' transactions in "cleared CDS," which generally are CDS submitted to ICE Trust where the CDS reference a government security. In addition, with respect to registered or noticed government securities brokers and government securities dealers that are not financial institutions, the order granted a temporary exemption from certain GSA regulatory requirements consistent with the SEC's treatment of registered brokers and dealers in its exemptive order. That temporary exemption similarly applied to those entities' transactions in cleared CDS.<sup>9</sup> Together with its order, Treasury solicited public comment on all aspects of the temporary exemptions and received no comments.

ICE Trust has requested that Treasury extend the temporary exemptions in the March 6, 2009 order.<sup>10</sup> ICE Trust also requested that Treasury grant certain supplemental exemptive relief to accommodate customer clearing.<sup>11</sup>

ICE Trust has stated that the existing order has allowed the financial industry to advance the goal of centralized clearing of CDS, and that allowing the order to expire could jeopardize this progress. It also states that the order should be extended because allowing it to expire would create uncertainty as to the regulatory status of cleared trades and clearing participants and that it would be premature to allow the order to expire at this stage in the

<sup>7</sup> ECPs are defined in Section 1a(12) of the Commodity Exchange Act, 7 U.S.C. 1 *et seq.* The use of the term ECPs in this order refers to the definition of ECPs in effect on the date of this order, and excludes persons that are ECPs under Section 1a(12)(C). The temporary exemptions provided to ECPs in this order also apply to interdealer brokers that are ECPs.

<sup>8</sup> 17 CFR Chapter IV parts 400-405, and 449 were issued under Section 15C(a), (b), and (d) of the Exchange Act.

<sup>9</sup> For purposes of this order, *cleared CDS* means a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to ICE Trust, that is offered only to, purchased only by, and sold only to ECPs (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this order (other than a person that is an ECP under paragraph (C) of that section)), and that references a government security.

<sup>10</sup> See Letter from Kevin McClear, ICE Trust U.S. LLC, to the Commissioner of the Public Debt, Van Zeck, December 3, 2009, available at <http://www.treasurydirect.gov/instit/statreg/gsareg/gsareg.htm>.

<sup>11</sup> *Id.* ICE Trust's request includes a discussion of and request for supplemental exemptive relief to include Client Member Transactions and the Non-Member Framework, as well as a request for an exemption to Clearing Members in connection with the receiving or holding of funds or securities from other persons.

development of ICE and ICE Trust, given the goal to expand the availability of CDS clearing.

ICE Trust's request described how ICE Trust currently clears CDS and how the proposed arrangements for central clearing of customers' CDS transactions would operate. The request also made representations about the safeguards associated with those arrangements. Since it began operation, ICE Trust has been subject to examination by the New York State Banking Department, the Federal Reserve Bank of New York, and the SEC. ICE Trust states that these examinations have addressed numerous aspects of ICE Trust's activities, including compliance with safety and soundness requirements.

ICE Trust has cleared through acceptance and novation the proprietary CDS transactions of its clearing members since March 9, 2009. As of October 30, 2009, ICE Trust represents that it had cleared approximately \$2.6 trillion notional amount of CDS contracts based on indices of securities. ICE Trust also intends to clear single-name CDS contracts based on individual reference entities or securities.

Treasury finds that the circumstances upon which it issued the March 6, 2009 order, including the need for increasing transparency and mitigation of potential systemic risk, still exist. Therefore, Treasury believes that continuing the temporary exemptions given in that order is warranted and appropriate. Treasury believes that applying the GSA requirements to certain CDS market participants that are not registered or noticed government securities brokers or government securities dealers could deter some of them from using ICE Trust to clear CDS transactions where the CDS references a government security, and thereby reduce the potential systemic risk mitigation and other benefits of central clearing.

Treasury continues to balance the need to avoid creating disincentives to the prompt use of CCPs against the critical importance of certain government securities broker and government securities dealer requirements in promoting market integrity and protecting customers. Moreover, Treasury agrees that it would be premature to allow the exemptions to expire given ICE Trust's stage of development. For similar reasons, Treasury believes that the full range of GSA requirements generally should not be applied immediately to government securities brokers and government securities dealers that engage in transactions involving CDS that reference a government security.

Treasury bases this extension of the order on the facts and circumstances presented and representations made by ICE Trust in the request. Treasury relies on these facts and representations in granting this temporary exemption.

Accordingly, pursuant to Section 15C(a)(5) of the Exchange Act, the Secretary finds that it is consistent with the public interest, the protection of investors, and the purposes of the Exchange Act to extend the temporary exemptions granted in the March 6, 2009 order until March 7, 2010. Consistent with the original order, the extension of the temporary exemptions does not apply to financial institution government securities brokers and government securities dealers. They should continue to comply with existing rules. In issuing this extension, Treasury has consulted with and considered the views of the staffs of the SEC, the Commodity Futures Trading Commission, and the appropriate regulatory agencies for financial institutions.<sup>12</sup>

<sup>12</sup> The definition of *appropriate regulatory agency* with respect to a government securities broker or a

Since Treasury is in the process of finalizing action with regard to ICE Trust's request that Treasury grant supplemental relief to permit an expansion of its clearing services to include the clearance of the CDS transactions of its clearing members' customers, this order only extends the exemptions granted in the March 6, 2009 order.

## Conclusion

*It is hereby ordered*, pursuant to Section 15C(a)(5) of the Exchange Act, that the order Treasury issued effective March 6, 2009 (74 FR 10647, March 11, 2009) is amended by replacing the expiration date of December 6, 2009, with a new expiration date of March 7, 2010, and in all other respects that order remains in effect.

The temporary exemptions contained in this order are based on the facts and circumstances presented in the request. These temporary exemptions could become unavailable if the facts or circumstances change such that the representations in the request are no longer materially accurate. If the SEC were to withdraw its order or modify the terms of its order, Treasury may revoke or modify this order accordingly. The status of cleared CDS submitted to ICE Trust prior to such change would be unaffected.

**Michael S. Barr,**

*Acting Under Secretary for Domestic Finance.*  
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government securities dealer is set out at 15 U.S.C. 78c(a)(34)(G). The definition includes the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Director of Thrift Supervision, and, in limited circumstances, the SEC.