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By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Decided: March 5, 2009.

**Jeffrey Herzig,**

*Clearance Clerk.*

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BILLING CODE 4915-01-P

## DEPARTMENT OF THE TREASURY

### 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

**AGENCY:** Department of the Treasury, Office of the Assistant Secretary for Financial Markets.

**ACTION:** Notice of temporary exemptions.

**SUMMARY:** The Department of the Treasury (Treasury) is granting temporary exemptions from certain provisions of the Government Securities Act of 1986 (GSA) and Treasury's GSA regulations in connection with a request on behalf of ICE US Trust LLC related to the central clearing of credit default swaps that reference government securities. These temporary exemptions are consistent with temporary exemptions the Securities and Exchange Commission recently granted to ICE US Trust LLC related to the central clearing of credit default swaps. Treasury is also soliciting public comment on this Order.

**DATES:** *Effective:* March 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Lori Santamarena, Executive Director; Lee Grandy, Associate Director; or Kevin Hawkins, Government Securities Specialist; Bureau of the Public Debt, Department of the Treasury, at 202-504-3632.

**SUPPLEMENTARY INFORMATION:** The following is Treasury's exemptive order:

#### I. Introduction

Treasury and other financial regulators have raised concerns related to the over-the-counter ("OTC") market in credit default swaps ("CDS"). These concerns relate to the potential systemic risk to the financial system posed by such CDS markets. The President's Working Group on Financial Markets

("PWG") noted in November 2008 that its:

Top near-term OTC derivatives priority is to oversee the successful implementation of central counterparty services for credit default swaps. A well-regulated and prudently managed CDS central counterparty can provide immediate benefits to the market by reducing the systemic risk associated with counterparty credit exposures. It also can help facilitate greater market transparency and be a catalyst for a more competitive trading environment that includes exchange trading of CDS.<sup>1</sup>

In this context, the Securities and Exchange Commission ("SEC") recently issued to ICE US Trust LLC ("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.

IntercontinentalExchange, Inc. ("ICE") and The Clearing Corporation ("TCC") requested that Treasury grant, pursuant to its authority under Section 15C of the Exchange Act, an exemption for ICE Trust, participants in ICE Trust and their affiliates,<sup>3</sup> and interdealer brokers ("IDBs") from the provisions of Section 15C(a), (b), and (d) (other than subsection (d)(3)) and the Treasury rules thereunder applicable to government securities brokers and government securities dealers,<sup>4</sup> to the extent they "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" CDS entered into by participants in ICE Trust with other

such participants and submitted to ICE Trust for clearance and settlement.<sup>5</sup>

Based on the facts presented and the representations made in the request on behalf of ICE Trust ("the request"),<sup>6</sup> and for legal certainty and other reasons discussed in this Order, the Secretary of the Treasury ("Secretary") is granting two temporary exemptions. First, the Secretary is granting a temporary exemption to ICE Trust, certain participants in ICE Trust ("ICE Trust Participants"),<sup>7</sup> and certain eligible contract participants ("ECPs"),<sup>8</sup> as defined in the Commodity Exchange Act ("CEA"), from the registration requirements under Section 15C and certain regulations applicable to registered or noticed government securities brokers or government securities dealers.<sup>9</sup> The temporary exemption applies to these entities' transactions in "Cleared CDS" as defined in this Order,<sup>10</sup> which generally are CDS submitted to ICE Trust where the CDS reference a government security. In general, this exemption does not apply to any ICE Trust Participant that is registered or noticed as a government securities broker or a government securities dealer pursuant

<sup>5</sup> See Letter from Johnathan Short, IntercontinentalExchange Inc. and Kevin McClear, The Clearing Corporation, to the Commissioner of the Public Debt, Van Zeck, February 26, 2009, available at <http://www.treasurydirect.gov/instit/statreg/gsareg/gsareg.htm>.

<sup>6</sup> 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. The status of Cleared CDS submitted to ICE Trust prior to such change would be unaffected.

<sup>7</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>8</sup> ECPs are defined in Section 1a(12) of the Commodity Exchange Act ("CEA"), 7 U.S.C. 1 *et seq.* The use of the term ECPs in this Order refers to the definition of ECPs as in effect on the date of this Order, and excludes persons that are ECPs under Section 1a(12)(C). Treasury's exemption provided in this Order to ECPs includes IDBs that are ECPs.

<sup>9</sup> As used in this Order, *registered or noticed government securities brokers or 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. See note 18, *infra*.

<sup>10</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 CEA 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>1</sup> See "PWG Announces Initiatives to Strengthen OTC Derivatives Oversight and Infrastructure." U.S. Department of the Treasury press release issued November 14, 2008. Available at: <http://www.treasury.gov/press/releases/hp1272.htm>. The Secretary of the Treasury serves as chairman of the group, which includes the chairmen of the Federal Reserve Board, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, and which worked with the Office of the Comptroller of the Currency and the Federal Reserve Bank of New York on these initiatives.

<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 ICE Trust request defines *affiliate* to mean an entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or under common control with, an ICE Trust Participant.

<sup>4</sup> 17 CFR Chapter IV parts 400-405, and 449 were issued under Section 15C(a), (b), and (d). See Part II Section 15C of this Order, *infra*.

to Section 15C(a)(1) of the Exchange Act.

Second, with respect to registered or noticed government securities brokers and government securities dealers that are not financial institutions,<sup>11</sup> the Secretary is granting a temporary exemption from certain Treasury regulatory requirements consistent with the SEC's treatment of registered brokers and dealers in its exemptive order. This temporary exemption similarly applies to these entities' transactions in Cleared CDS.

## II. Section 15C

Title I of the Government Securities Act of 1986<sup>12</sup> ("GSA") amended the Exchange Act by adding Section 15C, authorizing the Secretary to promulgate regulations with respect to transactions in government securities<sup>13</sup> effected by government securities brokers<sup>14</sup> and government securities dealers<sup>15</sup> concerning financial responsibility, protection of customer securities and balances, and recordkeeping and reporting.

Under Title I of the GSA, all government securities brokers and government securities dealers are required to comply with the requirements in Treasury's GSA regulations that are set out at 17 CFR parts 400–449.<sup>16</sup> Treasury's GSA

<sup>11</sup> A *financial institution* is defined in 15 U.S.C. 78c(a)(46).

<sup>12</sup> Public Law 99–571, 100 Stat. 3208 (1986).

<sup>13</sup> The term *government securities*, as defined at 15 U.S.C. 78c(a)(42), means: (A) Securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States; (B) securities which are issued or guaranteed by the Tennessee Valley Authority or by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors; (C) securities issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the SEC; and (D) generally "any put, call, straddle, option, or privilege" on a government security other than one that is traded on a national securities exchange or for which quotations are disseminated through an automated quotation system operated by a registered securities association. Certain Canadian government obligations are also included for certain purposes.

<sup>14</sup> A *government securities broker* generally is "any person regularly engaged in the business of effecting transactions in government securities for the account of others" with certain exclusions. 15 U.S.C. 78c(a)(43).

<sup>15</sup> A *government securities dealer* generally is "any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise," with certain exclusions. 15 U.S.C. 78c(a)(44).

<sup>16</sup> 17 CFR part 400 Rules of general application; 17 CFR part 401 Exemptions; 17 CFR part 402 Financial responsibility; 17 CFR part 403 Protection of customer securities and balances; 17 CFR part

regulations, for the most part, incorporate with some modifications SEC rules for non-financial institution government securities brokers and government securities dealers and the appropriate regulatory agency<sup>17</sup> rules for financial institutions that are required to file notice as government securities brokers and government securities dealers.<sup>18</sup>

Section 15C(a)(5) of the Exchange Act provides that the Secretary:

By rule or order, upon the Secretary's own motion or upon application, may conditionally or unconditionally exempt any government securities broker or government securities dealer, or class of government securities brokers or government securities dealers, from any provision of subsection (a), (b), or (d) of this section, other than subsection (d)(3), or the rules thereunder, if the Secretary finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of [the Exchange Act].

As noted above, the SEC recently issued an order granting temporary, conditional exemptions under the Exchange Act to ICE Trust in connection with the clearing and settling of certain CDS, as well as to certain other persons for proposed related activities.<sup>19</sup> The

404 Recordkeeping and preservation of records; 17 CFR part 405 Reports and audit; 17 CFR part 420 Large position reporting; and 17 CFR part 449 Forms, Section 15C of the Securities Exchange Act of 1934. The GSA regulations also include requirements for custodial holdings by depository institutions at 17 CFR part 450, which were issued under Title II of the GSA.

<sup>17</sup> The definition of *appropriate regulatory agency* with respect to a government securities broker or a 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.

<sup>18</sup> 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. See 17 CFR 400.1 and definitions at 17 CFR 400.3. 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. (The definitions of "government securities broker" and "government securities dealer" in 15 U.S.C. 78c(a)(43) and 78c(a)(44) exclude certain persons registered with the Commodity Futures Trading Commission ("CFTC"), but only if such persons effect transactions in government securities that the SEC, in consultation with the CFTC, has determined to be incidental to such persons' futures-related business.)

<sup>19</sup> See note 2, *supra*. The SEC's exemptive order applies only to CDS that are not swap agreements

SEC noted in its order that the temporary exemptions extended neither to the Exchange Act provisions applicable to government securities as set forth in Section 15C and its underlying rules and regulations, nor to the related definitions of "government securities," "government securities broker," and "government securities dealer." The SEC further noted that it does not have authority under Section 36 of the Exchange Act to issue exemptions in connection with these provisions.<sup>20</sup>

The request on behalf of ICE Trust states that some CDS include reference obligations or deliverable obligations that may be government securities as defined in Section 3(a)(42) of the Exchange Act.<sup>21</sup> In providing temporary exemptions from certain provisions of Section 15C of the Exchange Act, Treasury is not making a determination, for purposes of this Order, whether particular CDS are "government securities."

## III. CDS

A CDS is a bilateral contract between two parties, known as counterparties. The value of this contract is based on underlying obligations of a single entity or on a particular security or other debt obligation, or an index of several such entities, securities, or obligations. The obligation of a seller under a CDS contract to make payments is triggered by a default or other credit event involving such entity or entities or such security or securities. Investors may purchase CDS for a variety of reasons, including to offset or insure against risk in their portfolios, to take synthetic positions in bonds or in segments of the debt market, or to capitalize on credit spreads. In recent years, CDS market volumes have rapidly increased and this growth has coincided with a significant rise in the types and number of entities participating in the CDS market.

Under a typical CDS contract, the seller of the contract agrees, in exchange for receiving fixed periodic payments from the purchaser, to assume the credit risk of the underlying obligation(s) and to compensate the purchaser in the event of a default, bankruptcy, or other credit event. A bilateral CDS contract therefore entails counterparty risk between the purchaser and the seller. Currently, CDS participants bilaterally manage counterparty risk by monitoring their counterparties, entering into legal agreements that permit them to net

and thus not excluded from the definition of "security" by Section 3A of the Exchange Act.

<sup>20</sup> 15 U.S.C. 78mm(b).

<sup>21</sup> See note 13, *supra*.

gains and losses across contracts, and requiring counterparty exposures to be collateralized. A central counterparty ("CCP") could allow participants to avoid risks specific to an individual counterparty because a CCP "novates" bilateral trades by entering into separate contractual arrangements with each counterparty—becoming buyer to each seller and seller to each buyer.<sup>22</sup> Novation is one of the means by which a CCP can assume counterparty risk.

For this reason, a CCP for CDS could contribute generally to the goal of mitigating potential systemic risk. As part of its risk management program, a CCP could subject novated contracts to initial and variation margin requirements and establish clearing and guarantee funds. The CCP also could implement a loss-sharing arrangement among its participants to respond to a potential participant insolvency or default.

Recent credit market events have demonstrated the need for mechanisms to help manage potential counterparty risks posed by CDS. A prudently-managed CCP could help promote efficiency and reduce the potential systemic risk associated with counterparty credit exposures. These benefits could be particularly significant in times of market stress, as CCPs could enhance transparency and mitigate the potential for a market participant's difficulties to destabilize other market participants.

#### IV. ICE Trust

As noted above, ICE and TCC, on behalf of ICE Trust, have requested that the Secretary grant exemptions from certain requirements under the Exchange Act with respect to the proposed activities of ICE Trust in clearing and settling certain CDS, as well as the proposed activities of certain other persons.<sup>23</sup>

Based on the request, we understand the facts to be as follows. ICE and TCC are each corporations organized under the laws of the State of Delaware. The request states that ICE is in the process of acquiring TCC. ICE Trust is organized as a New York State chartered limited liability trust company, and will become a member of the Federal Reserve System.<sup>24</sup> ICE Trust is subject to direct

supervision and examination by the New York State Banking Department, and due to its expected membership in the Federal Reserve System, will be subject to direct supervision and examination by the Board of Governors of the Federal Reserve System, specifically by the Federal Reserve Bank of New York.

We further understand that CDS transactions entered into by ICE Trust Participants with other ICE Trust Participants will be submitted to ICE Trust for clearance and settlement. The request represents that initially, ICE Trust's business will be limited to the provision of clearing services for a limited range of CDS in the OTC market. During this initial phase, ICE Trust's CDS clearing services will be limited to transactions for the proprietary accounts of ICE Trust Participants (in each case, acting as principal for its own account or the account of an affiliate). ICE Trust will act as a CCP for ICE Trust Participants by assuming, through novation, the obligations of all eligible CDS transactions accepted by it for clearing and by collecting margin and other credit support from ICE Trust Participants to collateralize their obligations to ICE Trust.

The request states that ICE Trust anticipates that it will eventually expand the range of CDS contracts eligible for clearing to include single name CDS (which could include issuers of government securities). The request explains that participation in ICE Trust will be open to all qualified applicants, each of whom will clear transactions solely as principal for its own account and not on behalf of other persons. In order to qualify as an ICE Trust Participant, an applicant will be required to satisfy ICE Trust's participant criteria at the time that the applicant applies to ICE Trust and on an ongoing basis thereafter.<sup>25</sup> Among these criteria is a requirement that each ICE Trust Participant is subject to regulation for capital adequacy by a federal or foreign financial regulator or is an affiliate of an entity that is subject to regulation by such a financial regulator (and as a result the ICE Trust Participant would be subject to consolidated holding company group supervision).

Although CDS are currently bilaterally negotiated and executed, major market participants frequently use the Deriv/SERV service of The Depository Trust & Clearing Corporation

comparison and confirmation service when documenting their CDS transactions. ICE Trust will leverage the Deriv/SERV infrastructure in operating its CDS clearing service.

ICE Trust will collect and process information about CDS transactions and positions from all of its participants. With this information, ICE Trust plans to, among other things, calculate and disseminate current values for open positions for the purpose of setting appropriate margin levels, or have an agent perform these functions on its behalf. ICE Trust believes that the availability of such information could improve the fairness, efficiency, and competitiveness of the market. Moreover, with pricing and valuation information relating to CDS transactions, ICE Trust represents that market participants would be able to derive information about underlying securities and indexes. ICE Trust believes this could improve the efficiency and effectiveness of the securities markets by allowing investors to better understand credit conditions generally.

ICE Trust maintains that in addition to reducing the outstanding notional amount of ICE Trust-cleared CDS, it will further mitigate counterparty risk to ICE Trust, ICE Trust Participants, and the CDS market generally through its margin, guaranty fund, and credit support framework.

As the counterparty to each of the ICE Trust Participants, ICE Trust will have exposure to default risk by ICE Trust Participants. To address this counterparty credit risk, ICE Trust states that it will require the ICE Trust Participants to provide credit support for their obligations under cleared CDS transactions and has established rules that "mutualize" the risk of an ICE Trust Participant default across all ICE Trust Participants. ICE Trust's risk management infrastructure and related risk metrics have been structured specifically for the CDS products that ICE Trust clears. Each ICE Trust Participant's credit support obligations will be governed by a uniform credit support framework and applicable ICE Trust Rules.

The request also states that ICE Trust Participants may use the facilities of an IDB to execute CDS, for example, to access liquidity more rapidly or to maintain pre-execution anonymity, and submit such transactions for clearance and settlement to ICE Trust. Further, these IDBs may be unregistered with the SEC, may be registered as broker-dealers or government securities brokers or government securities dealers, or may be registered as broker-dealers and

<sup>22</sup> *Novation* generally is a process through which the original obligation between a buyer and seller is discharged through the substitution of the CCP as seller to buyer and buyer to seller, creating two new contracts.

<sup>23</sup> See note 5, *supra*.

<sup>24</sup> The Federal Reserve Board announced on March 4, 2009, its approval of the application by ICE US Trust LLC to become a member of the Federal Reserve System. See Federal Reserve Board

press release, available at <http://www.federalreserve.gov/newsevents/press/orders/20090304a.htm>.

<sup>25</sup> The request states that the participant criteria are specified in the ICE Trust Rules.

operating subject to Regulation ATS. The request indicates that these IDBs, although they are compensated for matching and effecting CDS transactions, do not handle the funds or property of their CDS participants, and similarly do not assume market positions in connection with their intermediation of CDS transactions.

The request states that a CDS that does not qualify as a security-based swap agreement may potentially be subject to characterization as a security, and similarly, that a CDS that has one or more reference or deliverable obligations that are government securities and that does not qualify as a security-based swap agreement may potentially be subject to characterization as a government security.

The request also asserts that the framework for the regulation of securities broker-dealers has been effective for traditional securities activities, but it has not provided a commercially practical framework for the conduct of broad categories of OTC derivatives activities. The request states that little would be gained by subjecting ICE Trust Participants to regulation as government securities brokers or government securities dealers with respect to any cleared CDS that reference government securities, given that ICE Trust Participants will be sophisticated derivatives market participants, will be acting solely for their own accounts (or the account of their affiliates) and will be limited to firms who are subject to regulation or consolidated supervision by a financial regulator.

ICE Trust further states that requiring government securities broker and government securities dealer regulation and imposing the Exchange Act Section 15C government securities regime on any cleared CDS that reference government securities would create a significant and burdensome dislocation of this part of the CDS market and would present a significant obstacle to the adoption of clearing for this and related segments of the CDS market. The request states that the imposition of such additional regulation and regulatory constraints would be unwarranted, would not constitute an efficient allocation of regulatory resources, and would not serve the public interest. ICE Trust believes that, equally important, "given the size and significance of the CDS market, proceeding in the face of any material legal uncertainty as to the regulatory status of a significant portion of CDS cleared through ICE Trust would be unacceptable both to market participants and the official sector." The

request states that either outcome would produce undesirable consequences and jeopardize the important benefits that the introduction of central clearing for CDS can provide.

The request asks for exemptive relief for the avoidance of legal uncertainty, on terms and conditions that would, in effect, permit ICE Trust, ICE Trust Participants and their affiliates, and IDBs to continue to conduct business in cleared CDS that reference government securities on the basis that such transactions would be treated as security-based swap agreements under the Exchange Act.<sup>26</sup>

#### V. Temporary Exemption for ICE Trust, ICE Trust Participants and Certain ECPs

Treasury believes that the application of the GSA requirements to certain participants in CDS transactions that are not currently registered or noticed government securities brokers or government securities dealers could deter some market participants from using ICE Trust to clear CDS transactions where the CDS references a government security and thus reduce the CCP benefit of mitigating potential systemic risk. Moreover, based on the representations made in the request for exemptive relief, Treasury has concluded that the CCP facility for CDS proposed by ICE Trust could increase transparency, enhance counterparty risk management, and contribute generally to the goal of mitigating systemic risk.

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 grant a temporary exemption until December 6, 2009 from the provisions of Section 15C(a), (b), and (d) (other than subsection (d)(3)) of the Exchange Act, and the rules thereunder. This temporary exemption applies to: (1) ICE Trust, (2) ICE Trust Participants that are not government securities brokers or government securities dealers registered or noticed under Section 15C(a)(1) of the Exchange

<sup>26</sup> The approach of the SEC exemptive order was to apply substantially the same framework to CDS transactions that applies to transactions in security-based swap agreements. See note 2, *supra*. While Section 3A of the Exchange Act excludes "swap agreements" from the definition of "security," certain antifraud and insider trading provisions under the Exchange Act explicitly apply to security-based swap agreements. *Security-based swap agreement* is defined in Section 206B of the Gramm-Leach-Bliley Act as a swap agreement in which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

Act, and (3) any ECPs<sup>27</sup> other than: (a) ECPs that are registered or noticed government securities brokers or government securities dealers; (b) ECPs that receive or hold funds or securities for the purpose of purchasing, selling,<sup>28</sup> clearing, settling, or holding CDS positions for other persons; and (c) ECPs that are ECPs under Section 1a(12)(C) of the CEA. This temporary exemption applies to these entities' transactions in Cleared CDS.<sup>29</sup>

#### VI. Temporary Exemption for Registered or Noticed Government Securities Brokers and Government Securities Dealers That Are Not Financial Institutions

The GSA and its underlying rules and regulations require government securities brokers and government securities dealers to comply with a number of obligations that are important to protecting investors and promoting market integrity. Treasury believes it is important to promote the integrity, liquidity, and efficiency of financial markets while at the same time ensuring that risk is mitigated and customers are protected. Treasury also wants to avoid creating obstacles to the use of CCPs for CDS, and recognizes that the factors discussed above suggest 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.

The request suggested that to the extent that the SEC's CDS exemptions exclude particular Exchange Act provisions or specify certain conditions to the exemptive relief, the Treasury relief should be issued subject to the same conditions and to compliance with the same excluded provisions, to the

<sup>27</sup> Treasury is providing relief to ECPs, including IDBs that are ECPs, consistent with the SEC's order and the treatment of security-based swap agreements under the Exchange Act. A *swap agreement* is defined under Section 206A of the Gramm-Leach-Bliley Act, in part, as any agreement, contract, or transaction between eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act \* \* \* other than a person that is an eligible contract participant under Section 1a(12)(C) of the Commodity Exchange Act \* \* \*) \* \* \* the material terms of which (other than price and quantity) are subject to individual negotiation. 15 U.S.C. 78c note.

<sup>28</sup> For the purposes of this Order, the terms *purchasing* and *selling* mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing the rights or obligations under, a cleared CDS transaction, as the context may require. This is consistent with the meaning of the terms "purchase" or "sale" under the Exchange Act in the context of security-based swap agreements. See Exchange Act Section 3A(b)(4).

<sup>29</sup> See note 10, *supra*.

extent applicable. The SEC order exempts registered broker-dealers from certain provisions and rules under the Exchange Act, but retains certain other requirements such as those related to the protection of customer funds and securities.<sup>30</sup>

Government securities brokers and government securities dealers are subject to the requirements in Section 15C and the regulations issued thereunder. Treasury was given authority by Congress in 1986 to issue rules with respect to transactions in government securities effected by government securities brokers and government securities dealers in the areas of financial responsibility, acceptance of custody and use of customer's securities, the carrying and use of customers' deposits or credit balances, and the transfer and control of government securities subject to repurchase agreements, records, and reporting. The GSA regulations issued by Treasury reflect a deliberate and responsive approach to regulating the government securities market, and strike a balance between ensuring customer protection and the continued liquidity and efficiency of the market. In addition, Congress directed the Secretary to: (1) Use existing regulations whenever possible, thereby avoiding duplicative requirements; (2) avoid imposing overly burdensome rules; and (3) ensure that the rules did not result in unequal treatment of market participants.<sup>31</sup>

Many of the Treasury regulations promulgated under the GSA incorporated with limited modifications the existing SEC regulations (*i.e.*, customer protection, recordkeeping, reports, and audits) that applied to registered brokers and dealers before the passage of the GSA. Treasury generally has exercised its authority under the Exchange Act in a manner that would provide consistency, to the extent possible, between the requirements applicable to registered broker-dealers and government securities brokers and government securities dealers. Therefore, Treasury is providing certain temporary exemptions for government securities brokers and government securities dealers that are not financial institutions from certain GSA regulations to maintain consistency with the requirements applicable to registered broker-dealers with respect to CDS transactions that are submitted to ICE Trust for clearance and settlement.

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 grant a temporary exemption to registered or noticed government securities brokers and government securities dealers that are not financial institutions until December 6, 2009 from the regulations in 17 CFR parts 402, 403, 404, and 405.<sup>32</sup> However, this Order does not exempt registered or noticed government securities brokers or government securities dealers from the following: (1) The capital requirements for registered government securities brokers and government securities dealers in part 402 of the GSA regulations (which are comparable to SEC Rule 15c3-1 on net capital)<sup>33</sup>; (2) the provisions of part 403 of the GSA regulations that incorporate and modify SEC Rule 15c3-3 on reserves and custody of securities; (3) the provisions of parts 404 and 405 of the GSA regulations that incorporate and modify SEC Rules 17a-3 through 17a-5, 17h-1T and 17h-2T, on records and reports; and (4) the provisions of part 404 of the GSA regulations that incorporate and modify SEC Rule 17a-13 on quarterly security counts. This temporary exemption applies to these entities' transactions in Cleared CDS.<sup>34</sup>

With respect to noticed government securities brokers and government securities dealers that are financial institutions, the GSA regulations generally adopt the appropriate regulatory agency rules for financial institutions that are comparable to the SEC rules to which the exemption does not extend. The GSA regulations also incorporate rules of the appropriate regulatory agencies that are otherwise applicable to financial institutions. Treasury is not extending the temporary exemption to financial institution government securities brokers and government securities dealers. Financial institution government securities brokers and government securities dealers should continue to comply with existing rules.

In issuing this Order, Treasury has consulted with and considered the views of the staffs of the SEC, the Commodity Futures Trading Commission, and the financial

<sup>32</sup> The rules in part 400 are excluded because they are rules of general application. The rules in part 401 are excluded because they cover existing exemptions. The rules in part 449 are excluded because they describe forms that are required by other rules.

<sup>33</sup> Part 402 does not apply to registered broker-dealers that are subject to Rule 15c3-1.

<sup>34</sup> See note 10, *supra*.

institution appropriate regulatory agencies.

## VII. Solicitation of Comments

Treasury intends to monitor the development of CCPs for the CDS market and determine to what extent, if any, additional action might be necessary. For example, as circumstances warrant, certain conditions could be added, altered, or eliminated from this Order. Treasury will in the future consider whether the temporary exemptions should be extended or allowed to expire. Treasury believes it is prudent to solicit public comment on this Order. Specifically, Treasury is soliciting public comment on all aspects of these temporary exemptions, including:

1. The appropriateness of the length of this temporary exemption (until December 6, 2009). If not appropriate, what should the appropriate duration be?

2. The appropriateness of the extent of the relief granted or any exclusions from the exemptions.

You may send comments to: Government Securities Regulations Staff, Bureau of the Public Debt, 799 9th Street, NW., Washington, DC 20239-0001. You may also send comments by e-mail to [govsecreg@bpd.treas.gov](mailto:govsecreg@bpd.treas.gov). Please provide your full name and mailing address. You may download this temporary exemptive Order, and review the comments we receive, from the Bureau of the Public Debt's Web site at <http://www.treasurydirect.gov>. The Order and comments also will be available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622-0990 for an appointment.

Treasury will continue to consult with, the staffs of the SEC, the Commodity Futures Trading Commission, and the financial institution appropriate regulatory agencies on this matter.

## VIII. Conclusion

*It is hereby ordered*, pursuant to Section 15C(a)(5) of the Exchange Act, that, until December 6, 2009:

(a) *Temporary Exemption for ICE Trust, ICE Trust Participants, and Certain ECPs*

The following persons are exempt from the provisions of Section 15C(a), (b), and (d) (other than subsection (d)(3)) of the Exchange Act, and the rules thereunder: ICE Trust, ICE Trust Participants that are not government

<sup>30</sup> See note 2, *supra*.

<sup>31</sup> 15 U.S.C. 78o-5(b)(4) and (5).

securities brokers or government securities dealers registered or noticed under Section 15C(a)(1) of the Exchange Act, and any ECPs<sup>35</sup> other than: (a) ECPs that are registered or noticed government securities brokers or government securities dealers; (b) ECPs that receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding CDS positions for other persons; and (c) ECPs that are ECPs under Section 1a(12)(C) of the CEA. This temporary exemption applies to these entities' transactions in Cleared CDS.<sup>36</sup>

*(b) Temporary Exemption for Registered or Noticed Government Securities Brokers and Government Securities Dealers that are not Financial Institutions*

Registered or noticed government securities brokers and government securities dealers that are not financial institutions are exempt from the regulations in 17 CFR parts 402, 403, 404, and 405. However, this Order does not exempt registered or noticed government securities brokers or government securities dealers that are not financial institutions from the following:

(1) The capital requirements for registered government securities brokers and government securities dealers in part 402 of the GSA regulations (which are comparable to SEC Rule 15c3-1 on net capital);

(2) the provisions of part 403 of the GSA regulations that incorporate and modify SEC Rule 15c3-3 on reserves and custody of securities;

(3) the provisions of parts 404 and 405 of the GSA regulations that incorporate and modify SEC Rules 17a-3 through 17a-5, 17h-1T and 17h-2T, on records and reports; and

(4) the provisions of part 404 of the GSA regulations that incorporate and modify SEC Rule 17a-13 on quarterly security counts.

This temporary exemption applies to these entities' transactions in Cleared CDS.

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. The status of Cleared CDS submitted to ICE Trust

prior to such change would be unaffected.

**Karthik Ramanathan,**

*Acting Assistant Secretary for Financial Markets.*

[FR Doc. E9-5242 Filed 3-6-09; 4:15 pm]

**BILLING CODE 4810-39-P**

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

#### Agency Information Collection Activities; Proposed Collection; Comment Request; Report of International Transportation of Currency or Monetary Instruments

**AGENCY:** Financial Crimes Enforcement Network, Treasury.

**ACTION:** Notice and request for comments regarding the renewal without change of the Report of International Transportation of Currency or Monetary Instruments.

**SUMMARY:** As part of our continuing effort to reduce paperwork and respondent burden, the Financial Crimes Enforcement Network invites the general public and other Federal agencies to comment on an information collection requirement concerning the Report of International Transportation of Currency or Monetary Instruments (the "CMIR"). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments should be received on or before May 11, 2009 to be assured of consideration.

**ADDRESSES:** Direct all written comments to: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, VA 22183-0039, *Attention:* PRA Comments—Report of International Transportation of Currency or Monetary Instruments. Comments also may be submitted by electronic mail to the following Internet address: "[regcomments@fincen.gov](mailto:regcomments@fincen.gov)" with the caption in the body of the text, "*Attention:* PRA Comments—Report of International Transportation of Currency or Monetary Instruments."

**FOR FURTHER INFORMATION CONTACT:** The FinCEN Regulatory Helpline at 800-949-2732, select option 6. A copy of the form may also be obtained from the FinCEN Web site at [http://www.fincen.gov/forms/files/fin105\\_cmir.pdf](http://www.fincen.gov/forms/files/fin105_cmir.pdf).

**SUPPLEMENTARY INFORMATION:** *Title:* Report of International Transportation of Currency or Monetary Instruments.

*OMB Number:* 1506-0014.

*Form Number:* FinCEN Form 105.

*Abstract:* The Bank Secrecy Act (BSA), Titles I and II of Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5332, authorizes the Secretary of the Treasury *inter alia* to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism or to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the BSA appear at 31 CFR part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of Financial Crimes Enforcement Network.

Pursuant to the BSA, "a person or an agent or bailee of the person shall file a report \* \* \* when the person, agent, or bailee knowingly—(1) Transports, is about to transport, or has transported, monetary instruments of more than \$10,000 at one time—(A) From a place in the United States to or through a place outside the United States; or (B) to a place in the United States from or through a place outside the United States; or (2) receives monetary instruments of more than \$10,000 at one time transported into the United States from or through a place outside the United States." 31 U.S.C. 5316(a). The requirement of 31 U.S.C. 5316(a) has been implemented through regulations promulgated at 31 CFR 103.23 and through the instructions to the CMIR.

Information collected on the CMIR is made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel in the official performance of their duties. The information collected is of use in investigations involving international and domestic money laundering, tax evasion, fraud, and other financial crimes.

*Current Actions:* Renewal without change.

*Type of Review:* Renewal of a currently approved collection.

*Affected Public:* Individuals, business or other for-profit institutions, and not-for-profit institutions.

*Estimated Number of Respondents:* 280,000.

*Estimated Time per Respondent:* 11 minutes.

<sup>35</sup> See note 8, *supra*.

<sup>36</sup> See note 10, *supra*.