June 22, 2017

Mr. Christopher J. Kirkpatrick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: ICE Clearing House Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act: Investment in Foreign Sovereign Debt Under Regulation 1.25

Dear Mr. Kirkpatrick:

ICE Clear Credit LLC ("ICE Clear Credit"), ICE Clear US, Inc. ("ICE Clear US") and ICE Clear Europe Limited ("ICE Clear Europe", and together with ICE Clear Credit and ICE Clear US, the "ICE DCOs"), each of which is a registered derivatives clearing organization ("DCO") under the Commodity Exchange Act, as amended (the "Act"), hereby request that the Commodity Futures Trading Commission (the "Commission") grant an exemptive order under Section 4(c) of the Act, or similar relief, to permit the investment by the ICE DCOs of futures and swap customer segregated funds in certain categories of Euro-denominated sovereign debt.

Introduction

The ICE DCOs, like all DCOs, are subject to the restrictions of Commission Rule 1.25[1] with respect to their investments of futures customer funds and cleared swap customer collateral (collectively, "customer funds").[2] In relevant part, Rule 1.25 permits a DCO to invest customer

[1] 17 C.F.R. 1.25.

[2] Rule 1.25 by its terms applies to the investment of futures customer funds. With respect to cleared swap customer collateral, Commission Rule 22.3(d) (17 C.F.R. 22.3(d)) requires that any investments be made in accordance with Rule 1.25. For convenience, we refer to both requirements herein as Rule 1.25.

INTERCONTINENTAL EXCHANGE
353 North Clark Street
Suite 3100
Chicago, IL 60654
Tel: 312.836.6700
Fax: 312.636.0020
theice.com

funds in obligations of the United States and obligations fully guaranteed as to principal and interest by the United States ("U.S. government obligations"). Such investments may be made either directly or through reverse repurchase agreements, in either case subject to the concentration and other requirements of Rule 1.25. With respect to U.S. dollar balances of customer funds, the ICE DCOs regularly make investments in U.S. government obligations consistent with Rule 1.25.

The current version of Rule 1.25 does not, however, permit a DCO to invest customer funds in the government obligations of other countries.[3] The ICE DCOs currently clear a number of contracts that are denominated in Euro. In addition, the ICE DCOs may generally accept margin in the form of Euro cash.[4] Because of the limitations in Rule 1.25, Euro-denominated customer fund balances cannot be invested in Euro-denominated sovereign debt (or other Euro-denominated assets) and generally must be maintained in commercial bank deposit accounts. For the reasons set forth herein, the ICE DCOs seek authorization to invest Euro-denominated customer fund balances in Euro-denominated sovereign debt issued by the Federal Republic of Germany and the French Republic ("Qualifying Euro Sovereign Debt"), both through direct investments and reverse repurchase transactions. The ICE DCOs also seek permission to enter into such reverse repurchase transactions with non-US banks and non-US securities dealers, which are the principal participants in the markets for such transactions, and to hold the

---

At this time, in light of their current mix of cleared products, ICE Clear US only holds and invests futures customer funds and ICE Clear Credit only holds and invests cleared swap customer collateral. Under its Rules, ICE Clear Europe may hold and invest both futures customer funds and cleared swap customer collateral provided by its FCM clearing members, although it currently only holds and invests futures customer funds.

[3] For clarity, ICE Clear Europe separately invests Euro balances of customers of non-FCM clearing members (which are not subject to the requirements of Section 4d of the Act or Rule 1.25) in various categories of Euro-denominated sovereign debt, consistent with applicable UK and EU legal and regulatory requirements. This request does not relate to such activity.

[4] Please note that currently ICE Clear US does not hold margin in the form of Euro cash, but has accepted and held Euro cash margin in the past. With respect to the other ICE DCOs, acceptance of Euro margin is not limited to Euro-denominated contracts (and the relief requested hereunder is not intended to be limited to that scenario), and similarly, margin in other currencies may be provided in respect of obligations of Euro-denominated contracts. However, ICE DCOs impose additional haircuts where margin is posted on a cross-currency basis, and it is frequently desirable for clearing members (and their customers) to provide margin in the same currency as the relevant contract.

securities purchased in such transactions with custodians domiciled in the European Union ("EU"), notwithstanding the restrictions of Rule 1.25(d)(2) and (7).

Discussion

Prior to 2011, Rule 1.25 expressly permitted a DCO to invest futures customer funds in the sovereign debt of a foreign country to the extent it had balances in segregated accounts owed to clearing members denominated in that country's currency. As part of amendments made to Rule 1.25 in December 2011 (the "2011 Amendments"), the Commission eliminated the authority to invest in foreign sovereign debt.[5] At the time, the Commission indicated a number of concerns about investments in foreign sovereign debt, including that such investments were not, in all situations, a sufficient safe means of managing foreign exchange risk and that foreign sovereign debt, particularly of a troubled sovereign issuer, may be illiquid and may be able to be sold only with a significant markdown. The Commission also noted a lack of evidence that foreign sovereign debt was widely used for investments of customer funds or that the use of foreign sovereign debt provided meaningful diversification.[6]

The Commission recognized, however, that DCOs have varying collateral management needs, that the safety of sovereign debt of one country may vary greatly from another and that investment in some sovereign debt "might be consistent with the objectives of preserving principal and maintaining liquidity, as required by Regulation 1.25."[7] The Commission further stated that it would be amenable to considering an application for an exemption from Rule 1.25 under Section 4(c) of the Act upon a demonstration that the investment of customer funds in the sovereign debt of particular countries was appropriate in light of the objectives of Rule 1.25 and the criteria set forth in Section 4(c).[8] More specifically, the Commission stated that it

---

[5] Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 76 Fed. Reg. 78776 (December 19, 2011).
[6] Id. at 78781-78782.
[7] Id.
[8] Section 4(c)(2) provides that an exemption from a requirement may only be granted if the exemption is consistent with the public interest and the purposes of the Act, and the relevant transaction will be entered into solely between appropriate persons and will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act. "Appropriate persons" for this purpose include FCMs (acting on their own behalf or on behalf of another appropriate person) and "such other persons as the Commission determines to be

would consider permitting investments in foreign sovereign debt of a country to the extent (1) the DCO has balances in segregated accounts owed to its clearing member FCMs in that country's currency and (2) such sovereign debt serves to preserve principal and maintain liquidity of customer funds as required for all other investments of customer funds under Rule 1.25.[9]

In the view of the ICE DCOs, the requested relief to permit investment of customer funds in Qualifying Euro Sovereign Debt meets this standard, as detailed herein.

Consistent with the first criterion above, investment of customer funds in Qualifying Euro Sovereign Debt would be limited to Euro cash balances held by the ICE DCO in segregation for the applicable customer account of its FCM clearing members as futures customer funds or cleared swap customer collateral. Such balances would be expected to arise where the clearing member had deposited Euro denominated cash as margin for the applicable customer account, from the proceeds of any sale of Euro-denominated securities provided as margin for the customer account, and from amounts accruing to the customer account in connection with Euro-denominated contracts.

With respect to the second criteria above, the ICE DCOs believe that such investments in Qualifying Euro Sovereign Debt will preserve principal and maintain liquidity for customer funds and permit timely access to such funds, to a similar extent as U.S. government securities currently permitted under Rule 1.25. The following discussion addresses in particular the risk of default, market liquidity and volatility of Qualifying Euro Sovereign Debt.

Low Risk of Default

The risk of default for Qualifying Euro Sovereign Debt is regarded as low and generally comparable to that of U.S. government securities, taking into account such measures as credit rating, overall financial stability, gross domestic product ("GDP"), and public debt as a percentage of GDP. The credit ratings of Germany and France by S&P, for example, are currently AAA and AA, respectively, reflecting a strong ability to service their public debt (for

---

appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections." Section 4(c)(3) of the Act.

[9] 76 Fed. Reg. at 78782.

comparison purposes, the United States currently has a credit rating of AA+ by S&P).[10] Moreover, overall GDP of these countries, together with their levels of public debt, demonstrates significant financial stability. For 2015, Germany's gross domestic product was approximately USD $3.8 trillion, while France's GDP was approximately USD $2.6 trillion.[11] The outstanding amount of Germany's marketable public debt[12] is approximately 32.9% of its GDP and the outstanding amount of France's marketable public debt is approximately 66.9% of its GDP. (By comparison, the outstanding amount of US marketable public debt is approximately 76.6% of GDP.).[13] In the view of the ICE DCOs, the risk of default of German and French sovereign debt is accordingly remote, comparable to that of U.S. government securities permissible as investments under Rule 1.25.[14] Such investments will thus preserve principal consistent with the objectives of Rule 1.25.

As a further demonstration of the low default risk, attached as Exhibit 1 is a chart of five year credit default swap contract prices for Germany, France and the U.S. (2009 - 2016).

Significant Liquidity

The trading markets for German and French sovereign debt demonstrate high liquidity and accessibility at various maturities. Germany's outstanding marketable public debt is approximately $1.2 trillion and France's outstanding marketable public debt is approximately $1.7 trillion. By comparison, in the U.S. the amount of outstanding marketable public debt is approximately $13.6 trillion. In addition, there is an active secondary market for transactions in both German and French sovereign debt. Moreover, with respect to reverse repurchase

---

[10] The credit rating data was obtained from Bloomberg as of March 1, 2017.

[11] CIA World Fact Book (2015 estimate).

[12] For purposes of this discussion, the ICE DCOs use the phrase "marketable public debt" to refer to the portion of a country's debt securities that are traded in the secondary market, such as U.S. Treasury Bills, Notes and Bonds. Examples of non-marketable public debt include such instruments as savings bonds and special securities issued only to state and local governments and federal trust funds such as social security.

[13] Bundesrepublik Deutschland Finanzagentur GmbH (Germany's Finance Agency) 2015 Data for German Government Securities and Agence France Tresor (France's Finance Agency) Treasury Bills and Medium and Long-Term by Maturity January 2013. GDP data sourced through the CIA World Fact Book.

[14] We note in this regard that Rule 1.25 in fact permits investment in a range of municipal securities which may have significantly higher risk of default than U.S. government obligations or the sovereign obligations of Germany or France.

transactions, the repo markets in German and French government securities have outstanding transaction values of $1.05 trillion and $661 billion, respectively.[15] By comparison, the repo market in U.S. government securities has outstanding transaction values of approximately $1.46 trillion.[16] It is contemplated that investments (either directly or by reverse repurchase transactions) in Qualifying Euro Sovereign Debt by the ICE DCOs in the aggregate would constitute a small percentage of the trading activity in either such market. As a result, the ICE DCOs believe that the liquidity characteristics of the markets are sufficiently liquid to permit the ICE DCOs to readily sell any investments when necessary to obtain funds, without substantial diminution in value.

Low Volatility

Qualifying Euro Sovereign Debt has historically demonstrated price stability that is comparable to that of U.S. government securities . This is consistent with the low risk of default and significant size and liquidity of the underlying secondary markets, as discussed above.

As a demonstration of the price stability of Qualifying Euro Sovereign Debt, attached as Exhibit 2 is a chart of the daily implied yield of German, French and U.S. debt (five year, zero coupon debt 2005 - 2016). In addition, Exhibit 2 is a chart of the daily changes in the implied yield of German, French and U.S. debt for the same time period. As demonstrated in Exhibit 3, the volatility of the sovereign debt yield across all three countries is highly comparable. Consistent with their existing investment policies and practices, the ICE DCOs would expect to manage the duration of investments (both direct and through reverse repurchase transactions) in Qualifying Euro Sovereign Debt, to further limit potential volatility and interest rate sensitivity of the portfolio. Specifically, the ICE DCOs seek to maintain 100% of the cash investment in overnight reverse repurchase transactions but would be permitted to maintain a short-term direct investments with a weighted average maturity ("WAM") of less than 60-days if sufficient overnight investment capacity cannot be sourced.

---

[15] International Capital Markets Association European Repo Market Survey December 2016. Total market size includes both Repo and Reverse Repo and transactions subject to sell/buy-back agreements. Amount is based on a EUR/USD F/X Rate as of June 16, 2017.

[16] Securities Industry and Financial Markets Association, Funding Statistics, US Primary Dealer Financing (Repo/Reverse Repo) - December 2016. Primary dealer financing values include both triparty and bilateral agreements.

The financial stability of Germany and France is the greatest within the Euro sector and is similar to the stability of the United States. As a result, in the ICE DCO's view, Qualifying Euro Sovereign Debt is a conservative and prudent investment. The investment in Qualifying Euro Sovereign Debt with short-term maturities will achieve the tenets of capital preservation and liquidity of customer funds, which are the objectives of Regulation 1.25.

Additional Policy Considerations

In addition to the considerations discussed above, the ICE DCOs believe that permitting the investment of customer funds in Qualifying Euro Sovereign Debt is prudent from a risk management perspective. Although the Commission in the 2011 Amendments identified certain risks of investing in sovereign debt generally, these risks are minimized in the context of the limited proposed use of German and French sovereign debt discussed herein. Moreover, there are other risks that arise from not having the ability to invest Euro-denominated customer funds in such debt. In particular, Euro-denominated customer fund balances must currently be held in unsecured bank demand deposit accounts. Use of such accounts exposes the ICE DCOs (and their clearing members and their customers) to the credit risk of such banks. Although the ICE DCOs maintain banking relationships for this purpose with a number of major, financially strong institutions, and have been able to diversify their exposure to deposits in these banks, the ICE DCOs believe that investment in Qualifying Euro Sovereign Debt would provide an important alternative for protection of customer funds.

Investment of Euro balances in Qualifying Euro Sovereign Debt allows the ICE DCOs to face the credit risk of the sovereign, rather than a commercial bank. (In the case of a reverse repo transaction, while the ICE DCOs are exposed to the credit risk of the financial institution counterparty, this risk is effectively collateralized by the Qualifying Euro Sovereign Debt acquired through reverse repurchase transactions, thus providing both counterparty and interest rate risk protection.) This places the ICE DCOs (and their clearing members and their customers) in a superior credit position as compared to an unsecured bank deposit. While for operational and other reasons the risk of bank deposits cannot be completely avoided, the ICE DCOs believe that clearing members and customers will be better protected if the ICE DCOs have the ability to invest such balances in high quality sovereign debt.[17]

[17] We note in this regard that under the European Market Infrastructure Regulation (EMIR), a central counterparty is generally *required* to invest at least 95% of its cash balances in arrangements collateralized with qualifying financial instruments, such as reverse repurchase transactions. *See* Article

The ICE DCOs have determined that Qualifying Euro Sovereign Debt presents a level of credit risk that is materially less than commercial bank deposits. Furthermore, the ICE DCOs have established robust operational measures, liquidity arrangements and risk mitigation procedures that will be applicable to investing in Qualifying Euro Sovereign Debt. In light of this experience, the ICE DCOs believe that the benefits of investing in Qualifying Euro Sovereign Debt can safely be, and should be, extended to Euro balances held for the customer accounts.

Additional Exemptive Relief for Reverse Repurchase Transactions

Rule 1.25(d) imposes additional conditions on reverse repurchase transactions entered into with customer funds. In connection with such transactions involving Qualifying Euro Sovereign Debt, the ICE DCOs request a partial exemption from two of such conditions, Rule 1.25(d)(2) and Rule 1.25(d)(7).

Rule 1.25(d)(2) by its terms requires that reverse repurchase transactions be entered into with a counterparty that is a U.S. bank (or domestic branch of a foreign bank) or a securities broker-dealer. In the experience of the ICE DCOs (including in reverse repurchase transactions in Euro denominated assets for proprietary accounts), the principal participants in the Euro sovereign debt repo markets are not these types of entities. Rather, the usual participants in these markets are non-U.S. banks or non-U.S. securities dealers, together with foreign branches of U.S. banks.[18]

As a result, the eligible counterparty requirements under Rule 1.25(d)(2), as a practical matter, would prevent or significantly constrain the use of Qualifying Euro Sovereign Debt reverse repurchase transactions. The ICE DCOs therefore request that, solely in connection with reverse repurchase transactions in Qualifying Euro Sovereign Debt, the counterparties be permitted to be any of the following, in addition to those specified in Rule 1.25(d)(2):

---

45 of Commission Delegation Regulation (EU) No. 153/2013 of 19 December 2012 supplementing Regulation (EU) No. 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties.

[18] For example, a recent inquiry by an ICE DCO of one investment agent active in the Euro sovereign debt reverse repurchase market indicated that none of the approximately 40 counterparties with which it engages in such transactions would qualify under Rule 1.25(d)(2).

- Any foreign bank that qualifies as a depository under Commission Rule 1.49[19] and is located in a money center country (as defined in such Rule) or other jurisdiction that has adopted the Euro as its currency;
- Any regulated securities dealer[20] located in a money center country (as defined in Rule 1.49);
- The European Central Bank; and
- The central banks of Germany and France.[21]

The ICE DCOs believe that allowing transactions with these types of entities will permit the ICE DCOs to arrange a diverse group of counterparties active in the Euro sovereign debt repo markets and thus help obtain sufficient capacity and competitive pricing. At the same time, these restrictions will ensure that counterparties are highly regulated and financially sound. In particular, the ICE DCOs believe it is appropriate to rely on the eligibility criteria in Rule 1.49 for foreign banks, as the Commission has determined in the custodial context that such banks have sufficient financial resources and overall safety and soundness to hold customer funds.

Similarly, Rule 1.25(d)(7) requires that securities purchased under a reverse repurchase transaction be held in a safekeeping account with a U.S. bank (or certain other U.S. institutions). In the context of a reverse repurchase transactions involving European sovereign debt, it is customary for such debt to be custodied in a safekeeping account with a non-US bank. It is impractical and inefficient to attempt to hold such securities in a U.S. custodian. As a result, the ICE DCOs request relief to permit Qualifying Euro Sovereign Debt purchased through a reverse repo transaction or directly purchased to be held with a non-US bank that qualifies as a depository under CFTC Rule 1.49. For this purpose, the ICE DCOs contemplate that they would expect to use Euroclear Bank SA/NV as their custodian for such securities, consistent with the requirements of Rule 1.49, as such entity is a principal securities depository and custodian used in the Euro repo markets. The safekeeping accounts would otherwise meet the

---

[19] 17 C.F.R. 1.49.

[20] Such entities would typically be regulated by the UK Prudential Regulation Authority or Financial Conduct Authority, the German Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin), the French Autorité Des Marchés Financiers (AMF) or Autorité de Contrôle Prudentiel et de Résolution (ACPR), or other similar regulators in the relevant money center jurisdiction.

[21] ICE DCOs may not currently be able to engage in repos with such central banks, but if such transactions should become available the ICE DCOs believe they should be permitted for customer fund transactions.

requirements of Commission Rule 1.26, including the requirement to obtain a segregation acknowledgment letter.

Conclusion and Request for Relief

The ICE DCOs respectfully request that the Commission grant exemptive relief, pursuant to Section 4(c) of the Act[22], in accordance with Section 4(c)(1) and 4(c)(2) of the Act, to permit the ICE DCOs to invest Euro-denominated customer funds in Qualifying Euro Sovereign Debt (through both direct investments and reverse repurchase transactions). In connection with reverse repurchase transactions, the ICE DCOs further request that the Commission grant exemptions from Rule 1.25(d)(2) and (7) as discussed above. ICE believes the requested relief is consistent with the objectives of Regulation 1.25, as investment in such debt will preserve the principal and maintain liquidity of customer funds and offer additional alternatives for protection of Euro-denominated customer funds.

As set forth above, the ICE DCOs believe that the exemption would benefit the clearing houses, clearing members and their customers, and be consistent with the public interest and the purposes of the Act. In light of the conditions and limitations described above, the other requirements of Rule 1.25, and the Commission's ongoing oversight of the ICE DCOs in their capacities as clearing organizations, the ICE DCOs further believe that the exemption would not have any material adverse effect on the ability of the Commission to discharge its regulatory duties. Accordingly, in the view of the ICE DCOs, the requested exemption satisfies the requirements of Sections 4(c)(1) and 4(c)(2) of the Act.[23]

---

[22] 7 U.S.C. 6(c).

[23] Although the requested exemption is not limited to particular categories of person, and would apply to any FCM or customer of an FCM providing Euro-denominated collateral for the customer account, the ICE DCOs believe that such persons should be treated as appropriate persons for purposes of Section 4(c)(3)(K) of the Act in light of the existing appropriate regulatory protections for FCM customers under the Act and Commission regulations.

If the Commission or its staff should have any questions or require further information regarding this submission, please do not hesitate to contact Eric Nield, General Counsel of ICE Clear Credit, at eric.nield@theice.com or (312) 836-6742, Michelle Weiler, General Counsel of ICE Clear US at michelle.weiler@theice.com or (312) 836-6884, or Patrick Davis, Head of Legal and Company Secretary of ICE Clear Europe, at patrick.davis@theice.com or (44) 20 7065 7738.

Respectfully submitted,

ICE Clear Credit LLC

By:_____
Name: Stanislav Ivanov
Title: President

ICE Clear US, Inc.

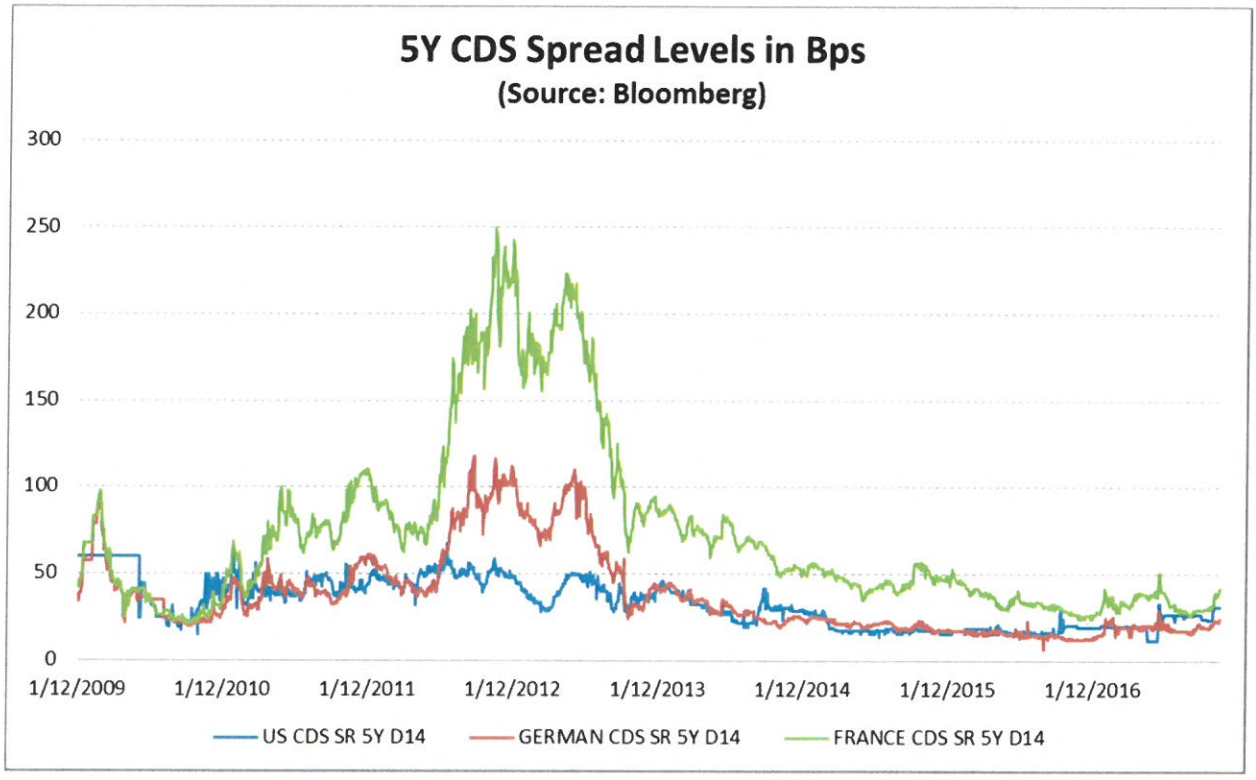
By:_____
Name: Hester Serafini
Title: President & COO

ICE Clear Europe Limited

By:_____
Name: Paul Swann
Title: President & Managing Director

cc: Acting Chairman J. Christopher Giancarlo
Commissioner Sharon Y. Bowen
John Lawton, Esq., Acting Director, Division of Clearing and Risk
Robert Wasserman, Esq., Chief Counsel, Division of Clearing and Risk

EXHIBIT 1



INTERCONTINENTAL EXCHANGE
353 North Clark Street
Suite 3100
Chicago, IL 60654
Tel: 312.836.6700
Fax: 312.636.0020
theice.com

EXHIBIT 2

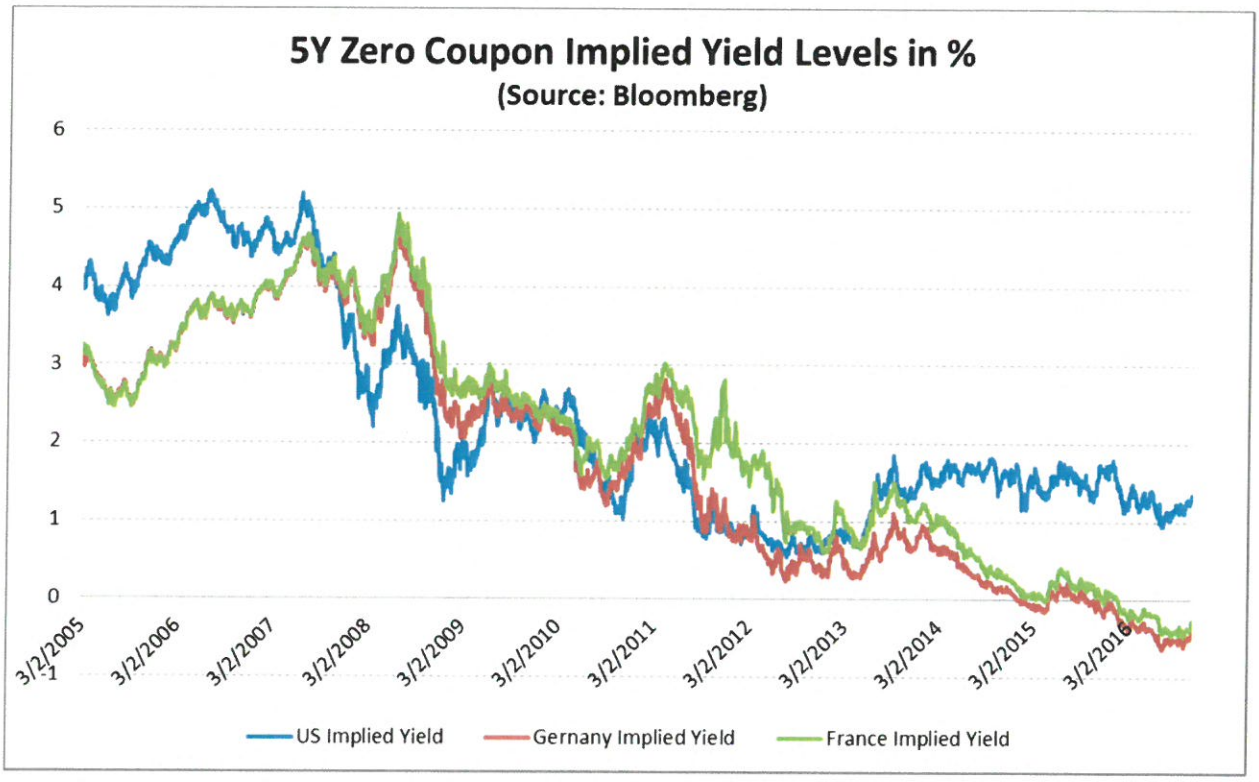
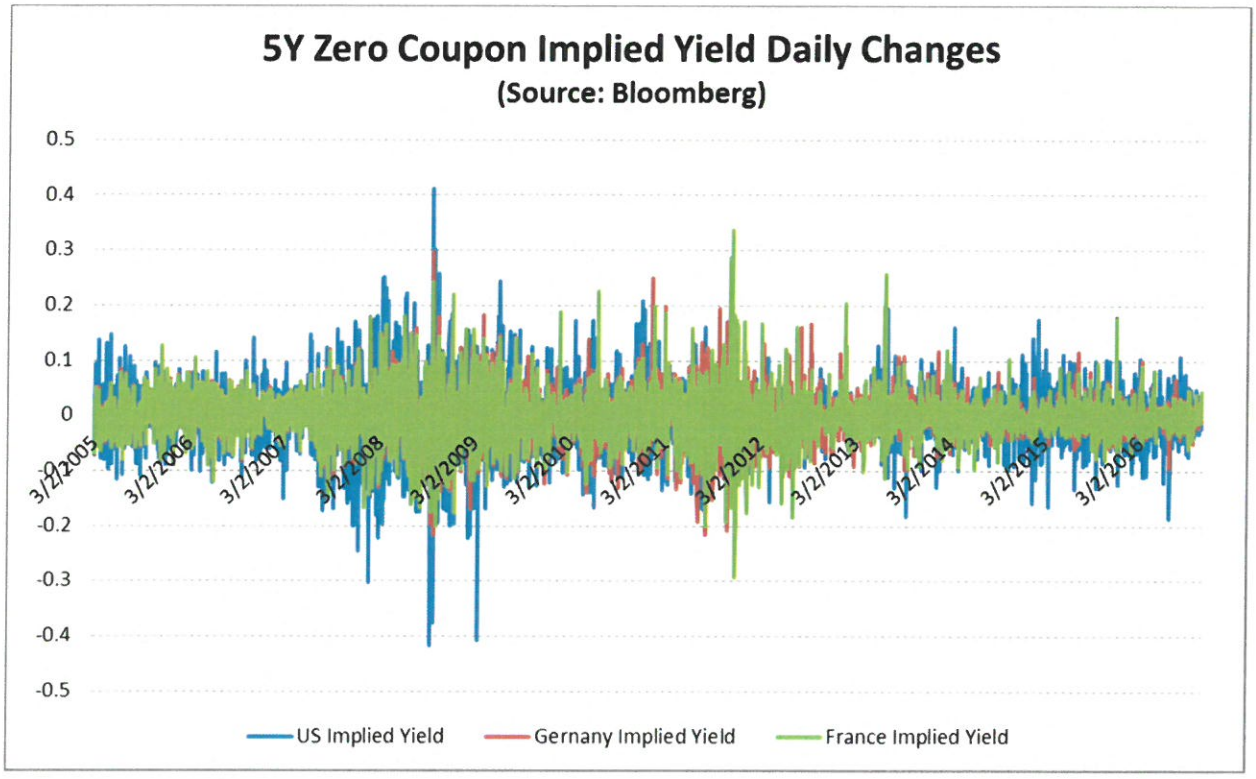

5Y Zero Coupon Implied Yield Levels in %
(Source: Bloomberg)
6
5
4
3
2
1
0
-1
3/2/2005
3/2/2006
3/2/2007
3/2/2008
3/2/2009
3/2/2010
3/2/2011
3/2/2012
3/2/2013
3/2/2014
3/2/2015
3/2/2016
US Implied Yield
Gernany Implied Yield
France Implied Yield

EXHIBIT 3


5Y Zero Coupon Implied Yield Daily Changes
(Source: Bloomberg)
0.5
0.4
0.3
0.2
0.1
0
-0.2
-0.3
-0.4
-0.5
3/2/2005
3/2/2006
3/2/2007
3/2/2008
3/2/2009
3/2/2010
3/2/2011
3/2/2012
3/2/2013
3/2/2014
3/2/2015
3/2/2016
US Implied Yield
Gernany Implied Yield
France Implied Yield