

# WINSTON & STRAWN LLP

BEIJING  
CHARLOTTE  
CHICAGO  
GENEVA  
HONG KONG  
LONDON  
LOS ANGELES

35 WEST WACKER DRIVE  
CHICAGO, ILLINOIS 60601-9703  
  
+1 (312) 558-5600  
  
FACSIMILE +1 (312) 558-5700  
  
www.winston.com

MOSCOW  
NEW YORK  
NEWARK  
PARIS  
SAN FRANCISCO  
SHANGHAI  
WASHINGTON, D.C.

November 12, 2010

Mr. David Stawick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

Re: ICE Trust U.S. LLC – Application for Registration as a Derivatives Clearing Organization Pursuant to Section 5b of the Commodity Exchange Act and Part 39 of the Regulations of the Commission

Dear Mr. Stawick:

ICE Trust U.S. LLC (“ICE Trust”) hereby submits the enclosed Application (the “Application”) for Registration as a Derivatives Clearing Organization (“DCO”) pursuant to Section 5b of the Commodity Exchange Act, as amended (the “Act”) and Part 39 of the Regulations promulgated under the Act (the “Commission Regulations”) by the Commodity Futures Trading Commission (the “Commission”).<sup>1</sup>

Among the primary purposes of the Dodd-Frank Act<sup>2</sup> are the mitigation of systemic risk and the enhancement of regulatory oversight of over-the-counter (“OTC”) derivatives by mandating the clearing of clearable OTC derivatives through DCOs registered with and regulated by the Commission. ICE Trust is currently authorized to clear, and does clear, OTC derivatives in its capacity as a multilateral clearing organization. Moreover, Section 725(b) of the Dodd-Frank Act provides for the deemed registration of ICE Trust as a DCO upon the effectiveness of the mandatory clearing provisions of the Dodd-Frank Act. By filing the Application, ICE Trust is seeking to voluntarily register with the Commission as a DCO at this time in order to promote the public interest in expediting the clearing of OTC derivatives through Commission-regulated DCOs, rather than relying on Section 725 to become a DCO at a later time.

---

<sup>1</sup> As described in the Application, ICE Trust is presently subject to direct regulation and supervision by the Federal Reserve and the New York State Banking Department. After registration as a DCO, ICE Trust will undergo a corporate reorganization to “de-bank,” and therefore no longer be subject to direct regulation by the Federal Reserve and the New York State Banking Department. As there is no process under New York law for ICE Trust to convert from a bank to a non-bank, this reorganization likely will involve ICE Trust merging into a new entity, which will then act as the DCO. The form of reorganization and transition process will be subject to the approval of the Superintendent of Banks, New York State Banking Department.

<sup>2</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No: 111-203.

ICE Trust respectfully requests that the Commission issue an order granting ICE Trust (or its affiliated successor, as discussed in footnote 1) registration as a DCO for clearing over-the-counter (“OTC”) derivatives, specifically single-name,<sup>3</sup> narrow- and broad-based index, and index tranche credit default swaps (“CDS”).

The Application demonstrates how ICE Trust is able to comply with the “core principles” for DCOs set forth in Section 5b(c)(2) of the Act and fulfill each of the various representations made in connection with the Application. In addition to demonstrating compliance with the existing DCO core principles, ICE Trust is voluntarily demonstrating compliance with the core principles, as amended by the Wall Street Transparency and Accountability Act of 2010 (the “Core Principles”).<sup>4</sup> ICE Trust represents that it will operate in accordance with the definition of “derivatives clearing organization” contained in Section 1a(15) (formerly Section 1a(9)) of the Act. ICE Trust is submitting a regulatory chart that describes the manner in which it complies with each of the Core Principles (Schedule I to the Application).

Pursuant to the requirements of Part 39 of the Commission Regulations, the Application also includes, as exhibits thereto, a copy of the ICE Trust Clearing Rules as will be in effect once ICE Trust commences operations as a DCO, ICE Trust policies and procedures, organizational documents, and copies of certain agreements entered into or to be entered into between or among ICE Trust, its participants, affiliates, parent, or service providers, which will enable ICE Trust to comply with the Core Principles.<sup>5</sup> ICE Trust has separately requested confidential treatment for each exhibit to the Application identified as a “Confidential Exhibit.”

Pursuant to Commission Regulation 39.3(a)(3), ICE Trust hereby requests that the Application be reviewed on an expedited basis and that ICE Trust be registered as a DCO not later than 90 days after the date of receipt of the Application.

Should you have any questions regarding the Application, please feel free to contact me at (312) 558-5905, Christopher Edmonds, President of ICE Trust, at (312) 836-6810, or Kevin McClear, General Counsel of ICE Trust, at (312) 836-6833.

Sincerely,



Michael Philipp

---

<sup>3</sup> Under the Dodd-Frank Act, “security-based swaps” (which includes single-name CDS) must be cleared through a clearing agency registered with, or exempted from registration by, the SEC. The SEC has temporarily exempted ICE Trust from registration as a clearing agency and ICE Trust will seek to maintain such exemption.

<sup>4</sup> The Commission has not yet released its final guidance or rules for compliance with the Core Principles as recently amended; however, ICE Trust has attempted to anticipate the application of the amended Core Principles to its operation as a DCO. Once the Commission releases such final guidance or rules, ICE Trust will undertake to adopt such amendments to its procedures and rules as are necessary for it to continue to comply with the Core Principles.

<sup>5</sup> To the extent any agreement, rule or policy submitted with the Application is not final and/or adopted, ICE Trust confirms that such agreements will be finalized and/or adopted prior to its operation as a DCO.

Mr. David Stawick  
November 12, 2010  
Page 3

Attachments

cc: Chairman Gary Gensler  
Commissioner Michael Dunn  
Commissioner Jill E. Sommers  
Commissioner Bart Chilton  
Commissioner Scott D. O'Malia  
Mr. Ananda K. Radhakrishnan, Director, Division of Clearing & Intermediary Oversight  
Mr. John Lawton, Deputy Director and Chief Counsel, Division of Clearing and  
Intermediary Oversight  
Mr. Robert Wasserman, Associate Director, Division of Clearing and Intermediary  
Oversight  
Mr. Christopher Edmonds, Chief Executive Officer, ICE Trust U.S. LLC  
Mr. Kevin McClear, General Counsel, ICE Trust U.S. LLC

**Application to the Commodity Futures Trading Commission  
for Registration as a  
Derivatives Clearing Organization  
Pursuant to  
Section 5b of the Commodity Exchange Act  
and  
Part 39 of the Regulations of the Commission**

**ICE Trust U.S. LLC**

**November 12, 2010**

	<u>Page</u>
I. Introduction.....	1
A. Current ICE Trust Structure.....	1
B. Current Regulation of ICE Trust.....	1
C. ICE Trust Restructuring.....	2
II. Core Principle Discussion and Analysis.....	3
A. Core Principle A: Compliance.....	3
B. Core Principle B: Financial Resources.....	3
C. Core Principle C: Participant and Product Eligibility.....	6
D. Core Principle D: Risk Management.....	11
E. Core Principle E: Settlement Procedures.....	23
F. Core Principle F: Treatment of Funds.....	27
G. Core Principle G: Default Rules and Procedures.....	28
H. Core Principle H: Rule Enforcement.....	35
I. Core Principle I: System Safeguards.....	36
J. Core Principle J: Reporting.....	38
K. Core Principle K: Recordkeeping.....	39
L. Core Principle L: Public Information.....	39
M. Core Principle M: Information Sharing.....	40
N. Core Principle N: Antitrust Considerations.....	41
O. Core Principle O: Governance Fitness Standards.....	41
P. Core Principle P: Conflicts of Interest.....	42
Q. Core Principle Q: Composition of Governing Boards.....	43
R. Core Principle R: Legal Risk.....	44
III. Conclusion.....	44
Schedule I. Core Principle Compliance Chart.....	I-1

## Exhibits

- Exhibit A – ICE Trust Clearing Rules
- Confidential Exhibit B – Operating Agreement of ICE Trust U.S. LLC
- Confidential Exhibit C – Limited Partnership Agreement of ICE US Holding Company L.P.
- Confidential Exhibit D – IntercontinentalExchange Inc. Corporate Organizational Chart
- Confidential Exhibit E – ICE Trust Proposed Transition Plan
- Confidential Exhibit F – ICE Trust Senior Management and Professional Biographies
- Confidential Exhibit G – Master Services Agreement
- Confidential Exhibit H – ICE Trust Departmental Organizational Chart
- Exhibit I – ICE Inc. Senior Revolving Credit Facility
- Confidential Exhibit J – ICE Trust Treasury Operations Policies & Procedures
- Confidential Exhibit K – ICE Trust Financial Statements
- Confidential Exhibit L – ICE Trust CDS Counterparty Monitoring Procedures
- Confidential Exhibit M – ICE Trust Risk Management Framework
- Confidential Exhibit N – ICE Trust Clearing Participant Application Documents
- Confidential Exhibit O – ISDA Schedule to the Master Agreement

Confidential Exhibit P – Reports of Independent Consultant Regarding the ICE Trust Risk Management Framework

Confidential Exhibit Q – ICE Trust Stress Testing Results, Backtesting Results and Risk Reports

Confidential Exhibit R – ICE Trust Committee Structure Organizational Chart

Confidential Exhibit S – ICE Trust Audit Committee Charter

Confidential Exhibit T – ICE Trust Code of Business Conduct and Ethics for Managers

Confidential Exhibit U – ICE Trust Compliance Committee Charter

Confidential Exhibit V – ICE Trust Sample Report of Margin Calculation

Confidential Exhibit W – ICE Trust Description of Mark-to-Market Process

Confidential Exhibit X – ICE Trust Sample Report of Guaranty Fund Calculation

Confidential Exhibit Y – ICE Trust Business Continuity Plan

Confidential Exhibit Z – ICE Trust Board of Managers and Professional Biographies

Confidential Exhibit AA – ICE Trust Code of Business Conduct and Ethics for Committee Members

Confidential Exhibit BB – ICE Inc. Code of Business Conduct and Ethics

## **I. Introduction**

ICE Trust U.S. LLC (“ICE Trust”) hereby submits this Application to the Commodity Futures Trading Commission (the “Commission”) for Registration as a Derivatives Clearing Organization (“DCO”) pursuant to Section 5b of the Commodity Exchange Act, as amended (the “Act”) and Part 39 of the Regulations of the Commission (the “Commission Regulations”). ICE Trust respectfully requests that the Commission issue an order granting ICE Trust (or its affiliated successor, as discussed in Section I.C. below) registration as a DCO for clearing over-the-counter (“OTC”) derivatives, specifically single-name,<sup>1</sup> narrow- and broad-based index, and index tranche credit default swaps (“CDS”).

### **A. Current ICE Trust Structure**

ICE Trust U.S. LLC is currently a New York limited liability trust company, a member of the Federal Reserve System, and subject to direct regulation and supervision by the Federal Reserve and New York State Banking Department.<sup>2</sup> Subject to the rights of the Risk Committee described in Section II.D. below, the management of ICE Trust is vested exclusively in the Board of Managers of ICE Trust (the “Board of Managers”), described in Section II.O. below. ICE Trust is a wholly owned subsidiary of ICE US Holding Company L.P. (“ICE Trust Holdings”).<sup>3</sup> The general partner of ICE Trust Holdings is ICE US Holding Company GP LLC, which is wholly owned and controlled by IntercontinentalExchange Inc. (“ICE Inc.”), a Delaware corporation that is listed on the New York Stock Exchange. The general partner of ICE Trust Holdings is responsible for the management, control, operation, and determination of the policies of ICE Trust Holdings, subject to certain limited exceptions. The limited partners of ICE Trust Holdings, which includes ICE Inc., are entitled to an interest in the profits of ICE Trust Holdings and do not have voting rights in ICE Trust Holdings, except for certain matters that would materially and adversely affect or change the rights, preferences or privileges of the Limited Partners. The Limited Partners of ICE Trust Holdings do not have any voting rights with respect to the governance or operations of ICE Trust.

ICE Inc. also is the ultimate parent of The Clearing Corporation (“TCC”), ICE Clear U.S., Inc., and ICE Clear Europe Limited, all of which are registered DCOs; ICE Futures U.S., Inc., which is a designated contract market; and other markets and clearinghouses registered in foreign jurisdictions.<sup>4</sup>

### **B. Current Regulation of ICE Trust**

As a New York limited liability trust company and a member of the Federal Reserve System, ICE Trust is subject to direct regulation and supervision by the Federal Reserve and the New York State Banking Department. ICE Trust currently operates as a multilateral clearing organization (“MCO”) for OTC derivative instruments pursuant to Sections 408 and 409 of Subtitle A of Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991.

---

<sup>1</sup> Under the Dodd-Frank Act, “security-based swaps” (which includes single-name CDS) must be cleared through a clearing agency registered with, or exempted from registration by, the SEC. The SEC has temporarily exempted ICE Trust from registration as a clearing agency and ICE Trust will seek to maintain such exemption.

<sup>2</sup> The operating agreement of ICE Trust is attached as Confidential Exhibit B.

<sup>3</sup> The limited partnership agreement of ICE Trust Holdings is attached as Confidential Exhibit C.

<sup>4</sup> A corporate organizational chart of the ICE Inc. entities is attached as Confidential Exhibit D.

ICE Trust also operates under a temporary, conditional exemption from the Securities and Exchange Commission (“SEC”), which exempts ICE Trust from the requirement to register as a clearing agency under Section 17A of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), solely to perform the functions of a clearing agency for single-name CDS transactions.<sup>5</sup> The Treasury Department (“Treasury”) has issued multiple orders providing temporary conditional exemptions to permit ICE Trust to clear and settle transactions in CDS that reference government securities. Specifically, on March 6, 2009, Treasury granted a temporary exemption from certain Government Securities Act of 1986 (“GSA”) provisions and regulations to ICE Trust, certain Clearing Participants (“Participants”), and certain eligible contract participants (“ECPs”), and granted a limited temporary exemption from certain GSA regulatory requirements to government securities brokers and government securities dealers that are not financial institutions.<sup>6</sup>

### **C. ICE Trust Restructuring/Transition**

As described above, ICE Trust is presently subject to direct regulation and supervision by the Federal Reserve and the New York State Banking Department. After registration as a DCO, ICE Trust will undergo a corporate reorganization to “de-bank” and therefore will no longer be subject to such bank regulation. As there is no process under New York law for ICE Trust to convert from a bank to a non-bank, this reorganization likely will involve ICE Trust merging into a newly formed Delaware limited liability company, which will then act as the DCO. The form of reorganization and transition process will be subject to the approval of the Superintendent of Banks, New York State Banking Department. ICE Trust does not anticipate any material changes to its ownership or governance of the surviving entity due to the restructuring.<sup>7</sup>

ICE Trust is applying to extend the exemptive relief granted by the SEC and Treasury described above.

### **D. ICE Trust CDS Clearing History**

ICE Trust began clearing North American CDS index contracts on March 9, 2009, and began clearing single-name CDS transactions (collectively, “CDS transactions”) in December 2009. The clearing of customer transactions through ICE Trust began in December 2009.

ICE Trust CDS transactions are currently conducted on a bilateral basis between customers and Participants (directly or through a trade execution and matching venue, such as ICE Link, MarkitWire, or TradeWeb), rather than on a centralized exchange. Upon the commencement of mandatory trading of CDS transactions on swap execution facilities (“SEFs”) and security-based swap execution facilities (“SSEFs”), ICE Trust will accept for clearing CDS

---

<sup>5</sup> Additionally, the SEC has exempted ICE Trust Participants from certain Exchange Act requirements with respect to single-name CDS cleared by ICE Trust, and has exempted ICE Trust and certain participants of ICE Trust from the registration requirements of Sections 5 and 6 of the Exchange Act solely in connection with the calculation of mark-to-market prices for single-name CDS cleared by ICE Trust. *See* Securities Exchange Act Release No. 59527 (Mar. 6, 2009), Securities Exchange Act Release No. 61119 (Dec. 4, 2009), and Securities Exchange Act Release No. 34-61662 (Mar. 5, 2010).

<sup>6</sup> *See* 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 Trust U.S. LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments, 74 FR 10647 (March 11, 2009).

<sup>7</sup> A summary of ICE Trust’s proposed transition plan is attached as Confidential Exhibit E.

transactions executed on qualified SEFs for CDS index contracts and SSEFs for single-name CDS transactions.<sup>8</sup> ICE Trust presently has 14 Participants that, as of November 5, 2010, have cleared CDS transactions (index and single-name) with a total notional value of \$8.1 trillion through ICE Trust. Also, as of November 5, 2010, ICE Trust held \$299 billion in notional value of open interest in index CDS and \$243 billion in notional value of open interest in single-name CDS.

## **II. Core Principle Discussion and Analysis**

### **A. Core Principle A: Compliance**

#### **1. Core Principle Requirements**

(i) *IN GENERAL. To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with each core principle described in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).*

(ii) *DISCRETION OF DERIVATIVES CLEARING ORGANIZATION. Subject to any rule or regulation prescribed by the Commission, a derivatives clearing organization shall have reasonable discretion in establishing the manner by which the derivatives clearing organization complies with each core principle described in this paragraph.*

#### **2. Factual Basis and Analysis for Satisfaction of Core Principle**

ICE Trust will operate in compliance with each Core Principle and the related Commission Regulations. The Commission has not yet released its final guidance or rules for compliance with the Core Principles as recently amended; however, ICE Trust has attempted to anticipate the application of the amended Core Principles to its operation as a DCO. Once the Commission releases final guidance or rules, ICE Trust will undertake to adopt such amendments to its procedures and rules as are necessary for it to continue to comply with the Core Principles. This Application and the exhibits hereto describe the manner in which ICE Trust will comply with each Core Principle and the related Commission Regulations.

### **B. Core Principle B: Financial Resources**

#### **1. Core Principle Requirements**

(i) *IN GENERAL. Each derivatives clearing organization shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the derivatives clearing organization.*

---

<sup>8</sup> ICE Trust Clearing Rule 314 ensures open access to the clearing system operated by ICE Trust pursuant to the Clearing Rules for all execution venues and trade processing platforms. ICE Trust may impose (a) reasonable criteria to determine whether an execution venue has the capability to deliver the necessary quality of service to be granted access to ICE Trust and (b) reasonable criteria to determine whether a trade processing platform has the capability to deliver the necessary quality of service to be granted access to ICE Trust and connected through the ICE Trust application programming interface; provided that in each case such criteria do not unreasonably inhibit such open access.

(ii) *MINIMUM AMOUNT OF FINANCIAL RESOURCES.* Each derivatives clearing organization shall possess financial resources that, at a minimum, exceed the total amount that would (I) enable the organization to meet its financial obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and (II) enable the derivatives clearing organization to cover the operating costs of the derivatives clearing organization for a period of 1 year (as calculated on a rolling basis).

2. Factual Basis and Analysis for Satisfaction of Core Principle

a. Operational and Managerial Resources

ICE Trust maintains operational and managerial resources necessary to fulfill its responsibilities as a DCO. ICE Trust has operated as a MCO since March 2009 and periodically evaluates its operational and managerial resources in light of its clearing activity.

The senior management team of ICE Trust consists of personnel who have significant prior experience in their respective areas of responsibility.<sup>9</sup>

ICE Trust has entered into a Master Services Agreement with its 100% commonly owned affiliate, TCC, a DCO registered with the Commission, and its ultimate parent, ICE Inc. (the “Master Services Agreement”).<sup>10</sup> As set forth on Schedule 1, Part 1 to the Master Services Agreement, TCC provides ICE Trust services related to clearing and risk management systems. These services include, but are not limited to, implementation of the ICE Trust Clearing Rules (the “Clearing Rules”),<sup>11</sup> administration of the Participant application process, receipt and validation of transaction data, reconciliation of transaction data with the Trade Information Warehouse (“TIW”), communication of transaction data to and from Markit Group Limited (“Markit”), validation of proposed settlement prices, administration of daily settlements with Participants and settlement banks, administration of the daily clearing and netting processing, daily reconciliation with and support of Participants, provision of risk management services, receipt and processing of notices of physical settlements, support for anti-money laundering and bank secrecy act policies and procedures, support for ICE Trust’s financial and regulatory reporting responsibilities, and provision of all technology infrastructure, application development and support, and product development to carry out these services. At its inception, ICE Trust relied almost exclusively on TCC for the performance of these services. As ICE Trust has grown, however, more of these functions are being performed directly by ICE Trust personnel. As set forth on Schedule 1, Part 2 to the Master Services Agreement, ICE Inc. provides ICE Trust with human resources, property management, office, financial and regulatory reporting and internal audit services.

TCC and ICE Inc. are required to perform their obligations under the Master Services Agreement using the reasonable skill and care expected of a provider of services of a similar nature, size, and scope as the services provided to ICE Trust in accordance with the industry

---

<sup>9</sup> A list of senior management and their professional biographies is attached as Confidential Exhibit F.

<sup>10</sup> A copy of the Master Services Agreement and amendments thereto is attached as Confidential Exhibit G.

<sup>11</sup> The Clearing Rules, as will be in effect once ICE Trust commences operations as a DCO, are attached as Exhibit A. Certain capitalized terms used but not defined herein shall have the meaning set forth in the Clearing Rules.

practices and standards that reasonably could be expected of a professional provider of the services, and in accordance with any standards set out in any ICE Inc. or TCC policy from time to time. TCC and ICE Inc. are required to allocate sufficient resources to the provision of services to allow ICE Trust to operate its business efficiently.<sup>12</sup>

Approximately 70 individuals support the Legal, Compliance, Client Services and Support, Risk, Technology, Treasury, Internal Audit, and Product Development departments of ICE Trust that will enable ICE Trust to fulfill its responsibilities as a DCO.<sup>13</sup> ICE Trust presently has approximately 30 employees. Under the Master Services Agreement, approximately 40 employees of TCC and three employees of ICE Inc. provide core services to ICE Trust.

b. Financial Resources

ICE Trust maintains adequate financial resources to discharge its financial obligations as a DCO. The financial resources of ICE Trust to cover its financial obligations to Participants in the event of a Participant's Default are Margin deposits, contributions to the Guaranty Fund, and assessment power, each of which is described in detail in Section II.D. below. The Guaranty Fund required deposit as of November 5, 2010, was \$2.75 billion (\$2.84 billion was on deposit), which is approximately 56% of the amount of Initial Margin of \$5.1 billion. As described in Section II.F. below, Participant's Margin and Guaranty Fund deposits are immediately available and highly liquid. At least 45% of Participant's Margin and Guaranty Fund deposits must be in cash. After the application of a Defaulting Participant's Margin and Guaranty Fund deposit, and the respective Guaranty Fund contributions of non-Defaulting Participants, ICE Trust may make a one-time assessment against all non-Defaulting Participants of up to the Guaranty Fund obligation, to be paid within one business day, whereby the remaining losses are shared among those Participants. To meet immediate liquidity needs in the event of a Participant's Default, ICE may borrow (through ICE Inc.), up to an aggregate principal amount of \$100,000,000 against ICE Inc.'s senior unsecured revolving credit facility.<sup>14</sup>

As described in Section II.D. below, the size of the Guaranty Fund, not including assessment powers, is currently set at the maximum stress loss, under extreme but plausible market conditions, of: (i) uncollateralized losses of the largest Defaulting Participant with a long protection profile and (ii) the uncollateralized losses of the two largest Defaulting Participants that exhibit short protection profiles.<sup>15</sup>

---

<sup>12</sup> See Article 6 of the Master Services Agreement.

<sup>13</sup> A departmental organizational chart of ICE Trust is attached as Confidential Exhibit H.

<sup>14</sup> The ICE Inc. senior unsecured \$300,000,000 revolving credit facility is attached as Exhibit I. Up to \$100,000,000 of the loan proceeds may be used to provide liquidity for the clearing operations of ICE Trust. Borrowing requests against the senior revolving credit facility must be made prior to 10:00 a.m. Eastern Time and generally will be funded within one hour of the administrative agent receiving the borrowing request. The process for borrowing against the senior revolving credit facility is described in the ICE Trust Treasury Operations Policies & Procedures, which are attached as Confidential Exhibit J.

<sup>15</sup> Prior to its operation as a DCO, ICE Trust will change the calculation of the size of Guaranty Fund to set it at the maximum stress loss of the uncollateralized losses of the two largest defaulting Participants with a long protection profile and the uncollateralized losses of the two largest defaulting Participants with a short protection profile. The funded amount of the Guaranty Fund covers the stress test of the two largest Participants.

As set forth in its financial statements, ICE Trust presently has financial resources, in the form of cash, which will enable it to cover its projected operating costs for a period of at least one year.<sup>16</sup> ICE Trust presently has designated a portion of these financial resources as restricted cash (i.e., set aside for this purpose) on its balance sheet. ICE Trust represents that as a DCO it will at all times maintain financial resources that will enable it to cover its projected operating costs for a period of at least one year (as calculated on a rolling basis).

## **C. Core Principle C: Participant and Product Eligibility**

### **1. Core Principle Requirements**

(i) *IN GENERAL.* Each derivatives clearing organization shall establish (i) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the derivatives clearing organization) for members of, and participants in, the derivatives clearing organization; and (ii) appropriate standards for determining the eligibility of agreements, contracts, and transactions submitted to the derivatives clearing organization for clearing.

(ii) *REQUIRED PROCEDURES.* Each derivatives clearing organization shall establish and implement procedures to verify, on an ongoing basis, the compliance of each participation and membership requirement of the derivatives clearing organization.

(iii) *REQUIREMENTS.* The participation and membership requirements of each derivatives clearing organization shall (i) be objective; (ii) be publicly disclosed; and (iii) permit fair and open access.

### **2. Factual Basis and Analysis for Satisfaction of Core Principle**

#### **a. Participant Requirements**

The first level of ICE Trust's overall risk management approach is to ensure that Participants have the financial, operational and management resources, controls and sophistication to participate in the clearing of CDS products. The requirements to become a Participant are set forth in Clearing Rule 201 and are publicly available on ICE Trust's website. ICE Trust established the Participant eligibility in accordance with regulatory guidance from the Bank for International Settlements ("BIS") and IOSCO<sup>17</sup> and consistent with the requirements of other significant central counterparties for OTC derivatives. The Participant qualification criteria permit fair and open access while ensuring the safety and soundness of ICE Trust and reducing risk for Participants by ensuring that all participants have sufficient financial resources and robust operational capacity to meet the obligations arising from participation in ICE Trust.

---

<sup>16</sup> Financial statements and project operating expenses of ICE Trust are attached as Confidential Exhibit K.

<sup>17</sup> The BIS Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions (IOSCO) published "Recommendations for Central Counterparties." Recommendation 2 states, "A CCP should require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the CCP. A CCP should have procedures in place to monitor that participation requirements are met on an ongoing basis. A CCP's participation requirements should be objective, publicly disclosed, and permit fair and open access."

Currently, all Participants of ICE Trust are banks or bank affiliates. Once ICE Trust becomes a DCO, Participants will not be required to be banks or bank affiliates, and are expected to come from a broader range of entities. All Participants will be required to be licensed and regulated for capital adequacy by a “competent authority” such as the Commission, SEC, Federal Reserve, Office of the Comptroller of Currency, U.K. Financial Services Authority, or other regulatory authority as determined by ICE Trust. Additionally, any Participant that clears CDS transactions for customers will be registered with the Commission as a futures commission merchant (“FCM”). Any Participant that clears single-name CDS transactions also will be required to maintain in good standing such registrations with the SEC (or exemptions from registration) as may be required from time to time to conduct its business.

Participants that are FCMs, and Participants that are non-FCMs that elect to provide a Form 1-FR or FOCUS Report to ICE Trust, must maintain a minimum of \$1 billion in Adjusted Net Capital as reported (or as would be reported) to the Commission on a Form 1-FR or FOCUS Report. Other non-FCM Participants must maintain a minimum of \$5 billion Tier 1 capital.<sup>18</sup> All Participants must be “eligible contract participants” as defined in the Act.

In establishing its Participant minimum capital criteria, ICE Trust considered (1) the need for its Participants to have the financial resources to address the unique risk characteristics of CDS transactions, (2) the limited clearing history of such products, and (3) the criteria established by other registered DCOs (LCH.Clearnet and Chicago Mercantile Exchange) that clear products with similar qualitative and quantitative risk profiles as the products cleared by ICE Trust. ICE Trust determined that a prudent, but not excessive, capital requirement was appropriate. ICE Trust will re-evaluate the sufficiency of its Participant minimum capital requirement on a periodic basis as the CDS market evolves under the new mandatory clearing and trading regulatory environment and as ICE Trust gains additional experience in the clearing of swaps.

ICE Trust, at its discretion, may deem the minimum capital requirements set out above to be met by the provision to ICE Trust of an unconditional guarantee (in a form, substance, and amount acceptable to ICE Trust) of the obligations of the Participant to ICE Trust from a direct or indirect parent company of the Participant (not including a subsidiary of the Participant), provided, among other things, that: (i) the guarantor itself meets the Adjusted Net Capital or Tier 1 criteria above; (ii) the guarantor is regulated by the Commission, SEC, a U.S. bank regulatory authority, or a comparable sovereign regulatory authority; (iii) ICE Trust is satisfied that the guarantee is enforceable against the guarantor; and (iv) ICE Trust is satisfied that the guarantor will be able to meet its financial obligations under the guarantee based upon such audited financial information or other financial information as is reasonably requested by ICE Trust.

Participants that are FCMs, and non-FCM Participants that elect to report Adjusted Net Capital on a Form 1-FR or FOCUS report, must maintain Excess Capital (as reported on Form 1-FR or FOCUS report) greater than their Guaranty Fund assessment obligation. Any material change in a Participant’s Adjusted Net Capital or Excess Capital level that is required to be reported to the Commission under Commission Regulation 1.12 also must be concurrently reported to ICE Trust.

---

<sup>18</sup> Tangible net worth is equal to the Federal Reserve’s definition of “Tier 1 capital” as contained in Regulation Y Part 225 Appendix A.

ICE Trust relies on an *internal* ratings system to evaluate and monitor Participants.<sup>19</sup> This internal rating provides guidance in determining the expected financial stability and credit/counterparty risk of each Participant. There are seven components to the internal rating, representing a combination of financial reporting data, more dynamic market data, and an overall qualitative assessment of the Participant's financial condition and market standing. Each component receives a separate score. The scores range from 1 to 5+, with 1 being the best score possible and 5+ the worst. The internal rating is the weighted average of the individual scores. Each Participant must maintain an ICE Trust internal rating that does not exceed 3.0 (generally equivalent to an A rating by Moody's or Standard & Poor's).

Additionally, ICE Trust evaluates each applicant's operational capabilities. To become a Participant, an applicant must demonstrate: (i) operational competence in CDS, including the ability to process the expected volumes and values of contracts within the required time frames; (ii) systems and management expertise in CDS, including maintaining back-office facilities (or entering into a facilities management agreement in a form and substance acceptable to ICE Trust); (iii) an ability to submit pricing data within the required time frames; (iv) risk management expertise in CDS; and (v) that it is a DTCC Deriv/Serv Participant.

Risk management expertise is evaluated, in part, with a survey addressing risk management sophistication in the CDS product area.<sup>20</sup> An applicant may demonstrate these operational capabilities by entering into an outsourcing arrangement with an affiliate that is a qualified service provider, provided, however, that the Participant remains responsible to ICE Trust for the performance of the functions outsourced to its service provider.

To become a Participant, an applicant must complete the Clearing Participant Application; enter into the Clearing Participant Agreement; enter into the ISDA Master Agreement and ISDA Schedule to the Master Agreement with ICE Trust; and provide the supplemental information requested in the Clearing Participant Application, which includes: financial statements, an organization chart; organizational documents, and risk management policies and procedures.<sup>21</sup> In connection with the reorganization and transition process described above, ICE Trust may amend its documentation such that the terms of the ISDA documentation are incorporated into the Clearing Participant Agreement or the Clearing Rules. ICE Trust's substantive legal relationship with its Participants would not change as a result of these amendments. In accordance with Commission Regulations, ICE Trust will provide notice to the Commission of any such changes to its Clearing Participant Agreement or the Clearing Rules.

The Participant Review Committee reviews Participant Applications to determine if the applicant meets the Participant criteria set forth in the Clearing Rules (as described above) and

---

<sup>19</sup> The calculation of internal ratings is described in the ICE Trust CDS Counterparty Monitoring Procedures, attached as Confidential Exhibit L. ICE Trust also assigns an internal rating to its Settlement Banks.

<sup>20</sup> A copy of the Risk Management Questionnaire is attached as Appendix 3 to the ICE Trust Risk Management Framework. The ICE Trust Risk Management Framework is attached as Confidential Exhibit M.

<sup>21</sup> The ICE Trust Clearing Participant Application Documents, which includes the Clearing Participant Agreement, is attached as Confidential Exhibit N. The ISDA Schedule to the Master Agreement is attached as Confidential Exhibit O.

makes a recommendation to the Board of Managers. The Board of Managers determines whether to admit an applicant as a Participant.<sup>22</sup>

The Participant Review Committee is a multi-disciplinary committee composed of representatives of ICE Trust Management, utilizing outsourced functions performed by TCC, formed for the explicit purpose of: (i) completing the approval of applicants for Participant status, (ii) ensuring that Participants maintain good standing, and (iii) adjudicating the suspension process. The Participant Review Committee meets on at least a monthly basis to execute these responsibilities. A detailed description of the responsibilities and processes of the Participant Review Committee are described in the Applicant Review & Monitoring Procedures, attached as Appendix 2 to the ICE Trust Risk Management Framework (the “Risk Management Framework”).<sup>23</sup>

When the Participant Review Committee makes its recommendation to the Board of Managers, and when the Board of Managers issues its Participant approval determination, the Participant Review Committee and the Board of Managers assigns one of the following categories of approval: (i) Full Approval, which indicates that the applicant meets all requirements to the satisfaction of ICE Trust; (ii) Conditional Approval, which indicates that the applicant satisfies most, but not all, requirements and the applicant’s approval is granted subject to the completion or satisfaction of certain requirements, which must be satisfied within two months; or (iii) Rejection, which indicates that the applicant does not satisfy the majority of requirements and ICE Trust does not believe that these requirements could be satisfied within two months.

In the event that an applicant believes that it has satisfied the requirements and is entitled to a different approval level, an applicant may: (i) any time after six months following its Rejection by the Board of Managers, resubmit its application by updating and resubmitting in its entirety its application form, including updated supporting application materials which have materially changed and documentation evidencing improvements made since the date of the last application to correct any deficiencies; or (ii) within ten (10) business days of the Board of Managers’ determination of a Conditional Approval level, request a direct interview with the Board of Managers, which interview will be held within ten (10) business days of such request at a mutually agreeable date and time. The Board of Managers will consider all information, notify the applicant if the applicant’s approval level has changed, and provide such additional information correspondent with this approval level.

b. Standards for Determining the Eligibility of Contracts

As described in the Risk Management Framework, ICE Trust clears CDS products that: (i) clear in a standardized coupon; (ii) are denominated in a supported currency; (iii) are in a supported restructuring clause; (iv) have DTCC TIW bilateral open interest of material value relative to that product class; and (v) have open interest held by a sufficient number of Participants (as determined by the Chief Risk Officer) to provide breadth of price discovery through the end-of-day settlement pricing process.

---

<sup>22</sup> The Board of Managers is described in Section II.O.

<sup>23</sup> The Risk Management Framework is attached as Confidential Exhibit M.

Prior to accepting a new product type for clearing, ICE Trust must consult with the ICE Trust Risk Committee (the “Risk Committee”) and also may consult with the ICE Trust Advisory Committee (the “Advisory Committee”) to evaluate the acceptability of the new product. The ultimate decision to add a new product lies with the Board of Managers, which is comprised of a majority of independent Board members. ICE Trust also must gain approval from its regulators prior to clearing a new product.

c. ICE Trust Procedures for Participant Compliance

The ICE Trust CDS Clearing Counterparty Monitoring Procedures set forth the procedures that ICE Trust follows to verify, on an ongoing basis, the compliance of each Participant with the Participant criteria.

The Risk Management Department and Participant Review Committee periodically reviews a Participant’s internal rating, financial statements, regulatory reports, and marketing reporting. Reports and reviews are based on monthly and quarterly releases and regulatory reporting schedules. The Participant Review Committee also monitors Participants’ compliance with the standards and requirements of membership. Monitoring is based on materials submitted by Participants to ICE Trust on a periodic basis and on publicly available information. On a regular basis (no less than annually), the Participant Review Committee reviews all Participants to monitor continued compliance with the Participant requirements. This monitoring compliments the daily and intra-day monitoring performed by the ICE Trust Risk Management Department, described in Section II.D., below.

In accordance with the Clearing Rules, ICE Trust can restrict, suspend, or terminate a Participant’s status based on non-compliance with the Participant criteria. The Participant Review Committee is responsible for conducting the restriction, termination, and suspension process. Further, a Participant can be declared in Default and terminated as a Participant if the Board of Managers determines that the Participant is likely to fail to meet its obligations as a Participant. In the event that a Participant is terminated, Clearing Rule 207 sets forth an orderly process to liquidate and/or hedge the Participant’s positions.

d. Pre-Default Portability of Positions

Each Participant (other than a Defaulting Participant) that carries customer positions is required, upon request of the customer for whom such positions are carried or with which the Participant has a contract, to transfer or novate, as the case may be, such Participant’s rights and obligations with respect thereto to one or more other Participants designated by the customer, subject to the Clearing Rules. Such transfer or novation does not require the consent of the transferor Participant, but is subject to the customer locating a transferee Participant, the customer satisfying any margin requirements imposed by the transferor Participant on any remaining positions that are not transferred from the transferor Participant, and the completion of transfer documentation.

## **D. Core Principle D: Risk Management**

### **1. Core Principle Requirements**

(i) *IN GENERAL. Each derivatives clearing organization shall ensure that the derivatives clearing organization possesses the ability to manage the risks associated with discharging the responsibilities of the derivatives clearing organization through the use of appropriate tools and procedures.*

(ii) *MEASUREMENT OF CREDIT EXPOSURE. Each derivatives clearing organization shall (I) not less than once during each business day of the derivatives clearing organization, measure the credit exposures of the derivatives clearing organization to each member and participant of the derivatives clearing organization; and (II) monitor each exposure described in subclause (I) periodically during the business day of the derivatives clearing organization.*

(iii) *LIMITATION OF EXPOSURE TO POTENTIAL LOSSES FROM DEFAULTS. Each derivatives clearing organization, through margin requirements and other risk control mechanisms, shall limit the exposure of the derivatives clearing organization to potential losses from defaults by members and participants of the derivatives clearing organization to ensure that (I) the operations of the derivatives clearing organization would not be disrupted; and (II) nondefaulting members or participants would not be exposed to losses that nondefaulting members or participants cannot anticipate or control.*

(iv) *MARGIN REQUIREMENTS. The margin required from each member and participant of a derivatives clearing organization shall be sufficient to cover potential exposures in normal market conditions.*

(v) *REQUIREMENTS REGARDING MODELS AND PARAMETERS. Each model and parameter used in setting margin requirements under clause (iv) shall be: (I) risk-based; and (II) reviewed on a regular basis.*

### **2. Factual Basis and Analysis for Satisfaction of Core Principle**

The Risk Management Framework describes the risk management policies and procedures of ICE Trust, which ensure that ICE Trust possesses the ability to manage the risks associated with discharging its responsibilities as a DCO.<sup>24</sup>

#### **a. Risk Management Approach**

ICE Trust's risk management approach is comprehensive, recognizing five types of risk: Systemic Risk, Collateral Risk, Market and Interest Rate Risk, Operational Risk, and Settlement Risk.

*Systemic Risk.* Systemic risk addresses the risks facing the broader financial market or system, and not just specific Participants. ICE Trust's systemic risk management goal is to

---

<sup>24</sup> Prior to its launch as a MCO, ICE Trust engaged an independent consultant to review the risk management framework of ICE Trust. The reports of independent consultant regarding the ICE Trust risk management framework are attached as Confidential Exhibit P.

ensure that no additional counterparty risk is introduced and that each Participant is insulated from the Default of another Participant.

ICE Trust's approach to managing systemic risk is based on a six-tiered waterfall. The strength of the approach is that each tier builds on the other tiers, and all tiers apply to all Participants without exception. The tiers are (in order):

1. Membership Criteria: Ensure Participants have sufficient credit strength, financial resources, and operational capabilities. Membership criteria are discussed in Section II.C. above.
2. Initial Margin Requirement: Collateralize potential Participant portfolio loss under distressed market conditions. Initial Margin is discussed below in this Section II.D.
3. Mark-to-Market/Variation Margin: Adjust Participant net asset value of cleared instruments based on end-of-day mark-to-market valuations. Mark-to-Market Margin is discussed below in this Section II.D.
4. Intra-day Risk Monitoring and Special Margin Call Execution: Identify additional margin requirements based on a comparison of unrealized profit/loss to initial margin, understanding unusual market fluctuations.
5. Guaranty Fund: Mutualize losses under extreme, but plausible, market scenarios. The Guaranty Fund is discussed below in this Section II.D.
6. Limited One-time Assessment: Oblige Participants to contribute a limited amount of additional default funding.

*Collateral Risk.* Collateral risk management is the measurement and management of movements in the value of collateral relative to the Margin deposits and Guaranty Fund requirements under current or future circumstances. Collateral risk management related to margin deposits and the Guaranty Fund is managed through a combination of conservative definitions of acceptable collateral, haircuts, and limitations on the investment of cash collateral/Guaranty Fund deposits (described below in Section II.F.). Exchange rate risk related to collateral cash deposits is mitigated by haircuts on the collateral.

*Market Risk and Interest Rate Risk.* Because ICE Trust's investment portfolio is in interest-bearing assets, ICE Trust's market risk is in the form of interest rate risk. Presently, all of the Margin and Guaranty Fund deposits are held in U.S. dollar ("USD") cash. ICE Trust's Investment Policy Statement establishes the parameters for the management of the investment portfolio.<sup>25</sup> Interest rate risk related to Margin or Guaranty Fund deposits is mitigated by haircuts on such collateral.

*Operational Risk.* Operational risk is the risk of loss resulting from inadequate or failed internal processes, people and systems, or from external events. Operational risk also includes legal risk, which is the risk of loss resulting from failure to comply with laws as well as prudent

---

<sup>25</sup> ICE Trust's Investment Policy Statement is attached as Appendix 11 to the Risk Management Framework.

ethical standards and contractual obligations. It also includes the exposure to litigation from ICE Trust's activities. Operational risk is mitigated through the implementation of detailed policies and procedures, adequate management oversight, and risk management controls.

*Settlement Risk.* ICE Trust bears settlement risk if Participants do not meet their daily settlement obligations. This settlement risk is managed and mitigated with clear direct payment deadlines supported by explicit Default policies and procedures. Settlement is discussed in Section II.E. below.

b. Risk Management Staff and Committees

The Chief Risk Officer is directly responsible for risk management and in this capacity, is directly accountable to the ICE Trust President.<sup>26</sup> The direct management of risk is balanced by a committee structure that provides (i) oversight and accountability, (ii) advisory input and, when necessary, (iii) specialized execution. These responsibilities are addressed across the committees that support and advise the Board of Managers with regard to its responsibilities for overseeing ICE Trust's risk and risk management.

The Risk Management Department, which is overseen by the Chief Risk Officer, is responsible for practices and procedures implementing the ICE Trust Risk Management Framework. The Risk Management Department consists of six individuals, who are dedicated to risk management and do not have responsibilities in other functions.<sup>27</sup>

The Risk Management Department is responsible for managing the risk inherent in all products cleared by ICE Trust. This includes the following tasks:

Analytics<sup>28</sup>

- Quantifying and analyzing Margin and Guaranty Fund requirements
- Back testing Initial Margin requirements
- Stress testing and completing scenario analysis to supplement ICE Trust's quantitative methodologies
- Reviewing CDS risk models and parameters (degrees of freedom, sample volatility, default probabilities, recovery rates, hedge and diversification offsets, etc.) on a monthly basis
- Reviewing and validating the use of pricing or valuation models, including pricing for collateral

---

<sup>26</sup> The Chief Risk Officer is a dual employee of ICE Trust and TCC.

<sup>27</sup> TCC provides risk management services to ICE Trust pursuant to the Master Services Agreement. As noted above, the Chief Risk Officer is dually employed by TCC and ICE Trust.

<sup>28</sup> Copies of the Risk Management Department's back stress testing results, backtesting results, and risk reports are attached as Confidential Exhibit Q.

### Exposure

- Monitoring Participants' Margin and Guaranty Fund requirements on an ongoing basis
- Verifying mark-to-markets on all transactions and position reports
- Modeling and analyzing collateral values
- Analyzing and/or monitoring interest rate sensitivities
- Recommending position or concentration limits to the Risk Working Group, the ICE Trust Risk Committee and the Board of Managers, as well as the monitoring of those limits

### Monitoring

- Analyzing and/or monitoring prospective and current Participants
- Maintaining a "Watch List" of Participants who pose a material risk to ICE Trust and other Participants
- Analyzing and/or monitoring settlement banks

### Default Participation

- Executing default procedures according to the Clearing Rules and the CDS Default Committee's guidance (described in Section II.G. below)

On at least a monthly basis, the Risk Management Department conducts a statistical analysis of the Margin levels and market performance. Using the minimum standards established by ICE Trust management in consultation with the Risk Working Group and the Risk Committee, the Risk Management Department recommends margin methodology changes to the President and the Board of Managers for their approval.

ICE Trust also has appointed a Chief Compliance Officer who reports directly to the President of ICE Trust.<sup>29</sup> The Chief Compliance Officer is responsible for, *inter alia*, reviewing the compliance by ICE Trust with the Core Principles, resolving any conflicts of interest, ensuring compliance with the Act and CFTC Regulations, establishing policies and procedures for addressing non-compliance, and addressing non-compliance.

The relevant committees for the purposes of risk management are the (i) Risk Committee; (ii) Audit Committee; (iii) Compliance Committee; (iv) Risk Working Group; (v) Participant

---

<sup>29</sup> The Chief Compliance Officer will fulfill the responsibilities of the "Chief Compliance Officer" set forth in Section 5b(i) of the Act.

Review Committee; (vi) Advisory Committee; (vii) CDS Default Committee; and (viii) Business Conduct Committee,<sup>30</sup> each as described below.

*Risk Committee.* The Risk Committee is responsible for making recommendations to the Board of Managers on margin rate setting, stress testing, product acceptance, product definition, margin asset acceptance, margin asset discount rates, and investment policy.<sup>31</sup>

The Risk Committee of ICE Trust consists of twelve members. Three of the Risk Committee members are comprised of (i) an independent Member of the Board of Managers, serves as chairman, and (ii) two officers of ICE Trust from among the CEO, President, CFO, and Chief Risk Officer, each appointed by ICE Trust. The remaining nine members are appointed by Participants.<sup>32</sup>

Each member of the Risk Committee is subject to the approval of the Board of Managers. Each member must have risk management experience and expertise and no member of the Risk Committee may be subject to statutory disqualification under Section 8a(2) of the Act or other applicable Commission Regulations. The Risk Committee makes all decisions and recommendations at a meeting by a majority vote of members or by unanimous written consent, absent a meeting. The Risk Committee is required to meet no less frequently than quarterly; however, since its constitution, the Risk Committee has met monthly. The Board of Managers or any two members of the Risk Committee may call for a meeting. Emergency meetings of the Risk Committee may be called by any one or more members of the Risk Committee.

The Risk Committee must be consulted in relation to any of the following actions:

- accepting for clearing any types of transactions other than pre-approved products, making modifications to ICE Trust provisions relating to the specific characteristics of a contract, or making the determination that a proposed modification to ICE Trust provisions does not constitute a contract modification;
- modifying Participant qualifications;
- modifying ICE Trust provisions that relate to Margin;
- modifying ICE Trust provisions that relate to (i) the structure, size, or application of the Guaranty Fund; (ii) the methodology for calculating a Participant's required Guaranty Fund contribution or the components thereof; (iii) the types of currency or assets eligible for, or valuation methodology or discounts applied to, a Participant's Guaranty Fund contribution; (iv) the limit on Participant assessments; (v) the time period for, or means by which, Collateral is returned to a Participant; (vi) the methodology for determining the interest rate credited for Collateral on deposit in the Guaranty Fund; (vii) the methodology and procedures for applying amounts on deposit in Guaranty Fund and recoveries related thereto;

---

<sup>30</sup> The ICE Trust committee structure organizational chart is attached as Confidential Exhibit R.

<sup>31</sup> Chapter 5 of the Clearing Rules describes the Risk Committee.

<sup>32</sup> The other nine members of the Risk Committee currently include one member appointed by each of the following Participants: Bank of America; Barclays Bank PLC; Citibank; Credit Suisse International; Deutsche Bank; Goldman Sachs; JPMorgan Chase Bank; Morgan Stanley Capital Services; and UBS.

(viii) provisions relating to the use, rehypothecation or investment of Collateral on deposit in the Guaranty Fund; or (ix) the size, form, timing, investment guidelines, valuation, or priority scheme with respect to the ICE Trust contributions to the Guaranty Fund;

- modifying ICE Trust provisions that relate to (i) the closing-out process, the CDS Default Committee or the other rights and obligations of ICE Trust upon the Default of a Participant or the occurrence of an ICE Trust Default; (ii) the definition of ICE Trust Default or Default or the process required to determine that a Default has occurred; (iii) the definition of Termination Event, the process required to determine that a Termination Event has occurred, or the rights and obligations of ICE Trust upon the occurrence of a Termination Event with respect to a Participant; (iv) the process for dispute resolution; or (v) the process for effecting physical settlement of Contracts or the allocation methodology relating thereto;
- modifying ICE Trust provisions that relate to open access to the clearing system for all execution venues and all trade processing platforms;
- modifying ICE Trust provisions that relate to (i) ICE Trust or any other person seeking the consent of, or engaging in consultation with, the Risk Committee or any other specified body or other person; (ii) the delegation of responsibility for an action or determination to a person other than ICE Trust; (iii) ICE Trust or any other person applying a particular standard for an action or determination, including, without limitation, Clearing Rule 615 (Determinations by ICE Trust); or (iv) Chapter 7 (Disciplinary Rules) of the Clearing Rules; and
- modifying the Clearing Rules or other provisions relating to the Risk Committee.

On at least an annual basis, to ensure an adequate risk control, the Risk Committee reviews ICE Trust's risk management compliance with the Risk Management Framework and associated policies and/or procedures, the margin framework and methodologies, the Guaranty Fund framework and methodologies, the Acceptable Collateral Policy and associated haircuts, the Investment Policy Statement, and all other relevant risk management policies, limits, and guidelines to ensure their ongoing effectiveness.

As described in Section II.Q. below, the Risk Committee also has the authority to designate four members for election to the Board of Managers, two of whom must satisfy the independence requirements set forth under the Clearing Rules. Further, the Risk Committee is entitled to consult with ICE Inc. prior to ICE Inc. appointing any member of the Board of Managers (other than a Risk Committee Board Appointee) with respect to the skills and experience of such proposed member.

*Audit Committee.* The Audit Committee of ICE Trust provides the Board of Managers with an independent opinion and recommendations on matters of importance to ICE Trust's financial matters, systems and controls, legal and regulatory compliance, and business ethics.<sup>33</sup>

The Audit Committee consists of three independent members of the Board of Managers.<sup>34</sup> No manager may serve as a member of the Audit Committee if such manager serves on the audit committees of more than two other public companies unless the Board of Managers determines that such simultaneous service would not impair the ability of such manager to effectively serve on the Audit Committee. The Audit Committee meets at least quarterly, and more frequently as circumstances dictate. The Audit Committee also meets at least quarterly with ICE Trust's independent auditors and management to review ICE Trust's financial statements.

The Audit Committee has the following major responsibilities:

- oversee the performance of the internal controls, internal audit function, external auditors, and annual financial reporting of ICE Trust;
- oversee the integrity of ICE Trust's financial statements;
- oversee ICE Trust's compliance with legal and regulatory requirements;
- oversee the qualifications and independence of ICE Trust's external auditors; and
- attend to such other matters related to ICE Trust's financial statements or accounting policies and any legal matter that could have a significant impact on ICE Trust's financial statements and compliance programs and procedures which are delegated by the Board of Managers to the Audit Committee from time to time.

The Audit Committee is responsible for reviewing ICE Trust's Annual Compliance Plan on an annual basis, including the results of the Annual Compliance Risk Assessment, planned program activities, and the Compliance Department staffing and budgeting. On a quarterly basis, the Audit Committee reviews top compliance risks, progress against the Annual Compliance Plan, remediation efforts, key risk indicators, including the results of testing, and the status of regulatory examinations. The Audit Committee also has responsibility for reviewing material correspondence or other action by regulators or governmental agencies as well as ICE Trust's response to such correspondence or action. The Audit Committee must monitor compliance with ICE Trust's Code of Business Conduct and Ethics, review and approve all requests by managers or officers for waivers of the code, and annually review the Code of Business Conduct and Ethics for Managers.<sup>35</sup>

In discharging its oversight role, the Audit Committee is empowered to investigate any matter brought to its attention with full access to all books, records, facilities, and other ICE

---

<sup>33</sup> The Audit Committee charter is attached as Confidential Exhibit S.

<sup>34</sup> See Section II.Q. below for a discussion of Board of Manager independence standards.

<sup>35</sup> A copy of the Code of Business Conduct and Ethics for Managers is attached as Confidential Exhibit T.

Trust personnel, and the authority to engage independent counsel and other advisors as it determines necessary to carry out its duties and responsibilities. The Audit Committee has the resources and authority appropriate to discharge its duties and responsibilities, including the authority to select, retain, terminate, and approve the fees and other retention terms of special or independent counsel, accountants or other experts and advisors, as it deems necessary or appropriate, without seeking approval of the Board of Managers or management.

*Compliance Committee.* The Compliance Committee consists of senior management of ICE Trust, presently including the Chief Compliance Officer (who serves as the Chair), the Compliance Manager, the General Counsel, the Chief Financial Officer, the Chief Risk Officer, the Chief Operating Officer, the Director of Technology, the Director of Operations, the Operational Risk Manager, and the Director of Internal Audit. The Compliance Committee meets at least 10 times each year, and may meet more frequently at the request of the Chair.

The Compliance Committee oversees and manages compliance risk management processes for ICE Trust's compliance-related policies and its firm-wide compliance risk management program.<sup>36</sup> The Compliance Committee is responsible for the establishment and ongoing administration of firm-wide compliance risk reporting. The Compliance Committee must ensure that significant compliance issues across ICE Trust are addressed in a timely manner. The Compliance Committee reviews major compliance-related policies and significant compliance-related procedures and approves such policies and procedures that do not require approval of the Board of Managers or Audit Committee. Finally, the Compliance Committee reviews and approves the Annual Compliance Plan, including actual and planned staffing levels, and forwards it to the Audit Committee for review.

*Risk Working Group.* The Risk Working Group is responsible for consulting with the Risk Management Department, ICE Trust management, and the Risk Committee to help ensure the Risk Management Framework is robust in scope, measurement, management, and controls; and that it correctly and equitably charges each Participant for the amount and quality of risk it introduces. The Risk Working Group helps to provide guidance and input into ICE Trust's systemic risk approach (including collateral eligibility and applicable haircuts). Each Participant may appoint a representative to the Risk Working Group. The Risk Working Group is chaired by the Chief Risk Officer.

The Risk Working Group has the following primary responsibilities:

- Review and validate ICE Trust's risk philosophy and risk tolerances, including periodic review of models, key assumptions, data requirements, etc.
- Review ICE Trust's periodic back testing
- Consult with Risk Management Department personnel and the Risk Committee and recommend to the Board of Managers for approval any changes to the Risk Management Framework, policies, limits, and other guidelines for acceptable risk taking activities

---

<sup>36</sup> The Compliance Committee charter is attached as Confidential Exhibit U.

- Review and recommend treatment of new products and their associated margin and Guaranty Fund requirements
- Advise the CDS Default Management Committee on its execution of the Default Management Procedures (described in Section II.G. below)

*Participant Review Committee.* As described in Section II.C. above, the Participant Review Committee evaluates applicants for Participant status, ensures that Participants maintain good standing, and adjudicates the suspension process.

*Advisory Committee.* The Advisory Committee is comprised of representatives of up to twelve major market participants, two members of ICE Trust management and an Independent Director of ICE Trust. The market participants, selected by ICE Trust following consultation with the Risk Committee, are representatives of the customers of Participants who are not themselves Participants. The Advisory Committee proposes actions to both the Board of Managers and the Risk Committee for consideration, as applicable, by those bodies. However, neither the Board of Managers nor the Risk Committee is under any obligation to accept any proposal made by, or take any action proposed by, the Advisory Committee.

*CDS Default Committee.* The CDS Default Committee provides market perspective and feedback on the Risk Management Framework and has a fiduciary responsibility to ICE Trust during ICE Trust’s execution of the Default Management Procedures, which are described in Section II.G. below. Members of the CDS Default Committee are chosen from a list of Committee Eligible Participants.<sup>37</sup> Three Committee Eligible Participants are chosen on a rotating basis and are responsible for managing ICE Trust’s exposure due to a Participant’s Default. The CDS Default Committee will convene upon the declaration of Default and, in conjunction with the Chief Risk Officer, will manage the liquidation of the Defaulting Participant’s portfolio. Members of the CDS Default Committee are seconded to ICE Trust to execute hedges on or liquidate, as appropriate, the positions held by the Defaulting Participant. The CDS Default Committee also assists ICE Trust in determining and managing “Minimum Target Prices” for hedged portfolios related to a Default. In this capacity, the CDS Default Committee oversees necessary auction(s) as well as the process to allocate remaining positions to Non-Defaulting Participants.

*Business Conduct Committee.* As described below in Section II.H., the Business Conduct Committee (“BCC”) is responsible for responding to the need for and managing the investigation of a Participant’s suspected violation of the Clearing Rules.

c. Mitigation of Exposure to Potential Losses from Defaults

ICE Trust mitigates its financial exposure with a hierarchy of protections: (i) Initial Margin, (ii) Mark-to-Market Margin, (iii) the Guaranty Fund, and (iv) the right of one time limited assessment. The combination of these protections mitigates the exposure of ICE Trust to potential losses from Participant Defaults to ensure that ICE Trust’s operations are not disrupted

---

<sup>37</sup>A Committee Eligible Participant is any Participant approved by the Board of Managers, after consultation with the Risk Committee, for participation on one or more Regional CDS committees.

and Non-Defaulting Participants are not exposed to losses that they are not able to anticipate or control.

*Initial Margin Requirements.* ICE Trust collects adequate but not excessive margins to collateralize risk. The margin required from each Participant is sufficient to cover potential exposures in normal market conditions. The Initial Margin requirements account for instrument risk, hedging benefits, bid-offer (liquidity), Jump-to-Default, and concentration risk. Features of the Initial Margin calculation methodology include accurately defined log-return credit spread distribution assumptions, specific stress scenarios for credit spread moves, and recovery rates. Collectively, ICE Trust believes this methodology and the selected risk parameters provide a robust and conservative Initial Margin approach.<sup>38</sup>

The instrument risk (margin) requirement is obtained by estimating scenario Profits/Losses (“P/L”) for a set of hypothetical up-moves and down-moves and by considering the largest loss. The scenario P/L is defined as the difference between the present values of all future cash flows at the scenario spread and at the current market (settlement) spread.

The bid/offer requirement incorporates the transaction costs associated with liquidating the portfolio of a Defaulting Participant. Transaction costs can lead to significant losses for large curve portfolios. The developed approach provides a general solution that can capture the proper liquidation cost for directional curve portfolios as well as for well-hedged portfolios.

The bid/offer requirement is estimated by considering the liquidity and the expected bid/offer widths for different instruments. The approach assumes, in general, that short-protection and long-protection positions would be liquidated at different bid/offer widths.

Jump-to-Default requirements are incorporated to account for the simultaneous Default of a Participant and a credit event associated with the underlying single-name on which the Defaulting Participant has sold protection. Index instruments are decomposed into their constituents and a Net Notional Value (“NNV”) is calculated for every instrument in a portfolio at the single-name level. A probability of Default is estimated for every single-name from the front end of its credit spread term structure. The probability of Default is estimated from the simulated widening spread scenario at the market implied return rate that produces the greatest value. The “Expected Loss Given Default” is estimated by means of a single-name-specific minimum return rate. If the NNV is negative (sold more protection than bought), then Jump-to-Default requirements apply.

Large positions are subject to additional risk assessments derived from the market depth and liquidity associated with the instruments under consideration. Concentration charges apply to both long and short index and single-name positions for which the overall position size is above a specific threshold that is predetermined by the Risk Management Department. Thresholds and overall position sizes are defined in terms of a 5 Year On-the-Run equivalent (“5Y OTR equivalent”). Portfolio positions are converted into 5Y OTR equivalent positions in order to apply the concentration charges. The concentration charges are progressive and can yield total requirements that asymptotically approach the full liability (i.e., NNV) for a

---

<sup>38</sup> The Initial Margin calculation methodology is described in Appendices 2 and 3 of the Risk Management Framework.

directional short position portfolio, or the value of the premiums to be paid for a directional long position portfolio. The current price of the considered instrument is taken into account to determine the maximum potential risk factor loss.

Diversification benefits are provided across risk factors that exhibit low levels of dependence (correlation). Risk factors that exhibit rank correlations whose absolute value is below a pre-determined threshold are eligible for diversification benefits. This benefit ensures that risk requirements accurately reflect the level of risk of a diversified portfolio.

On no less than a monthly basis, ICE Trust conducts a statistical analysis of the margin levels and market performance. Using the minimum standards established by ICE Trust management in consultation with the Risk Working Group and the Risk Committee, the Risk Management Department recommends margin methodology changes to the President and the Board of Managers for their approval.

Margin requirements for each Participant are calculated and communicated at least once each day (by 4:00 a.m. in the daily flow) and margin is due no later than 9:00 a.m. Eastern Time.<sup>39</sup>

*Mark-to-Market Margin.* Mark-to-Market Margin is calculated daily based on the changing market value of held positions. Participants are required to post additional Mark-to-Market Margin when the prior day's margin balance is insufficient to meet the current day's margin obligation.<sup>40</sup>

On a daily basis, concurrent with the calculation of Initial Margin for new positions, ICE Trust calculates the Mark-to-Market Margin for all Participants. ICE Trust determines the replacement value of each of its Participants' cleared positions based upon end-of-day settlement prices determined through ICE Trust's price discovery process.

The required Mark-to-Market Margin is calculated as Net Mark-to-Market Margin per CDS position. Net Mark-to-Market Margin is calculated as  $(1.0 - \text{Settlement Price}) * \text{Net Notional Amount}$ . This total required Net Mark-to-Market Margin is compared to the previous balance of Mark-to-Market Margin posted. Any Mark-to-Market Margin deficits are payable in cash and are included in the daily settlement process. Excess margin is not returned unless requested by a Participant.

To determine the cash owed, ICE Trust deducts both the cash deposits and unrealized P/L related to previously cleared positions from the margin required. Unrealized gains for each Participant are recognized in Participants' cash accounts as a "Cash Mark-to-Market Credit."

Additionally, the President, or his/her designee, has the authority to change margins as necessary to protect the interests of ICE Trust.

Margin requirements for each Participant are calculated and communicated at least once each day (by 4:00 a.m. Eastern Time in the daily flow) and are due no later than 9:00 a.m. Eastern Time. All deficits related to change in net Mark-to-Market Margin must be met in cash.

---

<sup>39</sup> Attached as Confidential Exhibit V is a sample report of Margin calculations.

<sup>40</sup> Attached as Confidential Exhibit W is a description of the Mark-to-Market Margin process.

*Intraday Risk Monitoring/Special Margin Call.* Intraday, the adequacy of the collected Initial Margin (i.e., risk-based margin) is actively monitored and is supported by automated feeds of the available intraday price data. This data is used to measure each Participant's intraday unrealized profit and loss to determine if ICE Trust's intraday exposure to each Participant is covered by the margin on deposit. The data is also used to measure and further explain intraday variability, which contributes to the Risk Management Department's required determination of the type of daily market environment (as an input to the daily end-of-day settlement pricing process). Intraday prices are based on the Participants' existing pricing processes. The Participants submit data to a third-party data provider (price or spread depending on the accepted convention for the respective product). The third-party agency "scrapes" e-mail messages and captures the prices and submits them to all market participants, including ICE Trust. This process is performed continuously throughout the day each time a new price is available. The bid-ask quotes are used as the intraday bid-ask and is available as an electronic file for input into the ICE Trust risk management application. The ICE Trust risk management application captures the intraday price and immediately revalues the P/L moves for each Participants' portfolios and the related Initial Margin requirement.

ICE Trust may issue margin calls to Participants whose previously posted margin, in its judgment, does not provide proper risk protection. The Risk Management Department notifies the ICE Trust Treasury Department of the "special" margin call. As a backup, the risk management application confirms the "special" margin call with an e-mail to the ICE Trust Treasury Department to initiate the margin call. Substantial increases in intraday margin requirements may place a Participant on the "Participant Watch List" for continued scrutiny.

The intraday price data is also analyzed to understand intraday volatility in greater detail in addition to the Risk Management Department's monitoring of the equity markets, the CBOE Volatility Index, and other volatility measures as an indicator of market movements.

Where particular risks are identified, the President or his/her designee, at his/her sole discretion, may call for additional margin at any time. If an additional margin call is made, the Participant has one hour to fully collateralize any deficits associated with the additional margin call.

*Guaranty Fund.* ICE Trust requires all Participants to participate in funding the Guaranty Fund. Each Participant is required to maintain a minimum of \$20 million in the Guaranty Fund.<sup>41</sup> The Guaranty Fund mutualizes losses under extreme but plausible market scenarios.<sup>42</sup> Typically these extreme scenarios are low-probability events whose quantification is subject to significant estimation errors. ICE Trust relies on a combination of quantitative and qualitative considerations to derive stress test scenarios to calculate the magnitude of portfolio losses. The size of the Guaranty Fund is set at the maximum stress loss of: (i) uncollateralized losses of the largest Defaulting Participant with a long protection profile, and (ii) the uncollateralized losses of the two largest Defaulting Participants, which exhibit short protection profiles.<sup>43</sup>

---

<sup>41</sup> Attached as Confidential Exhibit X is a sample report of Guaranty Fund requirement calculations.

<sup>42</sup> The parameters for these scenarios include the most volatile periods—the bankruptcy of Bear Stearns and collapse of Lehman Brothers in 2008—reflecting periods of great market disruption.

<sup>43</sup> Prior to its operation as a DCO, ICE Trust will change the calculation of the size of Guaranty Fund to set it at the maximum stress loss of the uncollateralized losses of the two largest defaulting Participants with a long protection

Funds to meet Guaranty Fund requirements are requested on the first business day of every month. However, on a daily basis, the Risk Management Department monitors Guaranty Fund size and allocations. If a Participant's daily estimated Guaranty Fund requirements exceed 5% of its prior day's Guaranty Fund collateral on deposit, additional Guaranty Fund contributions are called. All deficits related to a change in Guaranty Fund requirements must be met in cash by the end of the business day. The deficit may need to be met earlier at the Chief Risk Officer's discretion. Eligible collateral can be substituted for cash posted to the Guaranty Fund.

Additionally, in accordance with the Clearing Rules, the President, or his/her designee, has the authority to request additional Guaranty Fund commitments as necessary to protect the interests of ICE Trust.

ICE Trust (through ICE Inc.) maintains a deposit in the Guaranty Fund of approximately \$21 million (as of November 5, 2010) and will increase such deposit to \$25 million by December 14, 2010, and \$50 million by December 14, 2011.

Withdrawals from the Guaranty Fund in the event of a Participant Default are described in Section II.G.

#### **E. Core Principle E: Settlement Procedures**

##### **1. Core Principle Requirements**

*Each derivatives clearing organization shall –*

- (i) complete money settlements on a timely basis (but not less frequently than once each business day);*
- (ii) maintain an accurate record of the flow of funds associated with each money settlement;*
- (iii) possess the ability to comply with each term and condition of any permitted netting or offset arrangement with any other clearing organization;*
- (iv) employ money settlement arrangements to eliminate or strictly limit the exposure of the derivatives clearing organization to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements);*
- (v) ensure that money settlements are final when effected;*
- (vi) regarding physical settlements, establish rules that clearly state each obligation of the derivatives clearing organization with respect to physical deliveries; and*
- (vii) ensure that each risk arising from an obligation described in clause (vi) is identified and managed.*

---

profile and the uncollateralized losses of the two largest defaulting Participants with a short protection profile. The funded amount of the Guaranty Fund covers the stress test of the two largest Participants.

## 2. Factual Basis and Analysis for Satisfaction of Core Principle

TCC provides treasury services to the ICE Trust Treasury Department pursuant to the Master Services Agreement. The Treasury Department is responsible for the daily tasks associated with cash management related to the Margin and Guaranty Fund collection process. The Treasury Department is also responsible for portfolio investing. The ICE Trust Treasury Operations Policies & Procedures set forth ICE Trust's settlement procedures. The ICE Trust procedures for money settlements are set forth in the Risk Management Framework. ICE Trust supports three forms of risk-related settlement: (i) Cash settlement of Initial Margin, Mark-to-Market Margin, and Guaranty Fund requirements; (ii) Substitution of Initial Margin and Guaranty Fund cash with eligible collateral; and (iii) Physical delivery resulting from a credit event outside of an ISDA protocol. ICE Trust also supports Continuous Link Settlement ("CLS") payments for quarterly coupon payments.

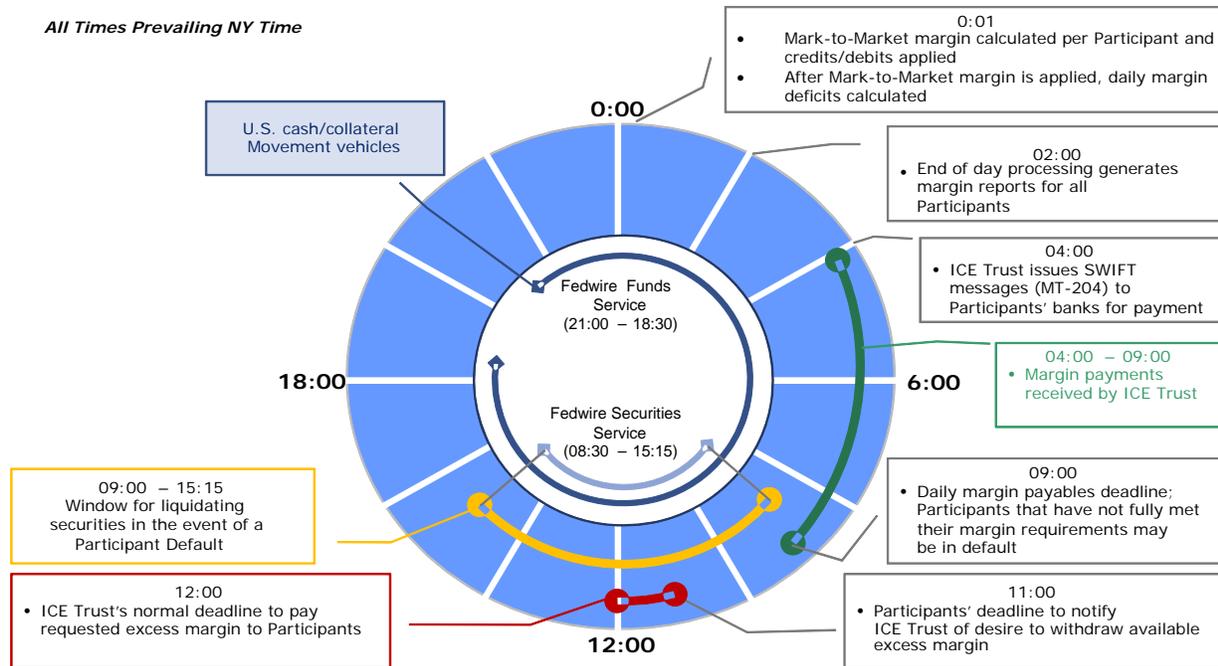
### a. End-of-Day Settlement Prices

ICE Trust has developed a comprehensive approach to the end-of-day settlement price process, also known as the daily mark-to-market process, using reliable, market-driven pricing. The pricing methodology simulates trading with actual bid-offer spreads submitted by the Participants, which may be matched into binding positions by ICE Trust. The ICE Trust methodology, which is described in detail in Appendix 7 to the Risk Management Framework, takes into account the varying pricing mechanisms among the Participants as well as the inherent nature of the product. The mark-to-market process begins each day at 4:30 p.m. Eastern time when each Participant has five minutes to submit an end-of-day price to ICE Trust. ICE Trust converts these end-of-day prices into a single, standardized bid-offer spread format. ICE Trust then applies its pricing algorithm to the bid-offer spreads to determine the end-of-day settlement prices and matched trading interests (if any), by product. ICE Trust then publishes the end-of-day settlement prices to the market at approximately 5:30.

As described above, Participants are required to periodically execute on matched interests as a means of ensuring they submit accurate end-of-day prices to ICE Trust.

### b. Cash Settlements

Cash settlements are completed once per business day. In the normal course of business, ICE Trust publishes margin requirements by 4:00 a.m. Eastern Time. Payments are due no later than 9:00 a.m. Eastern Time. Participants will be considered in Default if full payment is not received by 9:00 a.m. Eastern Time (barring technical difficulties). Upon funding, the monies move into ICE Trust's account at Bank of New York Mellon ("BNYM"). ICE Trust confirms on a daily basis that the funds transfers have been made by 9:00 a.m. Eastern Time. Failure to have fully met Margin requirements by 9:00 a.m. Eastern Time may result in a Participant being declared in Default. Money settlements are final when effected. Funds transfers are final and irrevocable upon transfer. The daily settlement process and timeline is illustrated by the following diagram:



ICE Trust maintains an accurate record of the flow of funds associated with money settlements and reconciles all confirmations with the register of expected payments. These records will be retained in accordance with ICE Trust's recordkeeping policy, described in Section II.K.

ICE Trust currently is not a party to any netting or offset arrangements with any other clearinghouse.

c. Collateral Posting

ICE Trust maintains custody accounts to manage eligible assets posted as collateral. The ICE Trust accounts separate the assets being held for Initial Margin and the Guaranty Fund. By holding the Guaranty Fund assets in custody at a non-Participant bank, ICE Trust's Default resources are further protected from exposure to Participants, which provides an additional layer of diversification to the custody plan. When acceptable forms of collateral are posted to the ICE Trust accounts, they are in ICE Trust's name and control. Any account that holds customer funds will be segregated and designated as such. ICE Trust makes daily reports available to Participants detailing collateral held.

For Participants that are not FCMs, the Clearing Rules state that all right, title, and interest in and to any cash transferred by the Participant to ICE Trust as margin for proprietary accounts of the Participant vests in ICE Trust free and clear of any liens, claims, charges, or encumbrances (i.e., the Participant transfers title to ICE Trust). For Participants that are FCMs, the Clearing Rules state that the Participant will grant ICE Trust a security interest in cash on deposit as margin for its proprietary and customer accounts.

While Margin must initially be posted in cash, ICE Trust allows the substitution of non-cash eligible collateral for cash. ICE Trust must receive a Participant substitution request by 11

a.m. Eastern Time to ensure ICE Trust can process and provide instructions to credit the excess cash payment by Noon the same day. Once security delivery is confirmed, the ICE Trust Treasury Department will authorize a cash credit to the Participant's account from the ICE Trust account. ICE Trust similarly will credit a Participant for excess collateral, pending receipt of a request and confirmation that the margin is excess.

d. Physical Delivery

Credit event settlement procedures will default to physical settlement if no ISDA protocol exists or it is decided by committee not to follow the ISDA protocol. Physical settlements are done on a net settlement basis where the amounts are dependent on their net positions. Physical settlements can also be supported under a deemed ISDA.

In the case of a physical settlement, the settlement will not be processed via ICE Trust; rather, the buyer and seller only will be matched by ICE Trust. The buyer will deliver the obligation to the seller outside of ICE Trust and the seller will pay the physical settlement amount corresponding to the obligation.

As ICE Trust does not take physical deliveries directly, it does not have delivery requirements. ICE Trust takes steps to collect Margin as collateral agent for the risk associated with the failure of buyers and sellers to meet their physical delivery requirements.

ICE Trust collects Physical Settlement Margin to protect itself against the possible default of a protection seller after the occurrence of a credit event being settled via physical settlement, but before physical settlement has occurred. In such an event, ICE Trust would be liable, subject to its Clearing Rules, to the protection buyer for the full notional value while receiving the underlying deliverable from the protection buyer.

e. Settlement Bank Risk

ICE Trust monitors the health of its settlement bank(s).<sup>44</sup> ICE Trust currently maintains settlement and custody accounts at BNYM. ICE Trust, as a matter of policy, does not bank with a financial institution that is also a Participant (or affiliate). This policy prevents the failure of a Participant from impacting ICE Trust's ability to conduct its banking business with non-Defaulting Participants. ICE Trust currently holds all USD cash margin and cash Guaranty Fund deposits in its account at the Federal Reserve Bank of New York.<sup>45</sup> On a daily basis, ICE Trust transfers the net of the margin calls and withdrawals to or from its Federal Reserve Bank Account.<sup>46</sup>

---

<sup>44</sup> As described in fn. 19, ICE Trust uses its internal rating system to monitor its settlement banks.

<sup>45</sup> Prior to its operation as a DCO, ICE Trust will enter into settlement banking agreements with BNYM that require BNYM to hold customer funds in accordance with Commission Regulations and also will obtain a segregated funds acknowledgement letter in the form prescribed by Commission Regulations, once such regulations have been adopted.

<sup>46</sup> Once ICE Trust has "de-banked," it will need to be designated as a "systemically important" DCO under Title VIII of the Dodd-Frank Act to maintain an account at the Federal Reserve.

## **F. Core Principle F: Treatment of Funds**

### **1. Core Principle requirements**

(i) *REQUIRED STANDARDS AND PROCEDURES.* Each derivatives clearing organization shall establish standards and procedures that are designed to protect and ensure the safety of member and participant funds and assets.

(ii) *HOLDING OF FUNDS AND ASSETS.* Each derivatives clearing organization shall hold member and participant funds and assets in a manner by which to minimize the risk of loss or of delay in the access by the derivatives clearing organization to the assets and funds.

(iii) *PERMISSIBLE INVESTMENTS.* Funds and assets invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks.

### **2. Factual Basis and Analysis for Satisfaction of Core Principle**

The Treasury Operations Policies and Procedures, Risk Management Framework, and Clearing Rules set forth the standards and procedures of ICE Trust designed to protect and ensure the safety of Participant and customer funds and assets.

As described in Section II.E. above, ICE Trust has designated BNYM as its bank (cash and custody) for Margin and Guaranty Fund assets. As a long-established global custodian, BNYM conforms to the BIS and IOSCO Recommendations for Securities Settlement Systems Recommendation 12 with regard to BNYM's protection of customer securities.<sup>47</sup> ICE Trust has sole control of the assets in the custodial account and has unfettered and direct access to the assets. The assets are held in the same time zone and jurisdiction as ICE Trust. ICE Trust monitors the financial condition of BNYM as part of its ongoing monitoring process.

Customer funds will be held in an account meeting the requirements of the "cleared OTC derivatives" account class. These customer funds will be segregated from the proprietary funds of Participants. Customer funds in a cleared OTC derivatives account may not be used to satisfy the proprietary obligations of the Participant.<sup>48</sup>

The Participant's Margin and the Guaranty Fund assets are immediately available and in highly liquid form: Cash (USD or G7), U.S. Treasury Securities (Bills, Notes, and Bonds) and G7 Government Securities (Canada, France, Germany, Italy, Japan, United Kingdom, and United States). ICE Trust also employs Initial Margin and Guaranty Fund collateral liquidity thresholds. At least 45% of Initial Margin and Guaranty Fund deposits must be in cash (USD). The next

---

<sup>47</sup> Recommendation 12 states, "Entities holding securities in custody should employ accounting practices and safekeeping procedures that fully protect customers' securities. It is essential that customers' securities be protected against the claims of a custodian's creditors."

<sup>48</sup> This customer account will be a "cleared OTC derivatives account" as defined in CFTC Regulation 190.1(a). See also Commission Final Rules amending Commission Regulation 190 (75 Fed. Reg. 17297 (April 6, 2010)). If the Commission has not adopted final CFTC Regulations relating to the treatment of funds held in the cleared OTC derivatives account class prior to ICE Trust becoming a DCO, ICE Trust will adopt Clearing Rules relating to this customer account that parallel the Commission's customer segregation requirements for the funds of commodity and options customers set forth in CFTC Regulation 1.20, et seq.

threshold of 20% (for a total of 65%) may be in cash (USD) and/or U.S. treasuries. The remaining percentage may be any form of the acceptable collateral.<sup>49</sup>

The ICE Trust Investment Policy, which relates to the capital funds of ICE Trust, is set forth in Appendix II to the Risk Management Framework. The investment portfolio's primary objective is the protection of principal. The secondary objective is maximizing the net after-tax yield of the portfolio while taking into account the future liquidity needs of the business. All customer funds are invested in accordance with Commission Regulation 1.25.<sup>50</sup>

Participant cash (e.g., Guaranty Fund) may be invested in any of the following liquid investments in ICE Trust's discretion: bank deposits and/or Treasury reverse repo overnight. Interest is paid out to each Participant on a monthly basis at such rate as may be determined by ICE Trust.<sup>51</sup>

ICE Trust has entered into agreements with BNYM, as custodian, and BMO Capital, and Bank of Montreal, as counterparty, to provide tri-party repo services. Although ICE Trust currently holds all USD cash margin and cash Guaranty Fund deposits in its account at the Federal Reserve Bank of New York, ICE Trust also may invest its USD balances from its operating bank accounts (general operating, House Margin, Guaranty Fund, and customer sequestered funds) overnight. The eligible securities are limited to U.S. Treasuries: Bills, Bonds, Notes, and Strips. The value of treasury collateral received is between 100.5% and 101.0% of the invested USD amount.

## **G. Core Principle G: Default Rules and Procedures**

### **1. Core Principle Requirements**

(i) *IN GENERAL. Each derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events during which members or participants (I) become insolvent; or (II) otherwise default on the obligations of the members or participants to the derivatives clearing organization.*

(ii) *DEFAULT PROCEDURES. Each derivatives clearing organization shall (I) clearly state the default procedures of the derivatives clearing organization; (II) make publicly available the default rules of the derivatives clearing organization; and (III) ensure that the derivatives clearing organization may take timely action (aa) to contain losses and liquidity pressures; and (bb) to continue meeting each obligation of the derivatives clearing organization.*

### **2. Factual Basis and Analysis for Satisfaction of Core Principle**

ICE Trust has documented its approach to implementing its Default Management Procedures, as set forth in Appendix 9 to the Risk Management Framework. In the event of Default (as described below) by a Participant (a "Defaulting Participant"), ICE Trust strives to minimize the impact of the Default on non-Defaulting Participants ("Non-Defaulting Participants") by instituting Default Management Procedures. The goal of such procedures is to

---

<sup>49</sup> Currently, all Margin and Guaranty Fund assets are held in USD cash.

<sup>50</sup> Currently all customer funds are held in ICE Trust's account at the Federal Reserve.

<sup>51</sup> See fn. 46 above.

limit the risk associated with the Defaulting Participant's Default and to conduct an orderly close-out or mitigate the risk relating to the Defaulting Participant's positions. ICE Trust attempts to minimize the Defaulting Participant's risk by executing a hedging strategy with Non-Defaulting Participants to neutralize the risk in the Defaulting Participant's positions in CDS and subsequently partitioning and auctioning the hedged and other positions of the Defaulting Participant to the Non-Defaulting Participants. The ultimate goal is to execute this strategy at a cost to ICE Trust that is covered by the Defaulting Participant's Initial Margin contribution and, if necessary, its contribution to the Guaranty Fund. Nonetheless, the Guaranty Fund in its entirety, along with available assessment rights, is available to cover the risk management costs associated with a Participant's Default.

The Risk Management Framework provides ICE Trust flexibility in how to best implement these procedures through its CDS Default Committee, with decision-making powers in place to manage the Default Management Procedures. The CDS Default Committee oversees seconded traders with responsibility for executing the default strategy (hedge and/or liquidate). The Default Management Procedures address the coordination needed if there is more than one Participant in Default. The Default Management Procedures include:

- Declaring a Participant in Default;
- Communicating the Default;
- Activating the CDS Default Committee and seconding traders;
- Conducting hedging and portfolio partitioning;
- Conducting auction(s); and
- Allocating remaining positions to Non-Defaulting Participants.<sup>52</sup>

a. Declaring a Participant in Default

As set forth in Clearing Rule 605, a Participant is in "Default" when it (i) fails to meet any of its obligations (other than an obligation to transfer Margin) with respect to, or who is otherwise in default or subject to early termination under, its Contracts with ICE Trust, (ii) fails to transfer Margin (whether Initial Margin or Mark-to-Market Margin) by the deadline established under the Clearing Rules, (iii) is suspended or expelled or whose privileges are revoked by ICE Trust or another market, or (iv) has a guarantor providing a guarantee pursuant to Clearing Rule 205 who fails to meet any obligations with respect to, or who is otherwise in default under, the guarantee. Pursuant to Clearing Rule 20-605(a), a Default also occurs when it appears, in the judgment of ICE Trust, likely that a Participant will fail to meet any of its obligations (other than an obligation to deposit Margin) with respect to the Participant's Contracts with ICE Trust. ICE Trust must use its best efforts to consult with the Risk Committee before making any determination that a Participant is in Default where (i) the Participant has

---

<sup>52</sup> In the event that two or more bidders submit the highest bid, the bidder whose existing portfolio combined with the auctioned trades reduces ICE Trust risk to the greatest extent, as determined by the Chief Risk Officer, will be declared the auction "winner."

failed to comply with a trading activity limitation or a limitation imposed upon the occurrence of a termination event; or (ii) where approval of the Board of Managers by a two-thirds majority of those voting is required to declare the Participant in Default.

If a Participant is in Default as described above, ICE Trust will declare the Participant in Default and take necessary action to mitigate risk for the remaining Participants. The level of authority required to declare a Default is based on the type of event upon which the Default is being contemplated:

- In the event of a bankruptcy filing, an officer designated by the Board of Managers for this purpose (an “Eligible ICE Trust Officer”) has the authority to declare a Participant in Default.
- If a Participant fails to satisfy a margin call or Mark-to-Market Margin payment, an Eligible ICE Trust Officer and either the Chairman of the Board of Managers or two members of the Board of Managers collectively have the authority to declare the Participant in Default. Before a Participant can be declared in Default for failing to satisfy a margin call or mark-to-market payment, an ICE Trust Officer will contact the appropriate bank to verify that the payment is not held up due to a technical error. The ICE Trust Officer will take reasonable steps to verify with the bank that the payment funds are not available and will not be processed. Further, the ICE Trust Officer will work with the Participant’s point of contact as is appropriate to resolve the issue before a Default is declared.
- For all other events, a declaration of Default must be approved by a Board of Managers vote with at least two-thirds majority and a quorum of 50% of members.

b. Default Notification

Prior to taking any action to close, transfer, or otherwise resolve a Defaulting Participant’s open CDS Positions, ICE Trust’s General Counsel or another member of the ICE Trust Legal or Compliance Departments will notify the Defaulting Participant, the Non-Defaulting Participants, ICE Trust’s regulators, and the public. ICE Trust will officially notify the Defaulting Participant that it is considered in “Default” pursuant to the Clearing Rules and its Participant Agreement. ICE Trust will send the Defaulting Participant a Default Notice by e-mail and fax. ICE Trust will notify Non-Defaulting Participants of a Default declaration as soon as reasonably practical by issuing an “Information Circular” and sending it via e-mail to each Non-Defaulting Participant’s point of contact. The Information Circular will inform the Non-Defaulting Participants of the Default and that the information will be posted on ICE Trust’s website. ICE Trust will notify the public of the Participant’s Default by posting the Information Circular on ICE Trust’s website. ICE Trust also will notify its regulators as appropriate.

c. Activating the CDS Default Committee and Seconding Traders

Immediately following the declaration of a Default, ICE Trust will cease all clearing activities for the Defaulting Participant. ICE Trust also will activate the CDS Default

Committee. The CDS Default Committee will work with ICE Trust management and will ultimately be responsible to the Board of Managers for their actions.

The CDS Default Committee consists of no more than three Committee Eligible Participants.<sup>53</sup> Each CDS Default Committee participant is responsible for designating one employee and at least two alternate employees with credit default swap experience to be a CDS Default Committee Member and serve as its representative on the CDS Default Committee. CDS Default Committee Members are “randomly chosen” pursuant to Clearing Rule 20-617 to serve the relevant term, and are responsible for consulting with the Chief Risk Officer, as appropriate, to achieve the following:

- determining and executing any closeout or initial cover transactions;
- determining and adjusting minimum target prices for auctions;
- providing ICE Trust a recommendation as to how to unwind or hedge the open CDS positions of the Defaulting Participant; and
- conducting an auction of a portion of the Defaulting Participant’s portfolio.

An ICE Trust officer will notify the designated CDS Default Committee Members of the Default and the activation of the CDS Default Committee by phone. If a CDS Default Committee Member is unable to meet the obligations of the committee (e.g., out of the country, in the hospital, cannot be reached in a reasonable amount of time), an ICE Trust officer will notify the designated Alternate Committee Member. If neither the CDS Default Committee Member nor one of the Alternate Committee Members is available or if they cannot be reached in a reasonable amount of time, the ICE Trust Officer will notify the relevant Participant to designate an appropriate CDS Default Committee Member. Once the CDS Default Committee has been activated, the Chief Risk Officer will review and discuss by telephone the strategy to mitigate the risk of the Defaulting Participant. This review will consist of an overview of the strategy to be used in hedging and unwinding the Defaulting Participant’s portfolio.

When this review is complete, the Chief Risk Officer will determine when to implement the strategy that will be used in hedging and/or unwinding the Defaulting Participant’s portfolio and where the CDS Default Committee Members will be located that are implementing this strategy. Specific next steps taken on the first day of the Default will be determined by the Chief Risk Officer and will be dependent on the facts and circumstances related to the Default including the day of the week and time of day of the declaration of the Default and the size and complexity of the portfolio of the Defaulting Participant.

ICE Trust will isolate the Defaulting Participant’s portfolio within its internal risk management system. The Risk Management Department will actively monitor the risk associated with the Defaulting Participant’s portfolio and coordinate with the CDS Default Committee Members for appropriate actions. The CDS Default Committee and the Risk Management Department will use this system to manage the Defaulting Participant’s risk separately from the Non-Defaulting Participants. The Risk Management Department will

---

<sup>53</sup> See fn. 37 above for a description of “Committee Eligible Participants.”

produce risk analyses and reports associated with the hedging activities taking place to minimize the Defaulting Participant's risk.

The Risk Management Department will be assembled by the Chief Risk Officer as soon as a Participant is declared to be in Default. The Risk Management Department will participate in the strategy call with the CDS Default Committee. The Chief Risk Officer will use the ICE Trust Risk Hedging Strategy (as set forth in Section II.F.2. of Appendix 9 of the ICE Trust Risk Management Framework) to divide the Defaulting Participant's portfolio into appropriate sub-portfolios. In the event that the Chief Risk Officer is not available, the Head of Quantitative Analytics or Senior Risk Manager of the Risk Management Department may be appointed by an Eligible ICE Trust Officer to act on behalf of the Chief Risk Officer.

ICE Trust will notify each CDS Default Committee Member that he/she is being seconded to manage the Defaulting Participant's portfolio. The CDS Default Committee Members will execute the hedging and liquidating transactions that the Chief Risk Officer and Risk Management Department deem necessary to minimize the overall risk of the Defaulting Participant's portfolio. The CDS Default Committee Members are responsible for treating the Defaulting Participant's portfolio as confidential and ensuring their portfolio management is unbiased and fair to all Non-Defaulting Participants to the best of his/her ability. The Chief Risk Officer only will share information with the CDS Default Committee Members to the extent that such information is necessary for them to execute the hedging strategy. At no time may the CDS Default Committee Members discuss the Defaulting Participant's portfolio with anyone other than ICE Trust's management and staff, the other members of the CDS Default Committee, and regulators, as requested.

d. Conducting Hedging and Portfolio Partitioning

The Clearing Rules and Participant Default Management Procedures provide ICE Trust with the authority to close, transfer, or otherwise resolve the Defaulting Participant's positions and apply the collateral of the Defaulting Participant towards the losses. To manage the risk associated with the Participant's Default, ICE Trust will isolate the Defaulting Participant's positions and will convert any non-cash portion of the Defaulting Participant's Margin and collateral securing its portion of the Guaranty Fund into cash. Once the CDS Default Committee Members have reviewed the Defaulting Participant's portfolio, they will hedge and/or liquidate positions as necessary and appropriate.

The hedging process will be used to reduce the immediate risk associated with the Defaulting Participant's positions. As positions are unwound and/or hedged, they will be entered into the ICE Trust default management systems; positions will be updated intra-day. Positions entered through the system will be copied into the risk database, allowing for updated risk to be calculated by the Chief Risk Officer. The cost of entering into these positions also will be tracked to monitor the erosion of the Margin held against the Defaulting Participant's portfolio. The Risk Management Department will periodically re-evaluate its risk exposure to the Defaulting Participant as hedges are put on, positions are unwound, and auctions take place.

e. Conducting Auctions

The Chief Risk Officer, in consultation with the CDS Default Committee, will use his/her discretion to split, if necessary, the hedged portfolio into marketable pieces which will be auctioned. At the discretion of ICE Trust, the CDS Default Committee Members will be responsible for directing the auction process. For single-name CDS, the CDS Default Committee will attempt to organize sub-portfolios for auction within each sector. Once the positions are hedged, the auction process may begin. The objective of the auction is to effectively terminate and replace the Defaulting Participant's positions in order for ICE Trust to regain an exactly matched book. Hedged positions will be auctioned off to the Non-Defaulting Participants.

The auction of each portion of the hedged portfolio will undertake the following steps:

- Position disclosure to Non-Defaulting Participants;
- Minimum target price setting;
- Bidding mechanics;
- Auction result and legal novation/settlement; and
- Trade submission to the TIW by winning bidder and ICE Trust.<sup>54</sup>

f. Allocating Remaining Positions to Non-Defaulting Participants

Those positions for which ICE Trust does not receive a formal bid above the minimum target price (or any bids at all) from any of the Non-Defaulting Participants will go through the allocation process, which will not begin until the auction process described above has been completed and associated trades have cleared. The allocation process schedule will be similar to the auction process and encompass six stages:

- Notification to the Non-Defaulting Participants that an auction was not successful and the allocation process has been triggered;
- Re-aggregation and re-partitioning (as necessary) of the remaining positions;
- Determination of position allocation among Non-Defaulting Participants based on risk exposure and overall portfolio size;
- Communication of position allocation to each relevant Participant impacted;
- Communication of price; and

---

<sup>54</sup> The Participant submitting the highest bid will be the "winner" and will enter into a transaction at the highest bid price for the contract specified in the auction. ICE Trust and the Participant will transfer funds bilaterally as appropriate. In the event that two or more bidders submit the highest bid, the bidder whose existing portfolio combined with the auctioned trades reduces ICE Trust's risk to the greatest extent, as determined by the Chief Risk Officer, will be declared the auction "winner."

- Trade novation.

After the allocated positions have been novated, the Participant's positions will be netted in accordance with the normal clearing and settlement process.

g. Use of Margin and Guaranty Fund

ICE Trust procedures call for the use of the Defaulting Participant's Margin and Guaranty Fund towards the losses. A Defaulting Participant's Margin for its proprietary account may be applied to satisfy a Default in a customer account, but a Defaulting Participant's Margin in its customer account may not be applied to satisfy a Default in its proprietary account. ICE Trust's policies also allow it to take any other action as ICE Trust may deem necessary or appropriate for its protection, including but not limited to drawing promptly on other financial resources (including but not limited to the Guaranty Fund balances of ICE Trust and the non-Defaulting Participants).

Upon a Participant Default, withdrawals from the Guaranty Fund will be made in the following order:

1. Defaulting Participant's Guaranty Fund Contribution
2. "First loss" funded by ICE Trust's first Priority contribution (one-time loss not to exceed \$25 million in total despite number of losses)
3. "Second loss" tranche funded equally by ICE Trust and the Non-Defaulting Participants' Guaranty Fund balances (see below for the specifics of how this tranche is calculated)
4. Remainder of the Guaranty Fund

The total amount of the second loss tranche is the equivalent of up to \$25 million from ICE Trust and a total of \$25 million times the number of Non-Defaulting Participants (e.g., if there are nine Non-Defaulting Participants, the Participants would commit  $9 * \$25$  million, or a total of \$225 million and ICE Trust would contribute \$25 million for a total of \$250 million) unless the total Guaranty Fund divided by the number of Participants plus one is less than \$20 million. The total amount committed by each Non-Defaulting Participants will be pro-rated based on each Participant's percentage of the total Guaranty Fund balance to reflect their proportionate share of the risk pool. Thus, while the total Participant commitment is the number of Participants times \$25 million (or an equal amount less than \$25 million as described above—the pro-rata reduction of \$25 million works in reverse in the same way), the actual commitment per Participant will be pro-rated.

In the event that the Guaranty Fund is exhausted, the remaining Participants will be obligated to contribute additional amounts to the Guaranty Fund based on a one-time limited assessment. The amount of the assessment will be up to (but will not exceed) each Participant's Guaranty Fund obligation prior to the Default.

The Clearing Rules, which are publicly available, describe the Default procedures. ICE Trust reviews its Default procedures on a quarterly basis.

## **H. Core Principle H: Rule Enforcement**

### **1. Core Principle Requirements**

*Each derivatives clearing organization shall –*

*(i) maintain adequate arrangements and resources for (I) the effective monitoring and enforcement of compliance with the rules of the derivatives clearing organization; and (II) the resolution of disputes;*

*(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant due to a violation by the member or participant of any rule of the derivatives clearing organization; and*

*(iii) report to the Commission regarding rule enforcement activities and sanctions imposed against members and participants as provided in clause (ii).*

### **2. Factual Basis and Analysis for Satisfaction of Core Principle**

#### **a. Monitoring and Enforcement**

ICE Trust compliance staff conducts investigations of possible violations of the Clearing Rules, prepares written reports with respect to such investigations, furnishes such reports to the Business Conduct Committee, and conducts the prosecution of such Clearing Rule violations.

ICE Trust will provide the Participant that is the subject of any investigation with a copy of the written report no less than five business days prior to distribution of the report to the Business Conduct Committee and will provide an opportunity to submit written comments regarding or evidence relevant to the report. Any written comments received from the Participant will either accompany distribution of the report to the Review Subcommittee or will be furnished to the Business Conduct Committee at or before the time of its meeting, depending on the date on which the Participant's comments are received by ICE Trust staff.

If, in any case, the Chief Executive Officer or President or another ICE Trust employee designated for this purpose by the Board of Managers concludes that a violation of the Clearing Rules may have occurred, he or she may:

- issue a warning letter to the Participant informing it that there may have been a violation of the Clearing Rules and that such continued activity may result in disciplinary sanctions; provided that such warning letter shall indicate that it is neither the finding of a violation of the Clearing Rules nor a penalty and is subject to the review of the Business Conduct Committee; or
- negotiate and enter into a written settlement agreement with the Participant, whereby the Participant, with or without admitting guilt, may agree to: (i) a cease and desist order or a reprimand; and/or (ii) a fine of up to ten thousand dollars for each violation of the Clearing Rules alleged plus the monetary value of any benefit received as a result of the alleged violation of the Clearing Rules. Any

such written settlement shall be subject to the approval of the Business Conduct Committee.

The Business Conduct Committee is comprised of Parent Independent Managers of the Board of Managers. Pursuant to the Clearing Rules, the Business Conduct Committee has the power to direct that an investigation of any suspected violation be conducted by ICE Trust. The Business Conduct Committee will hear any matter referred to it by ICE Trust or the Risk Committee regarding a suspected violation.<sup>55</sup>

Formal hearings on any alleged Clearing Rule violation are conducted by a three-member panel selected by the Business Conduct Committee Chairman from members of the Business Conduct Committee (the “Hearing Panel”).

The penalty that may be imposed on the Respondent by the Hearing Panel includes one or more of the following:

- a cease and desist order or a reprimand;
- a fine of up to one hundred thousand dollars for each Clearing Rule violation plus the monetary value of any benefit received as a result of the alleged Clearing Rule violation; and/or
- a recommendation to the Board of Managers to impose a suspension or revocation of clearing privileges or a termination of the Participant.

b. Dispute Resolution

Chapter 21 of the Clearing Rules sets forth arrangements for the resolution of disputes among Participants. Disputes will be heard and resolved by a committee consisting of Participant representatives, governed by the Clearing Rules.

c. Reporting

In accordance with the procedures described in this Section II.H., ICE Trust will report disciplinary actions to the Commission and other relevant regulatory authorities, where appropriate.

**I. Core Principle I: System Safeguards**

1. Core Principle Requirements

*Each derivatives clearing organization shall –*

*(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and automated systems, that are reliable, secure, and have adequate scalable capacity;*

---

<sup>55</sup> The Business Conduct Committee is described in Chapter 7 of the Clearing Rules.

(ii) *establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for (I) the timely recovery and resumption of operations of the derivatives clearing organization; and (II) the fulfillment of each obligation and responsibility of the derivatives clearing organization; and*

(iii) *periodically conduct tests to verify that the backup resources of the derivatives clearing organization are sufficient to ensure daily processing, clearing, and settlement.*

## 2. Factual Basis and Analysis for Satisfaction of Core Principle

### a. Operational Risk

Appendix 12 to the Risk Management Framework describes ICE Trust's Operational Risk Framework. ICE Trust broadly defines operational risk as the risk of loss resulting from inadequate or failed internal processes, people and systems. This definition includes legal risk, deficiencies in systems and controls, human errors, and management failures.

The Operational Risk Framework applies to ICE Trust including all of its activities, groups, functions, and locations, taking into consideration applicable laws and regulations. The policy also extends to ICE Trust's partners, related entities, and vendors where the relationship could have an impact on the operational risk levels at ICE Trust. Specifically, the objectives of the Operational Risk Framework are as follows:

- to articulate ICE Trust's strong commitment to operational risk management and its governing principles;
- to define ICE Trust's approach to operational risk management and enhance the operational risk management framework;
- to establish a common definition for operational risk management; and
- to establish clear governance and reporting structures.

The Board of Managers and senior management have the ultimate responsibility for the Operational Risk Framework. The Operational Risk Framework is reviewed and approved by the Board of Managers on an annual basis.

### b. Emergency Procedures, Backup Facilities, and Disaster Recovery Plan

ICE Trust has and maintains a Business Continuity Plan (the "BCP Plan").<sup>56</sup> The BCP Plan was developed to: (i) preserve the health and safety of staff; (ii) avoid confusion and reduce exposure to error during an interruption by providing an organized and consolidated approach to managing response, recovery, and resumption activities; (iii) reduce the impact resulting from short-term business interruptions by providing appropriate responses for rapid recovery from unplanned incidents; and (iv) resume essential operations in a timely manner.

With respect to disaster recovery, the BCP Plan includes objectives to:

---

<sup>56</sup> A copy of the Business Continuity Plan is attached as Confidential Exhibit Y.

- Establish and maintain distributed computing environments for the recovery of production systems based on current business demands.
- Maintain a process to copy data real-time to an off-site location to facilitate a timely system recovery and provide a backup of Development and Test environments.
- Conduct tests at least annually to ensure recovery of the infrastructure, applications and connectivity.
- Establish, maintain and document procedures and processes to facilitate recovery in event of disaster, as needed, based on business changes.
- Review plan with senior management semi-annually.
- Maintain relationship and responsibilities with disaster recovery services providers (currently Sungard Recovery Services).
- Maintain physical environment, secured cage space, and network connectivity within the disaster recovery facility.

ICE Trust maintains a remote site contracted from a leading disaster recovery service to be used in the event of a disaster. The site currently used is a disaster-resistant “bunkered” site, with redundant power sources, data communications, and hardware. The site also has power generators that can maintain operations independent of local power availability. All electronic trade data (trades, confirmation messages, and back office transactions) and risk management data are mirrored to the disaster recovery site in a real-time mode, so that all of the data necessary to recover the trading interfaces is available at the remote site at any given time.

c. Testing

Under the BCP Plan, every combination of alternate location and business function will be tested at least annually. Any identified issues are noted in the post-test report for follow up action. The BCP Plan will be revised as needed after any significant change to services provided or systems used by ICE Trust, but not less than annually. Component and data center level failure scenarios are tested at least six times per year. Three of the six tests per year are open to CDS client participation and clients are required to participate in at least one test per year.

**J. Core Principle J: Reporting**

1. Core Principle Requirements

*Each derivatives clearing organization shall provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the derivatives clearing organization.*

2. Factual Basis and Analysis for Satisfaction of Core Principle

ICE Trust will make available to the Commission, on request or at such interval as is set forth in the Act or Commission Regulations, all information necessary for the Commission to perform its oversight function of ICE Trust under the Act with respect to ICE Trust's activities. Upon becoming a DCO, ICE Trust will amend its procedures to provide the Commission with the information required under the Act and the Commission Regulations.

**K. Core Principle K: Recordkeeping**

1. Core Principle Requirements

*Each derivatives clearing organization shall maintain records of all activities related to the business of the derivatives clearing organization as a derivatives clearing organization –*

- (i) in a form and manner that is acceptable to the Commission; and*
- (ii) for a period of not less than 5 years.*

2. Factual Basis and Analysis for Satisfaction of Core Principle

In accordance with the Act and Commission Regulations, ICE Trust will maintain records of all activities related to its business as a DCO in a form and manner set forth in Commission Regulation 1.31 for a period of at least five years. ICE Trust will make its books and records open to inspection by any representative of the Commission or of the U.S. Department of Justice.

Presently, since ICE Trust is a relatively new entity, ICE Trust's policy with respect to record retention is that all records are maintained indefinitely. ICE Trust is in the process of implementing a formal record retention policy, which ICE Trust will update to include the recordkeeping requirements set forth in the Act and Commission Regulations prior to ICE Trust operating as a DCO.

**L. Core Principle L: Public Information**

1. Core Principle Requirements

*(i) IN GENERAL. Each derivatives clearing organization shall provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the derivatives clearing organization.*

*(ii) AVAILABILITY OF INFORMATION. Each derivatives clearing organization shall make information concerning the rules and operating and default procedures governing the clearing and settlement systems of the derivatives clearing organization available to market participants.*

*(iii) PUBLIC DISCLOSURE. Each derivatives clearing organization shall disclose publicly and to the Commission information concerning (I) the terms and conditions of each contract, agreement, and transaction cleared and settled by the derivatives clearing organization; (II)*

*each clearing and other fee that the derivatives clearing organization charges the members and participants of the derivatives clearing organization; (III) the margin-setting methodology, and the size and composition, of the financial resource package of the derivatives clearing organization; (IV) daily settlement prices, volume, and open interest for each contract settled or cleared by the derivatives clearing organization; and (V) any other matter relevant to participation in the settlement and clearing activities of the derivatives clearing organization.*

2. Factual Basis and Analysis for Satisfaction of Core Principle

The ICE Trust website will make publicly available the following information: (i) the Clearing Rules (which include Participant criteria, Default Procedures, and contract specifications for each contract cleared and settled by ICE Trust); (ii) clearing and other fees that ICE Trust charges to its Participants; (iii) the size and composition of ICE Trust's financial resource package, including quarterly information regarding the size of the ICE Trust Guaranty Fund; (iv) the ICE Trust Margin-setting methodology; and (v) volume, and open interest for each contract settled or cleared by ICE Trust. This information along with a series of Participant and market participant-specific documents provides market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using ICE Trust. Prior to its operation as a DCO, ICE Trust will make any information required by Core Principle L or Commission Regulations publicly available on its website.

ICE Trust will disclose publicly its daily settlement prices, which currently are distributed through its arrangement with Markit. Markit may charge a reasonable subscription fee for access to the settlement prices.

**M. Core Principle M: Information Sharing**

1. Core Principle Requirements

*Each derivatives clearing organization shall –*

*(i) enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement; and*

*(ii) use relevant information obtained from each agreement described in clause (i) in carrying out the risk management program of the derivatives clearing organization.*

2. Factual Basis and Analysis for Satisfaction of Core Principle

ICE Trust is not a party to any information-sharing agreements. Upon registration as a DCO, ICE Trust will apply to become a member of the Joint Audit Committee. ICE Trust will continue to evaluate potential information-sharing agreements or arrangements to consider whether they are appropriate and applicable to its operations, including whether the information obtained under such agreement or arrangement could be used to further the objectives of its risk management program and surveillance programs, including financial surveillance and continuing eligibility of its Participants.

In the Participant Agreement, each Participant authorizes ICE Trust to provide to any governmental or regulatory agency, or self-regulatory agency, upon request, information that the governmental or regulatory agency, or self-regulatory agency, is legally authorized to receive.

**N. Core Principle N: Antitrust Considerations**

1. Core Principle Requirements

*Unless necessary or appropriate to achieve the purposes of this Act, a derivatives clearing organization shall not –*

- (i) adopt any rule or take any action that results in any unreasonable restraint of trade; or*
- (ii) impose any material anticompetitive burden.*

2. Factual Basis and Analysis for Satisfaction of Core Principle

ICE Trust has not adopted, and will not adopt, any regulations or take other actions that it believes would be an unreasonable restraint of trade or impose any additional anticompetitive burden.

ICE Trust has considered the antitrust implications in drafting the Clearing Rules and related policies and procedures, and concluded that the Clearing Rules and ICE Trust's actions taken thereunder do not constitute an unreasonable restraint of trade or impose any material anticompetitive burden.

**O. Core Principle O: Governance Fitness Standards**

1. Core Principle Requirements

*(i) GOVERNANCE ARRANGEMENTS. Each derivatives clearing organization shall establish governance arrangements that are transparent (I) to fulfill public interest requirements; and (II) to permit consideration of the views of owners and participants.*

*(ii) FITNESS STANDARDS. Each derivatives clearing organization shall establish and enforce appropriate fitness standards for—(I) directors; (II) members of any disciplinary committee; (III) members of the derivatives clearing organization; (IV) any other individual or entity with direct access to the settlement or clearing activities of the derivatives clearing organization; and (V) any party affiliated with any individual or entity described in this clause.*

2. Factual Basis and Analysis for Satisfaction of Core Principle

a. Governance Arrangements

The Operating Agreement of ICE Trust and the Clearing Rules set forth a transparent governance structure that includes the Board of Managers and three Board of Managers-level committees: the Risk Committee, the Audit Committee, and the Advisory Committee. Separately, the Board of Managers has formed the Business Conduct Committee.

The Board of Managers consists of 11 Managers.<sup>57</sup> Four Managers are elected by ICE Inc. and at all times are independent in accordance with the requirements of each of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) the New York Stock Exchange listing standards (the “Parent Independent Managers”). Three Managers are elected by ICE Inc. (the “Parent Non-Independent Managers”). Two Managers designated by the Risk Committee are elected by ICE Inc. to the Board of Managers and at all times are independent in accordance with the requirements of each of the New York Stock Exchange listing standards, the Exchange Act, and the Board of Director Governance Principles (the “Risk Committee Independent Managers”). Two Managers designated by the Risk Committee are elected by ICE Inc. to the Board of Managers (the “Risk Committee Non-Independent Managers”). The Board of Managers will make a finding, on the record, that the Parent Independent Managers and Risk Committee Independent Managers meet the definition of “public director” that is ultimately adopted by the Commission in the Commission Regulations.

The ICE Trust governance structure empowers the Board of Managers with the authority and responsibility for delivering sound and effective services. The Board of Managers will receive input from the Risk Committee (which consists of Participants) and additional advisory committees, including the Advisory Committee (which consists of non-Participant market participants), each of which is described in Section II.C. above. Collectively, management and the committees work to ensure that ICE Trust continues to meet the risk management and public interest requirements.

ICE Trust has employees who are designated as officers by the Board of Managers will designate from time to time. Reporting lines between management and the Board of Managers are clear and direct.

b. Fitness Standards

ICE Trust has established fitness standards for its Participants, which are described above in Section II.C. Additionally, ICE Trust has established fitness standards for its managers, committee members, and officers.<sup>58</sup> Each member of the Board of Managers, committee member, and officer is required to submit a certification to ICE Trust that he/she is not subject to a statutory disqualification as described in Section 8a(2) of the Act.

**P. Core Principle P: Conflicts of Interest**

1. Core Principle Requirements

*Each derivatives clearing organization shall –*

*(i) establish and enforce rules to minimize conflicts of interest in the decision-making process of the derivatives clearing organization; and*

---

<sup>57</sup> A list of the ICE Trust Board of Managers and their professional biographies is attached as Confidential Exhibit Z.

<sup>58</sup> The ICE Trust Code of Business Conduct and Ethics for Managers is attached as Confidential Exhibit T. The ICE Trust Code of Business Conduct and Ethics for Committee Members is attached as Confidential Exhibit AA. The ICE Inc. Code of Business Conduct and Ethics, which applies to ICE Inc. employees and all employees of its subsidiaries (including TCC and ICE Trust), is attached as Confidential Exhibit BB.

(ii) *Each derivatives clearing organization shall establish a process for resolving conflicts of interest described in clause (i).*

2. Factual Basis and Analysis for Satisfaction of Core Principle

The Clearing Rules and the ICE Trust Code of Business Conduct and Ethics for Managers set forth rules and procedures to minimize conflicts of interest in the decision-making process and to resolve any such conflict of interest. The Chief Compliance Officer administers the resolution of conflicts of interest.

Clearing Rule 601(a) requires a Manager who has a conflict of interest with respect to the outcome of such a vote related to an Emergency (as determined by ICE Trust) to abstain from deliberating and voting on the matter in question.

If ICE Trust determines that any CDS Default Committee Participant has a conflict or lacks impartiality with regard to an action to be undertaken by the CDS Default Committee, ICE Trust will remove such CDS Default Committee Participant and, as promptly as practicable under the circumstances, replace it with the next CDS Committee-Eligible Participant on the CDS Default Committee Participant List.

As described in Section II.C. and Section II.O. above, the Board of Managers consists of a majority of public directors, who are solely responsible for certain functions of ICE Trust where conflicts may arise (e.g., the responsibilities of the Audit Committee). Prior to its operation as a DCO, and subsequent to the adoption of any relevant Commission Regulations regarding conflicts of interest, ICE Trust will review its Board of Managers and governance structure to ensure that it complies with applicable Commission Regulations.

As described in Section I.A. above, no Participant has any voting equity in ICE Trust.

**Q. Core Principle Q: Composition of Governing Boards**

1. Core Principle Requirements

*Each derivatives clearing organization shall ensure that the composition of the governing board or committee of the derivatives clearing organization includes market participants.*

2. Factual Basis and Analysis for Satisfaction of Core Principle

The ICE Trust Board of Managers and committees include market participants. As described in Section II.O. above, the Board of Managers consists of eleven Managers, including two independent Managers (also in accordance with the independence requirements of each of the New York Stock Exchange listing standards, the United States Securities Exchange Act of 1934, and ICE Trust's Board of Managers Governance Principles) designated by Participants (through the Risk Committee), and two non-independent Managers designated by Participants (through the Risk Committee). Pursuant to Clearing Rule 508(a), the Risk Committee will seek to ensure that the two non-independent board appointees are senior executives, preferably employed by ICE Inc., that have broad experience in corporate governance, management oversight, and financial markets (including with respect to matters other than credit derivatives).

The rights of the Risk Committee are to be consulted prior to ICE Trust taking certain actions, including products to be cleared, Participant qualifications, Margin methodology, and Guaranty Fund structure. The Risk Committee is described in Section II.D. above.

The Advisory Committee of ICE Trust consists of up to 12 major non-Participants, two of ICE Trust's Managers, and one ICE Inc. Independent Manager appointed by the Board of Managers. The Advisory Committee may propose actions to both the Board of Managers and the Risk Committee for consideration, as applicable, by those bodies. The Advisory Committee is described in Section II.D above.

## **R. Core Principle R: Legal Risk**

### **1. Core Principle Requirements**

*Each derivatives clearing organization shall have a well-founded, transparent, and enforceable legal framework for each aspect of the activities of the derivatives clearing organization.*

### **2. Factual Basis and Analysis for Satisfaction of Core Principle**

ICE Trust believes that it has a well-founded, transparent, and enforceable legal framework for each aspect of the activities of ICE Trust.

The Clearing Rules, Clearing Participant Agreement, procedures, and contracts of ICE Trust provide assurance that actions taken under the Clearing Rules and procedures may not later be stayed, avoided, or reversed. ICE Trust has obtained legal advice on the enforceability of the liquidation and netting provisions of the Clearing Rules in the U.K., U.S., France, Germany, Scotland, and Switzerland, which will remain applicable to self-clearing Participants in such jurisdictions. ICE Trust has received legal advice that, subject to the customary qualifications and assumptions found in such legal opinions, with respect to self-clearing Participants, ICE Trust will be able to enforce its rights against persons in relation to collateral held in such jurisdictions in accordance with its Clearing Rules. ICE Trust also will seek advice on the enforceability of the liquidation and netting provisions of the Clearing Rules in jurisdictions in which future applicants for membership are established.

## **III. Conclusion**

Based on the foregoing information and the information contained in the Schedules and Exhibits attached hereto, ICE Trust believes that it is eligible for registration as a DCO and that its proposed activities in that capacity satisfy the applicable Core Principles set forth in Section 5b(c)(2) of the Act.

**SCHEDULE I – COMPLIANCE WITH CORE PRINCIPLES**

**ICE Trust U.S. LLC (“ICE Trust”)  
APPLICATION FOR REGISTRATION AS A DERIVATIVES CLEARING  
ORGANIZATION**

<b>DCO Core Principle</b>	<b>ICE Trust U.S. LLC Response</b>
<b>(A) Compliance</b>	See the Letter from Winston & Strawn LLP to David Stawick, dated November 12, 2010, the Application of ICE Trust (the “Application”) and Exhibits thereto, and this table. Certain capitalized terms used but not defined herein shall have the meaning set forth in the ICE Trust Clearing Rules (the “Clearing Rules”), attached as Exhibit A to the Application.
<b>(B) Financial Resources</b>	<p>See Section II.B. of the Application.</p> <p>See the Exhibits to the Application:</p> <ul style="list-style-type: none"> <li>• Confidential Exhibit F – ICE Trust Senior Management and professional biographies</li> <li>• Confidential Exhibit G – Master Services Agreement</li> <li>• Confidential Exhibit H – ICE Trust Departmental Organizational Chart</li> <li>• Exhibit I – ICE Inc. Senior Revolving Credit Facility</li> <li>• Confidential Exhibit K – ICE Trust Financial Statements</li> <li>• Confidential Exhibit M – ICE Trust Risk Management Framework</li> </ul> <p>ICE Trust has entered into a Master Services Agreement (the “Master Services Agreement”) with its 100% commonly owned affiliate, The Clearing Corporation (“TCC”), a derivatives clearing organization (“DCO”) registered with the Commission, and its ultimate parent, IntercontinentalExchange, Inc. (“ICE Inc.”). Approximately 70 individuals support the Legal, Compliance, Client Services and Support, Risk, Technology, Treasury, Internal Audit, and Product Development departments of ICE Trust that will enable ICE Trust to fulfill its responsibilities as a DCO. ICE Trust presently has approximately 30 employees. Under the Master Services Agreement, approximately 40 employees of TCC and three employees of ICE Inc. provide core services to ICE Trust.</p> <p>The size of the Guaranty Fund, not including assessment powers, is set at the maximum stress loss, under extreme but plausible market conditions, of: (i) uncollateralized losses of the largest Defaulting Participant with a long protection profile and (ii) the uncollateralized losses of the two largest Defaulting Participants that exhibit short protection profiles. Prior to its operation as a DCO, ICE Trust will change the calculation of the size of Guaranty Fund to set it at the maximum stress loss of the uncollateralized losses of the two largest defaulting Participants with a long protection profile and the uncollateralized losses of the two largest defaulting Participants with a short protection profile.</p> <p>As set forth in its financial statements, ICE Trust presently has financial resources, in the form of cash, which will enable it to cover its projected operating costs for a period of at least one year.</p>

DCO Core Principle	ICE Trust U.S. LLC Response
<b>(C) Participant and Product Eligibility</b>	<p>See Section II.C. of the Application.</p> <p>See the following Exhibits to the Application:</p> <ul style="list-style-type: none"> <li>• Exhibit A – Clearing Rules</li> <li>• Confidential Exhibit L – ICE Trust CDS Counterparty Monitoring Procedures</li> <li>• Confidential Exhibit M – ICE Trust Risk Management Framework</li> <li>• Confidential Exhibit N – ICE Trust Clearing Participant Application Documents</li> <li>• Confidential Exhibit O – ICE Trust ISDA Schedule to the Master Agreement</li> </ul> <p><i>Participant Requirements.</i> ICE Trust has established appropriate Participant admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in its operation as a DCO). The requirements to become a Participant are set forth in Clearing Rule 201 and are publicly available on ICE Trust’s website. Participants that are FCMs, and Participants that are non-FCMs that elect to provide a Form 1-FR or FOCUS Report to ICE Trust, must maintain a minimum of \$1 billion in Adjusted Net Capital as reported (or as would be reported) to the Commission on a Form 1-FR or FOCUS Report. Other non-FCM Participants must maintain a minimum of \$5 billion Tier 1 capital. All Participants will be required to be licensed and regulated for capital adequacy by a “competent authority” such as the Commission, SEC, Federal Reserve, Office of the Comptroller of Currency, U.K. Financial Services Authority, or other regulatory authority as determined by ICE Trust. Additionally, any Participant that clears CDS transactions for customers will be registered with the Commission as a futures commission merchant (“FCM”). Any Participant that clears single-name CDS transactions also will be required to maintain in good standing such registrations with the SEC (or exemptions from registration) as may be required from time to time to conduct its business.</p> <p>Additionally, ICE Trust evaluates each applicant’s operational capabilities. To become a Participant, an applicant must demonstrate: (i) operational competence in CDS, including the ability to process the expected volumes and values of contracts within the required time frames; (ii) systems and management expertise in CDS, including maintaining back-office facilities (or entering into a facilities management agreement in a form and substance acceptable to ICE Trust); (iii) an ability to submit pricing data within the required time frames; (iv) risk management expertise in CDS; and (v) that it is a DTCC Deriv/Serv Participant.</p> <p>The Participant Review Committee reviews Participant Applications to determine if the applicant meets the Participant criteria set forth in the Clearing Rules (as described above) and makes a recommendation to ICE Trust’s Board of Managers (the “Board of Managers”). The Board of Managers determines whether to admit</p>

DCO Core Principle	ICE Trust U.S. LLC Response
	<p>an applicant as a Participant.</p> <p><i>Contract Requirements.</i> ICE Trust clears CDS products that: (i) clear in a standardized coupon; (ii) are denominated in a supported currency; (iii) are in a supported restructuring clause; (iv) have DTCC TIW bilateral open interest of material value relative to that product class; and (v) have open interest held by a sufficient number of Participants (as determined by the Chief Risk Officer) to provide breadth of price discovery through the end-of-day settlement pricing process.</p> <p>Prior to accepting a new product type for clearing, ICE Trust must consult with the ICE Trust Risk Committee (the “Risk Committee”) and also may consult with the ICE Trust Advisory Committee (the “Advisory Committee”) to evaluate the acceptability of the new product.</p> <p><i>Procedures for Participant Compliance.</i> The Risk Management Department and the Participant Review Committee monitor each Participant’s ongoing compliance with the Participant criteria in accordance with the ICE Trust CDS Clearing Counterparty Monitoring Procedures.</p>
<b>(D) Risk Management</b>	<p>See Section II.D. of the Application.</p> <p>See the following Exhibits to the Application:</p> <ul style="list-style-type: none"> <li>• Exhibit A – Clearing Rules</li> <li>• Confidential Exhibit M – ICE Trust Risk Management Framework</li> <li>• Confidential Exhibit P – Reports of independent consultant regarding the ICE Trust risk management framework</li> <li>• Confidential Exhibit R – ICE Trust Committee Structure Organizational Chart</li> <li>• Confidential Exhibit S – ICE Trust Audit Committee Charter</li> <li>• Confidential Exhibit U – ICE Trust Compliance Committee Charter</li> <li>• Confidential Exhibit V – ICE Trust Sample Report of Margin Calculation</li> <li>• Confidential Exhibit W – ICE Trust Description of Mark-to-Market Process</li> <li>• Confidential Exhibit X – ICE Trust Sample Report of Guaranty Fund Calculation</li> </ul> <p><i>Measurement of Credit Exposure.</i> ICE Trust collects adequate but not excessive margins to collateralize risk. The margin required from each Participant is sufficient to cover potential exposures in normal market conditions. The Initial Margin requirements account for instrument risk, hedging benefits, bid-offer (liquidity), Jump-to-Default, and concentration risk. Margin requirements for each Participant are calculated and communicated at least once each day (by 4:00 a.m. Eastern Time in the daily flow) and are due no later than 9:00 a.m. Eastern Time. Intraday, the adequacy of the collected Initial Margin (i.e., risk-based margin) is actively monitored and is supported by automated feeds of the available intraday</p>

DCO Core Principle	ICE Trust U.S. LLC Response
	<p>price data. This data is used to measure each Participant’s intraday unrealized profit and loss to determine if ICE Trust’s intraday exposure to each Participant is covered by the margin on deposit.</p> <p><i>Limitation of Exposure to Potential Losses from Defaults.</i> ICE Trust mitigates its financial exposure with a hierarchy of protections: (i) Initial Margin, (ii) Mark-to-Market Margin, (iii) Guaranty Fund, and (iv) the right of one time limited assessment. The combination of these protections mitigates the exposure of ICE Trust to potential losses from Participant Defaults to ensure that ICE Trust’s operations are not disrupted and Non-Defaulting Participants are not exposed to losses that they are not able to anticipate or control.</p> <p><i>Risk Management Staff and Committees.</i> The Chief Risk Officer is directly responsible for risk management and in this capacity, is directly accountable to the ICE Trust President. The direct management of risk is balanced by a committee structure that provides (i) oversight and accountability, (ii) advisory input and, when necessary, (iii) specialized execution. These responsibilities are addressed across the committees that support and advise the Board of Managers with regard to its responsibilities for overseeing ICE Trust’s risk and risk management.</p> <p>The Risk Management Department, which is overseen by the Chief Risk Officer, is responsible for practices and procedures implementing the ICE Trust Risk Management Framework. The Risk Management Department consists of six individuals, who are dedicated to risk management and do not have responsibilities in other functions.</p> <p><i>Review of Risk Controls.</i> On at least an annual basis, to ensure an adequate risk control, the Risk Committee reviews ICE Trust’s risk management compliance with the Risk Management Framework and associated policies and/or procedures, the margin framework and methodologies, the Guaranty Fund framework and methodologies, the Acceptable Collateral Policy and associated haircuts, the Investment Policy Statement, and all other relevant risk management policies, limits, and guidelines to ensure their ongoing effectiveness.</p>
<p><b>(E) Settlement Procedures</b></p>	<p>See Section II.E. of the Application.</p> <p>See the following Exhibits to the Application:</p> <ul style="list-style-type: none"> <li>• Exhibit A – Clearing Rules</li> <li>• Confidential Exhibit G – Master Services Agreement</li> <li>• Confidential Exhibit J – ICE Trust Treasury Operations Policies &amp; Procedures</li> <li>• Confidential Exhibit M – ICE Trust Risk Management Framework</li> </ul> <p><i>Completion of Money Settlements.</i> ICE Trust uses a direct settlement model whereby it issues direct debit messages to the Participants’ bank accounts at 4 a.m.</p>

DCO Core Principle	ICE Trust U.S. LLC Response
	<p>Eastern Time daily. Upon funding, the monies move into ICE Trust’s account at Bank of New York Mellon (“BNYM”). ICE Trust confirms on a daily basis that the funds transfers have been made by 9:00 a.m. Eastern Time. Failure to have fully met Margin requirements by 9:00 a.m. Eastern Time may result in a Participant being declared in Default. Money settlements are final when effected. Funds transfers are final and irrevocable upon transfer. All assets held in ICE Trust’s account are held in ICE Trust’s name and control.</p> <p><i>Settlement Bank Risk.</i> ICE Trust monitors the health of its settlement bank(s). ICE Trust currently maintains settlement and custody accounts at BNYM. ICE Trust, as a matter of policy, does not bank with a financial institution that is also a Participant (or affiliate). This policy prevents the failure of a Participant from impacting ICE Trust’s ability to conduct its banking business with non-Defaulting Participants. ICE Trust currently holds all USD cash margin and cash Guaranty Fund deposits at its account at the Federal Reserve Bank of New York. On a daily basis, ICE Trust transfers the net of the marging calls and withdrawals to or from its Federal Resreve Bank Account.</p>
<p><b>(F) Treatment of Funds</b></p>	<p>See Section II.F. of the Application.</p> <p>See the following Exhibits to the Application:</p> <ul style="list-style-type: none"> <li>• Confidential Exhibit J – ICE Trust Treasury Operations Policies &amp; Procedures</li> <li>• Confidential Exhibit M – ICE Trust Risk Management Framework</li> </ul> <p>The Treasury Operations Policies and Procedures, Risk Management Framework and Clearing Rules set forth the standards and procedures of ICE Trust designed to protect and ensure the safety of Participant and customer funds and assets. ICE Trust has designated BNYM as its bank (cash and custody) for Margin and Guaranty Fund assets.</p> <p>Customer funds will be held in an account meeting the requirements of the “cleared OTC derivatives” account class. These customer funds will be segregated from the proprietary funds of Participants. Customer funds in a cleared OTC derivatives account may not be used to satisfy the proprietary obligations of the Participant.</p> <p>The Participant’s Margin and the Guaranty Fund assets are immediately available and in highly liquid form: Cash (USD or G7), U.S. Treasury Securities (Bills, Notes, and Bonds) and G7 Government Securities (Canada, France, Germany, Italy, Japan, United Kingdom, and United States). ICE Trust also employs Initial Margin and Guaranty Fund collateral liquidity thresholds. At least 45% of Initial Margin and Guaranty Fund deposits must be in cash (USD). The next threshold of 20% (for a total of 65%) may be in cash (USD) and/or U.S. treasuries. The remaining percentage may be any form of the acceptable collateral.</p>

DCO Core Principle	ICE Trust U.S. LLC Response
	All customer funds are invested in accordance with Commission Regulation 1.25.
<b>(G) Default Rules and Procedures</b>	<p>See Section II.G. of the Application.</p> <p>See the following Exhibits to the Application:</p> <ul style="list-style-type: none"> <li>• Exhibit A – Clearing Rules</li> <li>• Confidential Exhibit M – ICE Trust Risk Management Framework</li> </ul> <p>As set forth in Clearing Rule 605, a Participant is in “Default” when it (i) fails to meet any of its obligations (other than an obligation to transfer Margin) with respect to, or who is otherwise in default or subject to early termination under, its Contracts with ICE Trust, (ii) fails to transfer Margin (whether Initial Margin or Mark-to-Market Margin) by the deadline established under the Clearing Rules, (iii) is suspended or expelled or whose privileges are revoked by ICE Trust or another market, or (iv) has a guarantor providing a guarantee pursuant to Clearing Rule 205 who fails to meet any obligations with respect to, or who is otherwise in default under, the guarantee.</p> <p>The Clearing Rules and Participant Default Management Procedures provide ICE Trust with the authority to close, transfer, or otherwise resolve the Defaulting Participant’s positions and apply the collateral of the Defaulting Participant towards the losses. ICE Trust procedures call for a close or a transfer of the Defaulting Participants’ positions and the use of their Margin and Guaranty Fund towards the losses. ICE Trust’s policies also allow it to take any other action as ICE Trust may deem necessary or appropriate for its protection, including but not limited to drawing promptly on other financial resources (including but not limited to the Guaranty Fund balances of ICE Trust and the non-Defaulting Participants).</p> <p>The legal framework provides a high degree of assurance that the decisions to liquidate or transfer the positions of a Defaulting party or to draw down on resources in the event of a Default by a Participant will not be stayed or reversed.</p> <p>ICE Trust has a documented approach to implementing Default procedures. The plans afford ICE Trust flexibility in how to best implement these procedures through its CDS Default Committee with decision-making powers in place to manage the default procedures. The Default Committee oversees seconded traders with responsibility for executing the default strategy (hedge and/or liquidate). The plan addresses the coordination needed when there is more than one Participant defaulter. The plan is reviewed on a quarterly basis.</p> <p>The default procedures as indicated are publicly available (e.g., definition of Default, declaration of Default, etc.). The detailed policies and procedures are available to Participants.</p>

<b>DCO Core Principle</b>	<b>ICE Trust U.S. LLC Response</b>
<b>(H) Rule Enforcement</b>	<p>See Section II.H. of the Application.</p> <p>See the following Exhibits to the Application:</p> <ul style="list-style-type: none"> <li>• Exhibit A – Clearing Rules</li> <li>• Confidential Exhibit M – ICE Trust Risk Management Framework</li> <li>• Confidential Exhibit U – ICE Trust Compliance Committee Charter</li> </ul> <p>ICE Trust compliance staff conducts investigations of possible violations of the Clearing Rules, prepares written reports with respect to such investigations, furnishes such reports to the Business Conduct Committee, and conducts the prosecution of such Clearing Rule violations.</p> <p>Chapter 21 of the Clearing Rules sets forth arrangements for the resolution of disputes among Participants. Disputes will be heard and resolved by a committee consisting of Participant representatives, governed by the Clearing Rules.</p> <p>ICE Trust will report disciplinary actions to the Commission and other relevant regulatory authorities, where appropriate.</p>
<b>(I) System Safeguards</b>	<p>See Section II.I. of the Application.</p> <p>See the following Exhibits to the Application:</p> <ul style="list-style-type: none"> <li>• Confidential Exhibit G – Master Services Agreement</li> <li>• Confidential Exhibit M – ICE Trust Risk Management Framework</li> <li>• Confidential Exhibit Y– ICE Trust Business Continuity Plan</li> </ul> <p>ICE Trust broadly defines operational risk as the risk of loss resulting from inadequate or failed internal processes, people and systems. This definition includes legal risk, deficiencies in systems and controls, human errors, and management failures. The Board of Managers and senior management have the ultimate responsibility for the Operational Risk Framework. The Operational Risk Framework is reviewed and approved by the Board of Managers on an annual basis.</p> <p>ICE Trust has and maintains a Business Continuity Plan (the “BCP Plan”). The BCP Plan was developed to: (i) preserve the health and safety of staff; (ii) avoid confusion and reduce exposure to error during an interruption by providing an organized and consolidated approach to managing response, recovery, and resumption activities; (iii) reduce the impact resulting from short-term business interruptions by providing appropriate responses for rapid recovery from unplanned incidents; and (iv) resume essential operations in a timely manner.</p> <p><i>Testing.</i> Under the BCP Plan, every combination of alternate location and business function will be tested at least annually. Any identified issues are noted in the post-test report for follow up action. The BCP Plan will be revised as needed after any significant change to services provided or systems used by ICE Trust, but not less than annually. Component and data center level failure</p>

<b>DCO Core Principle</b>	<b>ICE Trust U.S. LLC Response</b>
	scenarios are tested at least six times per year. Three of the six tests per year are open to CDS client participation and clients are required to participate in at least one test per year.
<b>(J) Reporting</b>	<p>See Section II.J. of the Application.</p> <p>ICE Trust will make available to the Commission, on request or at such interval as is set forth in the Act or Commission Regulations, all information necessary for the Commission to perform its oversight function of ICE Trust under the Act with respect to ICE Trust’s activities.</p>
<b>(K) Recordkeeping</b>	<p>See Section II.K. of the Application.</p> <p>In accordance with the Act and Commission Regulations, ICE Trust will maintain records of all activities related to its business as a DCO in a form and manner set forth in Commission Regulation 1.31 for a period of at least five years. ICE Trust will make its books and records open to inspection by any representative of the Commission or of the U.S. Department of Justice.</p>
<b>(L) Public Information</b>	<p>See Section II.L. of the Application.</p> <p>Prior to its operation as a DCO, ICE Trust will make any information required by Core Principle L or Commission Regulations publicly available on its website. This will include information that provides market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using ICE Trust. ICE Trust will disclose publicly its daily settlement prices, which currently are distributed through its arrangement with Markit. Markit may charge a reasonable subscription fee for access to the settlement prices.</p>
<b>(M) Information Sharing</b>	<p>See Section II.M. of the Application.</p> <p>See the following Exhibits to the Application:</p> <ul style="list-style-type: none"> <li>• Confidential Exhibit P – ICE Trust Clearing Participant Application Documents</li> </ul> <p>ICE Trust is not a party to any information-sharing agreements. Upon registration as a DCO, ICE Trust will apply to become a member of the Joint Audit Committee. ICE Trust will continue to evaluate potential information-sharing agreements or arrangements to consider whether they are appropriate and applicable to its operations, including whether the information obtained under such agreement or arrangement could be used to further the objectives of its risk management program and surveillance programs, including financial surveillance and continuing eligibility of its Participants.</p> <p>In the Participant Agreement, each Participant authorizes ICE Trust to provide to any governmental or regulatory agency, or self-regulatory agency, upon request, information that the governmental or regulatory agency, or self-regulatory agency, is legally authorized to receive.</p>

<b>DCO Core Principle</b>	<b>ICE Trust U.S. LLC Response</b>
<b>(N) Antitrust Considerations</b>	<p>See Section II.N. of the Application.</p> <p>ICE Trust has not adopted, and will not adopt, any regulations or take other actions that it believes would be an unreasonable restraint of trade or impose any additional anticompetitive burden.</p> <p>ICE Trust has considered the antitrust implications in drafting the Clearing Rules and related policies and procedures, and concluded that the Clearing Rules and ICE Trust’s actions taken thereunder do not constitute an unreasonable restraint of trade or impose any material anticompetitive burden.</p>
<b>(O) Governance Fitness Standards</b>	<p>See Section II.O. of the Application.</p> <p>See the following Exhibits to the Application:</p> <ul style="list-style-type: none"> <li>• Exhibit A – Clearing Rules</li> <li>• Confidential Exhibit Z – ICE Trust Board of Managers and Professional Biographies</li> <li>• Confidential Exhibit AA – ICE Trust Code of Business Conduct and Ethics for Committee Members</li> <li>• Confidential Exhibit BB – ICE Inc. Code of Business Conduct and Ethics</li> </ul> <p>The Operating Agreement of ICE Trust and the Clearing Rules set forth a transparent governance structure that includes the Board of Managers and three Board of Managers-level committees: the Risk Committee, the Audit Committee, and the Advisory Committee. Separately, the Board of Managers has formed the Business Conduct Committee.</p> <p>ICE Trust has established fitness standards for its Participants, which are described in the Clearing Rules. Additionally, ICE Trust has established fitness standards for its managers, committee members, and officers. Each member of the Board of Managers, committee member, and officer is required to submit a certification to ICE Trust that he/she is not subject to a statutory disqualification as described in Section 8a(2) of the Act.</p>
<b>(P) Conflicts of Interest</b>	<p>See Section II.P. of the Application.</p> <p>See the following Exhibits to the Application:</p> <ul style="list-style-type: none"> <li>• Exhibit A – Clearing Rules</li> <li>• Confidential Exhibit T – Code of Business Conduct and Ethics for Managers</li> </ul> <p>The Clearing Rules and the ICE Trust Code of Business Conduct and Ethics for Managers set forth rules to minimize conflicts of interest in the decision-making process and to resolve any such conflict of interest. The Chief Compliance Officer administers the resolution of conflicts of interest.</p>

<b>DCO Core Principle</b>	<b>ICE Trust U.S. LLC Response</b>
	<p>The Board of Managers consists of a majority of public directors, who are solely responsible for certain functions of ICE Trust where conflicts may arise (e.g., the responsibilities of the Audit Committee).</p> <p>No Participant has any voting equity in ICE Trust.</p>
<b>(Q) Composition of Governing Boards</b>	<p>See Section II.Q. of the Application.</p> <p>See the following Exhibits to the Application:</p> <ul style="list-style-type: none"> <li>• Exhibit A – Clearing Rules</li> <li>• Confidential Exhibit B – ICE Trust U.S. LLC Operating Agreement</li> <li>• Confidential Exhibit M – Risk Management Framework</li> </ul> <p>The Operating Agreement provides that, subject to the advisory rights of the Risk Committee as set forth in the Clearing Rules, the management of ICE Trust will be vested exclusively in the Board of Managers. The Board of Managers includes two independent Managers designated by Participants (through the Risk Committee) and two non-independent Managers designated by Participants (through the Risk Committee).</p> <p>The rights of the Risk Committee are to be consulted prior to ICE Trust taking certain actions, including products to be cleared, Participant qualifications, Margin methodology, and Guaranty Fund structure. The Risk Committee will consist of twelve members, nine of which are representatives of Participants.</p> <p>The Advisory Committee may propose actions to both the Board of Managers and the Risk Committee for consideration, as applicable, by those bodies. The Advisory Committee of ICE Trust consists of up to 12 major non-Participants, two of ICE Trust’s Managers, and one ICE Inc. Independent Manager appointed by the Board of Managers.</p>
<b>(R) Legal Risk</b>	<p>See Section II.R. of the Application.</p> <p>See the following Exhibits to the Application:</p> <ul style="list-style-type: none"> <li>• Exhibit A – Clearing Rules</li> <li>• Confidential Exhibit N – ICE Trust Clearing Participant Application Documents</li> </ul> <p>As described in the Application, ICE Trust believes that it has a well-founded, transparent, and enforceable legal framework for each aspect of the activities of ICE Trust. The Clearing Rules, Clearing Participant Agreement, procedures, and contracts of ICE Trust provide assurance that actions taken under the Clearing Rules and procedures may not later be stayed, avoided, or reversed.</p>