

FEDERAL RESERVE SYSTEM

ICE US Trust LLC
New York, New York

Order Approving Application for Membership

ICE US Trust LLC (“ICE Trust”), a de novo uninsured trust company organized under New York law,¹ has requested the Board’s approval under section 9 of the Federal Reserve Act (“Act”)² to become a member of the Federal Reserve System.³ ICE Trust proposes to operate as a central counterparty (“CCP”) and clearinghouse for credit default swap (“CDS”) transactions conducted by its participants.

ICE Trust will become a wholly owned subsidiary of ICE US Holding Company LP (“ICE LP”),⁴ which will be controlled indirectly by Intercontinental-Exchange, Inc. (“ICE”),⁵ an operator of futures exchanges and over-the-counter markets

¹ Under New York law, a limited liability trust company may not accept deposits from the general public and must obtain an exemption from the general requirement under state law that New York-chartered banks and trust companies have federal deposit insurance. See New York Banking Law §§ 32, 102a. The New York State Banking Board (“NYSBB”) has approved ICE Trust’s charter application and its exemption from the deposit insurance requirement. Letter from NYSBB to Bradley K. Sabel, Esq., December 4, 2008.

² 12 U.S.C. § 321 *et seq.*

³ 12 U.S.C. §§ 221 and 321. ICE Trust is a bank for purposes of the Act and, therefore, is eligible for membership in the Federal Reserve System.

⁴ ICE LP is organized under the law of the Cayman Islands but has consented to the jurisdiction of United States courts and government agencies with respect to matters arising out of federal banking laws. ICE LP also has committed to make available to the Board such information on the operations of ICE Trust and its affiliates as the Board deems necessary to enforce compliance with the Act and other applicable federal law.

⁵ ICE’s wholly owned subsidiary, ICE US Holding Company GP LLC (“ICE GP”), a Delaware limited liability company, will be the general partner of ICE LP. ICE, ICE GP, and ICE LP have committed that ICE LP will not, without the prior approval of the

for commodities and derivative financial products.⁶ ICE has entered into an agreement to acquire The Clearing Corporation (“TCC”), a derivatives clearinghouse.⁷

ICE Trust is being organized to reduce the risk associated with the trading and settlement of CDS transactions.⁸ The CDS market as measured by the total notional amount of outstanding contracts has grown significantly, from approximately \$6.4 trillion by year-end 2004 to approximately \$57.3 trillion by mid-year 2008.⁹ In the second half of 2008, however, dealers in CDS contracts were able to reduce the total notional amount of outstanding contracts by approximately \$32 trillion through regular and frequent portfolio compression activity. CCPs interpose themselves between counterparties to financial contracts, becoming the buyer to the seller of the contract and the seller to the contract’s buyer. In the absence of a CCP, each market participant bears the risk, known as counterparty credit risk, that one or more of its counterparties will default. By interposing itself between participants and thereby assuming counterparty credit risk,

Board, engage in any activity or make any investment other than holding an interest in ICE Trust and TCC.

⁶ ICE Trust is not a bank as defined in the Bank Holding Company Act (“BHC Act”) (12 U.S.C. § 1841 *et seq.*). See 12 U.S.C. § 1841(c)(1). ICE LP, ICE GP, and ICE, therefore, would not be bank holding companies for purposes of the BHC Act. No bank holding company will directly or indirectly control more than 5 percent of the voting shares of ICE Trust.

⁷ TCC also will become a wholly owned subsidiary of ICE LP. TCC will provide certain clearing services to ICE Trust.

⁸ In the simplest form of a CDS arrangement, the seller of a CDS agrees to pay the buyer the full principal amount of the debt obligation underlying the CDS in exchange for periodic payments to cover the cost of the credit-risk protection. The seller is then obligated to pay the buyer if the maker of the obligation defaults or declares bankruptcy. In index-based CDS contracts, the parties’ payment obligations are based on an index of debt obligations of multiple companies, such as an index of U.S. investment-grade or emerging-market bonds, rather than on a single obligation.

⁹ See Bank for International Settlements, OTS Derivatives Market Activity in the First Half of 2008 (November 2008); Bank for International Settlements, OTS Derivatives Market Activity in the Second Half of 2005 (May 2006). The notional amount refers to the principal amount of obligations underlying CDS contracts.

a CCP enables market participants to accept the best bids and offers without concern that a counterparty may default.

By assuming counterparty credit risk and enforcing participation standards and margin requirements, CCPs also can help diminish systemic risk in market settlement activities. In addition, establishment of a CCP can lower systemic risk by instituting procedures for the orderly close out of the positions of any participant who defaults and by mutualizing the cost of the close-out process.

Proposed Activities

ICE Trust would act as the CCP for its participating financial institutions by novating CDS contracts between participants. Through novation, ICE Trust would be positioned between the parties to a CDS contract, thereby becoming the counterparty to each party. ICE Trust would net out the overall positions of each participant and, accordingly, would receive payments from and make payments to each participant on a net basis. In this manner, ICE Trust would reduce the volume of settlement payments among participants and reduce the counterparty, credit, and other risks and the transaction costs associated with CDS contracts.

Initially, ICE Trust proposes to clear only contracts that are based on certain CDX North American indices and are submitted by the participants as principals.¹⁰ Incidental to clearing such transactions, ICE Trust also would provide certain transaction-related administrative services to participants. ICE Trust proposes to charge a fee for its CDS clearing services to participants primarily on a per-transaction basis.

As a member of the Federal Reserve System, ICE Trust would be eligible to open an account with, and receive payment services from, the Federal Reserve Bank of New York. ICE Trust proposes to obtain a number of services from TCC and ICE. ICE Trust would use TCC's existing infrastructure for clearing operations and its risk-management services. ICE would provide internal audit functions for ICE Trust.

¹⁰ These indices include certain investment-grade indices; investment-grade, high-volatility sub-indices; and high-yield indices.

Factors Governing Board Review of the Proposal

In acting on an application for membership in the Federal Reserve System, the Board is required by the Act and Regulation H to consider the financial history and condition of the applying bank; the adequacy of its capital in relation to its assets and to its prospective deposit liabilities and other corporate responsibilities; its future earnings prospects; the general character of its management; whether its corporate powers are consistent with the purposes of the Act; and the convenience and needs of the community to be served.¹¹ Because ICE Trust's primary business would be acting as a CCP and clearinghouse for CDS transactions, the Board has reviewed the applicable financial and managerial factors in light of the Federal Reserve's Policy on Payments System Risk ("PSR Policy"), including its minimum standards for systemically important central counterparties.¹² These standards address, among other matters, financial resources, measurement and management of credit exposures, margin requirements, and default procedures.

Financial Considerations

In considering the financial history and condition, future earnings prospects, capital adequacy of ICE Trust, and other financial factors, the Board has reviewed its business plan and financial projections and has assessed the adequacy of ICE Trust's anticipated capital levels in light of its proposed assets and liabilities.¹³

¹¹ 12 U.S.C. §§ 322 and 329; 12 CFR 208.3(b)(3).

¹² Federal Reserve Policy on Payments System Risk, available at <http://www.federalreserve.gov/paymentsystems/psr/default.htm>. The PSR Policy incorporates the minimum standards for systemically important central counterparties in the Recommendations for Central Counterparties ("RCCP"), jointly issued in November 2004 by the Committee on Payment Settlement Systems of the Bank for International Settlements and by the Technical Committee of the International Organization of Securities Commissioners.

¹³ 12 U.S.C. §§ 322 and 329; 12 CFR 208.3(b)(3). As required by its regulations, the Board has used the definition of capital in Appendix A to Regulation H in assessing ICE Trust's capital adequacy. 12 CFR 208.4(a). In light of the fact that ICE Trust would (1) take no deposits from the general public, (2) have no federal deposit insurance,

ICE Trust would maintain capital that is adequate to cover its start-up costs, projected operational losses, and unanticipated losses and to allow for an orderly wind-down of positions if confronted with the need to cease operations.

In assessing the adequacy of ICE Trust's capital levels, the Board has taken into account the financial resources maintained by ICE Trust to enable it to withstand a default in extreme but plausible market conditions by the participant to which it has the largest exposure.¹⁴ For ICE Trust, as for many CCPs, these resources include margin collateral posted by participants based on the value and risk associated with their open positions and participants' contributions to a guaranty fund. The Board expects ICE Trust at all times to maintain financial resources commensurate with the level and nature of the risks to which it is exposed.

If a participant defaults, ICE Trust would draw on margin collateral posted by the participant. If the margin collateral is insufficient, ICE Trust would then look to the defaulting participant's guaranty fund contribution. Should the defaulting participant's margin collateral and guaranty fund contribution be insufficient to cover any losses on the defaulted obligations, ICE Trust would be authorized to use, as needed, other participants' guaranty fund contributions to satisfy any remaining obligations of the defaulting party. If the guaranty fund in total is inadequate to cover losses on the defaulted obligations, ICE Trust would have the ability to assess additional guaranty fund contributions on nondefaulting participants.

(3) engage in no activities apart from serving as a CCP and clearinghouse, and
(4) have assets and liabilities that reflect its status as a CCP and clearinghouse, the Board will not require ICE Trust to meet the risk-based capital requirements or the leverage requirements set forth in Appendices A, B, E, and F of Regulation H. The Board retains the authority, however, to specify capital requirements for ICE Trust and to require ICE Trust to increase its capital if the Board at any time concludes that ICE Trust's capital is inadequate in view of its assets, liabilities, and responsibilities. 12 CFR 208.4(a).

¹⁴ RCCP at 23.

To limit the risk of default by participants, ICE Trust proposes to establish strong and objective participant eligibility requirements. For example, only a firm with a net worth of \$5 billion or more and a credit rating of “A” or better may become a participant. Among other criteria, each prospective participant also would be required to demonstrate that it has systems, management, and risk-management expertise with respect to CDS transactions.

Margin requirements for participants in ICE Trust would be comprised of two components: (1) initial margin collateral provided at the time of contract novation that is intended to cover losses from a defaulting participant’s positions under normal market conditions; and (2) mark-to-market margin requirements that are calculated at the end of each day based on a participant’s outstanding positions. ICE Trust plans to regularly perform stress testing on its calculations of credit exposure and margin requirements to determine the sufficiency of the financial resources needed to withstand participant defaults under a range of plausible market scenarios. To ensure its liquidity, margin collateral would be required to be in the form of cash or G7 government debt.

In addition to margin requirements, ICE Trust would require each participant to contribute a minimum of \$20 million to the guaranty fund plus additional amounts based on the participant’s expected level of position exposures. Additional contributions would be assessed at least quarterly.

The establishment of ICE Trust as a CCP for CDS contracts is expected to minimize the impact on financial markets of a failure by a single participant by collateralizing counterparty risk exposures through the standardized application of margin and guaranty fund requirements, by reducing exposures through the netting of CDS transactions on a multilateral basis, and by standardizing and centrally managing the close out of a defaulting participant’s positions with the CCP.

After carefully considering all the facts of record, the Board has concluded that ICE Trust’s financial condition, capital adequacy, future earnings prospects, and other financial factors are consistent with approval of the proposal.

Managerial Considerations

In reviewing ICE Trust's managerial resources, the Board has considered carefully the experience of ICE Trust's proposed management, as well as its planned risk-management systems, operations, and anti-money laundering compliance program. In addition, because ICE Trust proposes to be a CCP, the Board has considered ICE Trust's plans for managing the counterparty credit risk, operational risk, legal risk, and other risks that CCPs commonly encounter.¹⁵

The most significant risk that a CCP for CDS transactions experiences is counterparty credit risk. The Board has carefully reviewed ICE Trust's risk-management framework and its ability to measure accurately its exposure to counterparty credit risk. ICE Trust proposes to measure its credit-risk exposures to clearing participants on a daily basis, using a value-at-risk methodology to calculate the appropriate level of margin, and to calculate the margin requirement and collect the required margin collateral from each participant daily. ICE Trust has conducted extensive validation of its models for each of the products it initially intends to clear. The Board also has reviewed independent assessments of ICE Trust's models. To manage concentration risk, ICE Trust will charge additional margin collateral for positions exceeding pre-set notional thresholds. To address liquidity risk, ICE Trust will ensure that it has ready access to sufficient sources of liquidity to meet its payment obligations on a same-day basis.

The Board also has reviewed ICE Trust's other mechanisms for controlling counterparty credit risk, including the adequacy of its policies and procedures for identifying any instance of default by a participant and for the orderly close out of a defaulting participant's positions. The Board has carefully reviewed ICE Trust's plan to limit investment risk by investing cash margin it receives in certain highly liquid instruments. To address settlement risks associated with participants' payments of

¹⁵ ICE Trust has committed that it will provide the Federal Reserve System with a 60-day prior notice of material changes to its rules to provide time for an adequate review by the Federal Reserve System and the opportunity to raise any supervisory or regulatory objections.

margin collateral, guaranty fund contributions, and other monies, ICE Trust will establish a program to monitor payment concentration among settlement banks, evaluate the impact of settlement-bank failure, and develop measures to mitigate associated risks.

The Board has also considered the legal framework within which ICE Trust would operate as a CCP, including the planned contractual arrangements and applicable governing statutes and regulations with respect to the novation process, netting arrangements, settlements, and procedures in the event of a participant default. The Board also has considered information regarding the legal implications of cross-border participation in ICE Trust. In addition, the Board has reviewed ICE Trust's proposed operational and information technology infrastructure, including its business continuity plans and the adequacy of its management controls.

Based on this review and all the facts of record, the Board has concluded that the general character of ICE Trust's management is consistent with approval of the proposal.

Other Considerations

In considering whether the corporate powers exercised by ICE Trust are consistent with the purposes of the Act, the Board notes that ICE Trust's proposed activities are permissible for a state member bank under the Act's applicable provisions.¹⁶ Under Regulation H, ICE Trust would be required to obtain the Board's approval before changing the general character of its business or the scope of the corporate powers it exercises.¹⁷ In addition, ICE Trust has provided the Board with several commitments intended to ensure that the Board will have adequate enforcement authority over ICE Trust as an uninsured state member bank.¹⁸ For these reasons and based on a review of

¹⁶ See 12 U.S.C. §§ 330 and 335.

¹⁷ 12 CFR 208.3(d)(2).

¹⁸ ICE Trust has stipulated that it would be subject to the supervisory, examination, and enforcement authority of the Board under the Federal Deposit Insurance Act as if ICE Trust were an insured depository institution for which the Board is the appropriate federal banking agency under that act.

the entire record, the Board has concluded that this consideration is consistent with approval of the proposal.

The Board also has considered the convenience and needs of the community to be served.¹⁹ As noted, the establishment of ICE Trust as a CCP for CDS contracts is expected to benefit financial markets significantly, by reducing systemic risks associated with counterparty credit exposures in CDS transactions, and thereby enhance the stability of the overall financial system. In addition, ICE Trust would promote greater market transparency by making publicly available the closing settlement price and related volume and open interest data for each cleared product, on terms that are fair, reasonable, and not unreasonably discriminatory. For these reasons and based on a review of the entire record, the Board has concluded that the convenience and needs considerations are consistent with approval of the proposal.

Conclusion

Based on the foregoing and all the facts of record, including all the commitments, stipulations, and representations made in connection with the application, and subject to all the terms and conditions set forth in this order, the Board has determined that ICE Trust's proposed membership in the Federal Reserve System should be, and hereby is, approved. The Board's approval is specifically conditioned on compliance with Regulation H,²⁰ with receipt of required authorizations from certain other agencies,²¹ and with all the commitments, stipulations, and representations made in connection with the application, including the commitments and conditions discussed in this order. The commitments, stipulations, representations, and conditions relied on in reaching this decision shall be deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

¹⁹ Because ICE Trust will not accept deposits or have federal deposit insurance, it will not be subject to the Community Reinvestment Act. 12 U.S.C. § 2901 et seq.

²⁰ 12 CFR Part 208.

²¹ Those agencies are the NYSBB and the Securities and Exchange Commission.

ICE Trust will become a member of the Federal Reserve System on its purchase of stock in the Federal Reserve Bank of New York (“Reserve Bank”). This transaction must occur not later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Reserve Bank acting pursuant to delegated authority.

By order of the Board of Governors,²² effective March 4, 2009.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

²² Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, Duke, and Tarullo.