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April 23, 2010

Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Attention: Elizabeth Murphy  
Secretary

## **Request for Extension: Exemption for Certain Provisions of the U.S. Securities Exchange Act of 1934 with Respect to ICE Clear Europe Limited and its Clearing Members**

Ladies and Gentlemen:

On behalf of our client, ICE Clear Europe Limited (“ICE Clear Europe”), we hereby respectfully request an extension of the temporary exemptive relief order issued on July 23, 2009<sup>1</sup> (“ICE Clear Europe Order”) in which the U.S. Securities and Exchange Commission (the “Commission” or “SEC”) granted certain temporary exemptive relief to ICE Clear Europe, clearing members in ICE Clear Europe (“Clearing Members”), certain entities affiliated with ICE Clear Europe Clearing Members<sup>2</sup> (“Affiliates”) and inter-dealer brokers in connection with credit default swaps (“CDS”) entered into by such ICE Clear Europe Clearing Members (or their Affiliates) with other ICE Clear Europe Clearing Members and submitted to ICE Clear Europe for clearance and settlement.

By its term, the ICE Clear Europe Order is scheduled to expire on April 23, 2010.

### **I. Introduction: Request for extension of existing order**

We believe that extension of the ICE Clear Europe Order is prudent under the circumstances. The ICE Clear Europe Order is an important Commission action that has allowed

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<sup>1</sup> See Release No. 34-60372, “Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with Request on Behalf of ICE Clear Europe Limited Related to Central Clearing of Credit Default Swaps, and Request for Comments,” issued July 23, 2009, 74 Fed. Reg. 37748 (July 29, 2009).

<sup>2</sup> 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.

the financial industry to advance the goal of centralized clearing of credit default swaps, in particular as regards credit default swaps based on European reference entities. Allowing the ICE Clear Europe Order to expire could jeopardize this progress. In this regard, many Congressional leaders, the U.S. Department of Treasury<sup>3</sup>, the Board of Governors of the Federal Reserve System, the President's Working Group on Financial Markets,<sup>4</sup> the Group of 20 leading industrial nations (G20),<sup>5</sup> the Financial Stability Board,<sup>6</sup> the Basel Committee,<sup>7</sup> the Financial Services Authority,<sup>8</sup> Her Majesty's Treasury<sup>9</sup> and the European Commission<sup>10</sup> have all emphasized the need for prompt implementation of a clearing solution for CDS. We believe that the ICE Clear Europe Order should be extended because:

- ICE Clear Europe has expended considerable effort and resources to commence business as a central counterparty ("CCP") for CDS and already clears significant volumes of Cleared CDS. Clearing Members have also taken similar steps. Expiry of the

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<sup>3</sup> 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>.

<sup>4</sup> See Policy Objectives for the OTC Derivatives Market, The President's Working Group on Financial Markets (Nov. 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 (Mar. 13, 2008), [http://www.treas.gov/press/releases/reports/pwgpolicystatemktturmoil\\_03122008.pdf](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 (Oct. 2008), <http://www.treas.gov/press/releases/reports/q4progress%20update.pdf>.

<sup>5</sup> Leader's Statement, The Pittsburgh Summit (Sept. 25, 2009) [http://www.g20.org/Documents/pittsburgh\\_summit\\_leaders\\_statement\\_250909.pdf](http://www.g20.org/Documents/pittsburgh_summit_leaders_statement_250909.pdf).

<sup>6</sup> Improving Financial Regulation, Report of the Financial Stability Board to G20 Leaders (Sept. 25, 2009), [http://www.financialstabilityboard.org/publications/r\\_090925b.pdf](http://www.financialstabilityboard.org/publications/r_090925b.pdf).

<sup>7</sup> Report and Recommendations of the Cross-border Bank Resolution Group, (Sept. 17, 2009), <http://www.bis.org/publ/bcbs162.pdf>.

<sup>8</sup> Reforming OTC Derivative Markets: A UK perspective, Financial Services Authority & HM Treasury, [http://www.fsa.gov.uk/pubs/other/reform\\_otc\\_derivatives.pdf](http://www.fsa.gov.uk/pubs/other/reform_otc_derivatives.pdf) (Dec. 2009). See also Joint UK Financial Services Authority and HM Treasury response to EU Consultation document: Possible initiatives to enhance the resilience of OTC derivatives markets (Sept. 25, 2009), [http://www.fsa.gov.uk/pubs/international/response\\_derivatives.pdf](http://www.fsa.gov.uk/pubs/international/response_derivatives.pdf).

<sup>9</sup> HM Treasury, Reforming Financial Markets (July 2009), [http://www.hm-treasury.gov.uk/d/reforming\\_financial\\_markets080709.pdf](http://www.hm-treasury.gov.uk/d/reforming_financial_markets080709.pdf).

<sup>10</sup> Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee, the Committee of the Regions and the European Central Bank: Ensuring efficient, safe and sound derivatives markets: Future policy actions (provisional version) (COM (2009) 563/4) (Oct. 21, 2009), [http://ec.europa.eu/internal\\_market/financial-markets/docs/derivatives/20091020\\_563\\_en.pdf](http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/20091020_563_en.pdf); and Commission Press Release: Major step towards financial stability: European market for credit default swaps becomes safer IP/09/1215 (July 31, 2009), <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1215>.

ICE Clear Europe Order in the absence of Exchange Act relief of the kind provided by that Order will jeopardize the ability of Clearing Members to continue using the clearing solution of ICE Clear Europe. Allowing the ICE Clear Europe Order to expire would create uncertainty as to the regulatory status of cleared trades and Clearing Members, which could create a significant barrier to the Commission's goal of encouraging the use of CCPs in the clearing of CDS. To date, the products eligible for clearing at ICE Clear Europe include CDS transactions involving certain of the iTraxx Europe, High Volume and Crossover indices and single-name CDS contracts that meet ICE Clear Europe's risk management and other criteria. Since the date of the ICE Clear Europe Order, ICE Clear Europe has cleared approximately €1.6 trillion in notional amount of iTraxx contracts. In addition, ICE Clear Europe has cleared approximately €96 billion in notional amount of single-name CDS contracts.<sup>11</sup>

- As an operational entity, ICE Clear Europe reduces the credit and operational risks associated with the CDS activities of its Clearing Members, and in particular the international operations of Clearing Members (including several Clearing Members that are U.S. persons). It would be premature to allow the order to expire at this stage in the development of ICE and ICE Clear Europe, particularly given the goal of the Commission and other regulators to expand the availability of CDS clearing.

- Not only do the terms of the ICE Clear Europe Order provide the Commission and other regulatory agencies with adequate authority to monitor ICE Clear Europe's activities, but ICE Clear Europe is also comprehensively supervised by the U.K. Financial Services Authority.

## **II. Additional facts and representations**

As a condition to the exemptive relief requested herein, ICE Clear Europe represents that: first, there have been no material changes to the operations of ICE Clear Europe, and second, the representations made by ICE Clear Europe in the ICE Clear Europe Order remain true in all material respects.

ICE Clear Europe continues to use the end-of-day process described in the ICE Clear Europe Order,<sup>12</sup> and represents that there have been no material changes to the end-of-day

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<sup>11</sup> For a daily summary of the CDS volume and open interest, see <https://www.theice.com/marketdata/reports/ReportCenter.shtml>.

<sup>12</sup> See the ICE Clear Europe Order at Section II.B.2. In 2009, ICE Clear Europe adopted procedures implementing required trades on 30 random days within each 12-month period.

In addition to the procedures implementing required trades on random days for CDS indices and the required trade process described herein with respect to single name CDS, ICE Clear Europe regularly monitors the quality of the respective firm's end-of-day price submissions. On a regular basis, ICE Clear Europe: (1) performs a statistical analysis with respect to the dispersion of price submissions; (2) reviews the number of "Advisory Trades" for each firm; and (3) reviews any instances where firms have either submitted late prices or failed to submit prices. When appropriate, ICE Clear Europe management contacts

settlement price calculation or to the procedure relating to required trading described in the ICE Clear Europe Order. The daily submission requirements and end-of-day settlement price calculation process for single-name CDS are similar to the existing process for index CDS. On February 16, 2010, ICE Clear Europe published a circular modifying the application of the required trading process to single-name CDS.<sup>13</sup> As described in the circular, ICE Clear Europe requires trading for the, five year, 100 basis point coupon for certain single-name CDS, on a random-day basis. On each random day, ICE Clear Europe requires trading for a percentage (currently approximately 10%) of randomly selected cleared single-name reference entities.<sup>14</sup> ICE Clear Europe will apply a filter that first selects for required trading the most liquid “cross points” on a curve generated for each such reference entity. ICE Clear Europe will also apply a notional ceiling with respect to the amount of required trades in CDS on the selected reference entities for any given day.<sup>15</sup>

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

### III. Conclusion

Based on the foregoing, we respectfully request that the Commission issue an extension of the exemptive relief order issued on July 23, 2009. Given that Congress and the Commission are actively working towards regulatory reform that includes the regulation of CDS CCPs, we respectfully request the extension of the ICE Clear Europe Order indefinitely, or until such time as law or regulation superseding the Order is passed by Congress or adopted by the Commission and becomes effective. To the extent this extension is granted separately from any request to expand the ICE Clear Europe Order, we respectfully request harmonization of the expiry dates, if any, of such prospective orders.

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firms to discuss the quality of their price submissions. In addition, on a regular basis, ICE Clear Europe management reviews the default spread widths (DSW) and the daily trade results (“Advisory” and “Firm”) with the Trading Advisory Committee (TAC) and the ICE Clear Europe CDS Risk Committee.

<sup>13</sup> See ICE Clear Europe Circular, “CDS Clearing: Introduction of Random Firm Trade Dates for Eligible Single Name CDS products,” (Feb. 16, 2010), available at [https://www.theice.com/publicdocs/clear\\_europe/circulars/C10017.pdf](https://www.theice.com/publicdocs/clear_europe/circulars/C10017.pdf), (the “February 16 Circular”). As noted in the February 16 Circular, ICE Clear Europe will introduce required trading for additional tenors and coupons in cleared single-name products over time.

<sup>14</sup> Single Name Reference Entities is a term defined at CDS Procedure 11.2.

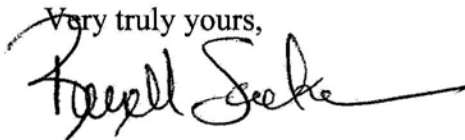
<sup>15</sup> The current notional ceiling is ten million (10,000,000) euros per single-name reference entity (a reference entity includes all of the coupons and tenors). The notional ceiling for the most liquid “cross point” on the tenor curve of a particular reference entity is five million (5,000,000) euros. The notional ceilings for the other “cross points” on the tenor curve is two million five hundred thousand (2,500,000) euros.

For these reasons, we believe that the ICE Clear Europe Order continues to be in the public interest and is consistent with the protection of investors, and that the requested extension is therefore appropriate.

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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 any of the undersigned at (212) 848-7585 or [rsacks@shearman.com](mailto:rsacks@shearman.com), or Abigail Arms of Shearman & Sterling at (202) 508-8025 or [aarms@shearman.com](mailto:aarms@shearman.com).

Very truly yours,



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