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March 1, 2011

Douglas J. Scheidt, Esq.
Associate Director and Chief Counsel
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: ICE Trust U.S. LLC:
Custody of Margin Provided by Investment Companies;
No-Action Request

Dear Mr. Scheidt:

We are writing on behalf of ICE Trust U.S. LLC ("ICE Trust" or the "Clearinghouse") to request assurance that the staff of the Division of Investment Management (the "Staff") will not recommend enforcement action under Section 17(f) of the Investment Company Act of 1940, as amended (including the rules thereunder, the "1940 Act"), if a registered investment company (a "fund") or its custodian maintains certain assets of the fund in the custody of the Clearinghouse or certain of the Clearinghouse's clearing members for purposes of meeting the Clearinghouse's or a clearing member's margin requirements. This request is made in the context of ICE Trust's operation of a clearinghouse system intended to centralize and contribute to broader efforts to stabilize the existing market for bilateral credit default swaps ("CDS").

We note that ICE Trust's operations will change upon its planned transition to registration with the Commodity Futures Trading Commission ("CFTC") as a derivatives clearing organization (a "DCO") and with the Commission as a securities clearing agency to comply with various pending requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") (also further described below, see "Dodd-Frank Transition"). We believe that the relevant facts and circumstances of ICE Trust's clearinghouse operations upon

the Dodd-Frank Transition will continue to be appropriately subject to relief of the nature requested under this letter, but are not requesting that post-transition relief at this time.[1] Post-transition relief would be requested at a later date in a manner intended to avoid a "break period" in which access to ICE Trust clearinghouse operations by funds might be restricted. Without the relief requested, ICE Trust believes that access to its CDS clearinghouse operations by funds will be either blocked or significantly reduced, which would limit the access of fund investors to a more efficient and rationalized market for CDS (and leave funds at a potential disadvantage to other market participants that already have ready access to the ICE clearinghouse). Given the scale of the fund industry, that outcome also inhibits the development of ICE Trust's clearinghouse operations by leaving a significant market segment uncovered. We also note that following the effectiveness of the Dodd-Frank Act, market participants, including funds, may be required to clear certain CDS products, in which case it will be necessary for funds to have access to clearinghouses such as ICE Trust.

ICE Trust has been advised by many prospective fund users of the ICE Trust clearinghouse that funds (of all sizes) have a pressing market interest in (a) realizing the various benefits of central clearing that we describe below (benefits recognized by Congress by the passage of the Dodd-Frank Act) and (b) taking proactive steps to respond to the coming Dodd-Frank Act mandated clearing framework as soon as possible. To be clear, ICE Trust believes these prospective fund users do not wish to wait until the Dodd-Frank Transition to access the clearinghouse and would, in the interests of their fund shareholders, welcome an immediate expansion of the limited clearinghouse alternatives now available to them.

Description of ICE Trust - Current Operations

ICE Trust is a New York-chartered limited purpose trust company and member of the Federal Reserve System that acts as a central counterparty for bilateral CDS. ICE Trust acts as a central clearing party by accepting the rights and obligations under eligible CDS transactions entered into with the Clearinghouse's clearing members ("Clearing Members") and submitted to the Clearinghouse in accordance with its rules (the "ICE Trust Rules"). Following acceptance of a CDS transaction for clearing, the Clearinghouse becomes the seller of credit protection with respect to the CDS purchaser, and the purchaser of credit protection with respect to the CDS seller. The Clearing Member parties to a CDS transaction thus face the Clearinghouse, rather than their respective original counterparties, in the performance of both the seller's and the purchaser's obligations in respect of a transaction.

Central clearing in this manner has several important market efficiency and investor protection benefits relative to the preexisting marketplace in which all CDS transactions had to be entered into and performed on a bilateral basis between the individual parties to the transaction:

[1] The no-action position requested under this letter relates only to ICE Trust as the Clearinghouse and its Clearing Members that are U.S. entities (although we expect also to request relief in the future, i.e., applying upon the Dodd-Frank Transition, for Clearing Members that are futures commission merchants registered with the CFTC and/or broker-dealers registered with the Commission).

- First, the substitution of a highly regulated central counterparty with significant financial resources substantially reduces the risk of counterparty default, representing both a systemic market benefit and an investor protection benefit for each party engaging in CDS transactions through the Clearinghouse.
- Second, the ICE Trust Rules allow a streamlined process for a party to a CDS transaction to move one of more pieces of the party's CDS portfolio from one Clearing Member to another. The "portability" that this represents will result in a more efficient CDS marketplace overall and in greater investor choice in the management of CDS portfolios. Portability is also a meaningful investor protection, in that at times of market or counterparty stress being "locked into" dealing with one's existing counterparty may be especially undesirable.
- Third, central clearing provides a robust mechanism for the segregation and protection of margin provided by market participants. This is an important additional overlay to existing practices in the CDS market, in which any segregation requirements for margin provided by funds must be agreed bilaterally (and thus may differ) from counterparty to counterparty.
- Finally, the central counterparty model improves transparency, in that information about all cleared transactions is centralized and webs of complex, back-to-back CDS transactions can be collapsed into a more rational structure. This likewise represents both a systemic market benefit and an investor protection benefit for each party engaging in CDS transactions through the Clearinghouse.[2]

Since March 2009, ICE Trust has been clearing CDS subject to a temporary conditional exemption from clearing agency registration, together with other exemptions provided by the Securities and Exchange Commission (the "Commission") and the U.S. Department of the Treasury.[3] As of December 31, 2010, ICE Trust had cleared a notional amount of $8.753 trillion of CDS on behalf of its 14 current Clearing Members.[4]

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2 Various policymakers have recognized the benefits of a central clearinghouse for CDS transactions. For example, the ICE Trust December 2009 Order, cited in the following footnote, includes a finding by the Commission as follows:

> The Commission has taken multiple actions designed to address concerns related to the market in CDS. The over-the-counter (OTC) market for CDS has been a source of particular concern to us [the Commission] and other financial regulators, and we have recognized that facilitating the establishment of central counterparties for CDS can play an important role in reducing the counterparty risks inherent in the CDS market, and thus can help mitigate potential systemic impact. We therefore have found that taking action to foster the prompt development of central counterparties, including granting temporary conditional exemption from certain provisions of the federal securities law, is in the public interest.

The clearing requirements of the Dodd-Frank Act also reflect these policy considerations.

3 The Commission's Order of March 6, 2009 provided temporary conditional exemptions for ICE Trust and its clearing members, effective until December 7, 2009. Order Granting Temporary Exemptions Under the Exchange Act on Behalf of ICE US Trust LLC, Exchange Act Release No. 59527 (Mar. 6, 2009) [hereinafter *ICE Trust March 2009 Order*]. The Commission's order of December 4, 2009 extended such relief until March 7, 2010. Order Extending and Modifying Temporary Exemptions Under the Exchange Act for ICE Trust U.S. LLC,

Initially, the clearing services of ICE Trust were limited to the clearance of proprietary positions in CDS for Clearing Members. Commencing December 2009, ICE Trust made available a framework (the "Non-Member Framework") to provide access to ICE Trust's clearing services to clients of Clearing Members ("Third-Party Clients").[5] ICE Trust requests that the Staff take the position that it will not recommend an enforcement action if a fund were to access the Non-Member Framework on the same basis as other Third-Party Clients.

The Non-Member Framework has been designed to mirror the framework under which existing futures clearinghouses operate, with appropriate differences to reflect the nature of CDS and the identity and operation of its Clearing Members. We refer to the various ICE Trust temporary exemption orders (cited at note 3 supra), and the related request letters from Kevin McClear, General Counsel of ICE Trust, to the Commission with respect thereto (each request letter is a publicly available exhibit to each order), for a more complete description of the terms of the Non-Member Framework.

Under the Non-Member Framework, ICE Trust has no direct relationship with a Third-Party Client. Rather, a Third-Party Client enters into CDS transactions with a Clearing Member, which in turn submits the transaction to ICE Trust for clearing. The resulting transactions between the Clearing Member and ICE Trust ("Client-Related Transactions") are kept separate from proprietary (or "house") cleared transactions of the Clearing Member. The ICE Trust Rules require Clearing Members to collect initial and mark-to-market (or "variation") margin from their respective Third-Party Clients for any CDS cleared by ICE Trust. Specifically, each Clearing Member will be required under the Rules to collect from its Third Party Client at least the minimum required amount of initial margin calculated on a daily basis under the ICE Trust risk model for that client's positions carried through that Clearing Member. In addition, the Clearing Member must collect the daily mark-to-market margin required for the client's positions, calculated on the basis of the end-of-day settlement price for the relevant cleared contracts as determined by ICE Trust under its procedures. The ICE Trust Rules also permit Clearing Members to require additional initial margin amounts from Third Party Clients in the discretion of the Clearing Member to reflect the Clearing Member's individualized judgment of its credit risk exposure to that Third Party Client. As would be expected, in the event of a default

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Exchange Act Release No. 61119, (Dec. 4, 2009) [hereinafter *ICE Trust December 2009 Order*]. The Commission's order of March 5, 2010 extended such relief until November 30, 2010. Order Extending and Modifying Temporary Exemptions Under the Exchange Act for ICE Trust U.S. LLC, Exchange Act Release No. 61662, (March 5, 2010) [hereinafter *ICE Trust March 2010 Order*]. That relief has now been extended to July 16, 2011. Order Extending and Modifying Temporary Exemptions Under the Exchange Act for ICE Trust U.S. LLC, Exchange Act Release No. 63387, (Nov. 29, 2010) [hereinafter *ICE Trust November 2010 Order*]

[4] The current Clearing Members are: Bank of America, N.A.; Barclays Bank PLC; BNP Paribas; Citibank N.A.; Credit Suisse International; Deutsche Bank AG, London Branch; Goldman Sachs International; HSBC Bank USA, N.A.; JPMorgan Chase Bank, N.A.; Merrill Lynch International; Morgan Stanley Capital Services, Inc.; Nomura International PLC; The Royal Bank of Scotland plc; UBS AG, London Branch.

[5] For the avoidance of doubt, only Clearing Members can directly access the Clearinghouse. A fund or any other Third-Party Client wishing to access the Clearinghouse thus would have to do so under an arrangement with one or more Clearing Members.

by a Third Party Client, its Clearing Member will be entitled to apply margin posted by the Third Party Client to satisfy its obligations to the Clearing Member.

Clearing Members, in turn, must post required initial margin received from a Third-Party Client in an omnibus segregated client account at ICE Trust or ICE Trust's subcustodian, promptly upon receipt. Clearing Members must post all of the margin they collect from Third-Party Clients pursuant to ICE requirements to the custodial client omnibus margin account ("Custodial Client Omnibus Margin Account") that is maintained at ICE or a subcustodian. The Custodial Client Omnibus Margin Account will be held for the benefit of all Third-Party Clients of the relevant ICE Clearing Member (or for the ICE Clearing Member as agent or custodian on behalf of such Third-Party Clients), subject to the rights of ICE Trust under its Rules to apply such margin, and will be segregated from the other assets of the ICE Clearing Member (including assets in the ICE Clearing Member's proprietary account). ICE Rules require ICE Clearing Members to maintain records of the identity of the Third-Party Clients, the margin they post, the transfer of those assets to the Custodial Client Omnibus Margin Account and the use of that margin. Additional initial margin required by a Clearing Member may, under ICE Trust Rules and the ICE Trust November 2010 Order, be either posted by the Clearing Member in the manner required of other initial margin or may be maintained in a custody arrangement with an independent third-party custodian.[6]

The ICE Trust Rules, like those of other clearing organizations, have detailed provisions addressing the actions to be taken by the Clearinghouse in the event of a Clearing Member default. Following such a default, ICE Trust will have the right to close out the positions of the defaulting Clearing Member with the Clearinghouse under the Rules.[7] ICE Trust is required to run this closing-out process separately for Client-Related Transactions and proprietary transactions, such that a separate net gain or loss will be determined for the Client-Related Transactions and for the proprietary transactions of the defaulting Clearing Member. Under the Rules, net gains on Client-Related Transactions may not be applied to net losses on proprietary transactions. Losses on closed-out transactions may only be satisfied from certain sources specified under the Rules. In the case of losses to ICE Trust on Client-Related Transactions, ICE Trust will be entitled to apply the following assets to those losses, in order, (i) margin provided

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[6] The greater flexibility for the treatment of such additional margin reflects the fact that such margin is intended for the benefit of the Clearing Member in the event of a Client default, and is not intended for the protection of the Clearinghouse. We would expect that a fund would specify that any such third-party custodian be a qualified custodian for purposes of Section 17(f).

[7] With respect to portability of Third-Party Client positions in the event of an ICE Clearing Member default, ICE Trust Rules permit ICE Trust (i) to transfer, or arrange the transfer of, the defaulting ICE Clearing Member's Third-Party Client positions and related transactions and margin to a new ICE Clearing Member, (ii) terminate the existing transactions and establish new positions with the new ICE Clearing Member, or (iii) take into account Third-Party Client prearrangements for the use of one or more "backup" ICE Clearing Members to which their transactions would be transferred in the event their primary ICE Clearing Member defaults. In the event that ICE Trust is unable to transfer or terminate and replace Third-Party Client-member transactions during the transfer period, the Third-Party Client may terminate the Third-Party Client-Clearing Member transactions as provided by the terms of the agreement. ICE Trust then would determine the close-out price for the Third-Party Client positions and the Third-Party Client-Clearing Member transactions.

by a defaulting Third Party Client, (ii) amounts received from Third Party Clients on close-out of their transactions, (iii) margin posted by the defaulting Clearing Member with respect to its proprietary positions (to the extent not otherwise used for losses on those positions), (iv) the defaulting Clearing Member's contribution to the ICE Trust guaranty fund, (v) the initial margin posted by Third Party Clients, up to a specified cap (the "ICE Trust Net Customer Margin Requirement")[8], and (vi) contributions of other Clearing Members to the ICE Trust guaranty fund.

The ICE Trust Net Customer Margin Requirement is determined by ICE Trust to reflect the net risk to ICE Trust from all Client-Related Transactions of all Third Party Clients of a Clearing Member.[9] ICE Trust may only use margin posted by nondefaulting Third Party Clients on a pro rata basis in an aggregate amount up to the ICE Trust Net Customer Margin Requirement. Other Third Party Client Margin held by ICE Trust beyond this net amount may not be used by ICE Trust, even if there are additional losses. As a result of ICE Trust Rules, funds, like other Third-Party Clients of a Clearing Member, are subject to the risk of loss resulting from the default of another Third-Party Client of that clearing Member, up to the amount of the ICE Trust Net Customer Margin Requirement. In any case, Third Party Client initial margin held with ICE Trust cannot be used to cover losses on proprietary positions.[10] Third Party Clients will be entitled under the ICE Trust Rules and ICE Trust Standard ISDA Annex to the return of initial margin not applied by ICE Trust in accordance with the Rules or otherwise used to satisfy obligations of the Third Party Client in favor of its Clearing Member.

This limited use of client margin is consistent with, and in some cases more favorable to clients than, the use of client margin by typical futures clearing organizations. Futures clearinghouses generally provide that client initial margin may be used to satisfy losses to the clearinghouse on client-related positions. In some futures clearing models, client margin is used at an earlier point in the priority of sources (i.e., before the use of proprietary margin). In addition, the ICE Trust model has the advantage for Third Party Clients that only a portion of Third Party Client margin (up to the ICE Trust Net Customer Margin Requirement) may be used; in some futures clearing organizations, all client initial margin may be so used.[11]

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[8] ICE Trust has a security interest in Third-Party Client initial margin posted to it by Clearing Members to permit ICE Trust to apply it to cover losses in case of a Clearing Member default on Client-Related Transactions in accordance with this priority of sources (but not in any event for losses on proprietary positions).

[9] Because positions of one Third Party Client may offset in part positions of another Third Party Client, the ICE Trust Net Customer Margin Requirement is likely to be lower at any given time that the aggregate amount of margin posted by Third Party Clients and held in the ICE Trust client omnibus margin account.

[10] In addition, margin posted by a Third Party Client and held with ICE Trust with respect to transactions through a particular Clearing Member will not be used to satisfy losses (client or proprietary) from the default of a different Clearing Member.

[11] In this respect, ICE Trust's approach is a hybrid between so-called "gross" margining and "net" margining models, both of which are in wide use by futures clearinghouses. In a "gross" model, a Clearing Member is required to post to the clearinghouse the full amount of margin posted by its clients, without taking into account any offsetting positions held by other clients. In a "net" model, by contrast, the Clearing Member is only required

As in other clearinghouses, mark-to-market margin reflects daily gains or losses on positions. A daily gain or loss on one Third-Party Client's position will correspond to a loss or gain on another position carried with the Clearinghouse. Accordingly, mark-to-market margin provided by one Third-Party Client would be expected to be used by the Clearinghouse and/or Clearing Member to provide mark-to-market margin in favor of another Third-Party Client or Clearing Member.

The Clearinghouse is subject to examination by the Commission under the ICE Trust December 2009 Order and is directly supervised by the Board of Governors of the U.S. Federal Reserve System and the New York State Banking Department.[12] As recognized in the ICE Trust December 2009 Order, the ICE Trust Rules incorporate protections for initial margin posted by a Third-Party Client conceptually similar to those contemplated under Section 17(f) of the 1940 Act and related rules. In particular, the ICE Trust Rules largely mirror those under 1940 Act Rule 17f-6 that enable funds to participate in central clearing arrangements for commodity futures.

Dodd-Frank Transition (Applicable After the No-Action Position Requested Under this Letter)

The Commission and the CFTC are required to adopt rules and issue interpretations implementing the Dodd-Frank Act by July 16, 2011 with respect to centralized clearing of CDS.[13] Upon the July 16, 2011 implementation date of the Dodd-Frank Act, ICE Trust will automatically become a DCO registered with the CFTC and a securities clearing agency registered with the Commission. This transition is referred to throughout this letter as the "Dodd-Frank Transition."

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to post the net margin requirement for all client positions, taking into account positions of one client that may offset the risk of positions of other clients. The ICE Trust model requires the posting to the clearinghouse of the gross margin for all Third Party Clients, but ICE Trust is only allowed to use that margin up to the ICE Trust Net Customer Margin Requirement (which is the amount that would be posted in the "net" model). The ICE Trust Net Customer Margin Requirement cannot exceed the "gross" margin required of Third Party Clients, and to the extent Third Party Clients of a Clearing Member have offsetting positions (e.g., one Third Party Client has bought protection on a specified index with a particular tenor, and another Third Party Client has sold protection on that index with the same tenor), the ICE Trust Net Customer Margin Requirement will be lower than the gross margin requirement. Although the exact level of the ICE Trust Net Customer Margin Requirement (and the extent to which it is less than the gross margin requirement) will depend on the specific content of the cleared portfolios of Third Party Clients at any given time, the approach is, by definition, more favorable to Third Party Clients than the pure gross margining approach used by some clearinghouses.

[12] ICE Trust also operates pursuant to an exemption issued by the Treasury Department with respect to certain matters involving government securities broker-dealer registration and regulation. See Order Extending and Modifying Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With Request From ICE Trust U.S. LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments, 74 Fed. Reg. 65554 (Dec. 10, 2009).

[13] It is possible that the actual effective date of some of these rules may be delayed beyond July 16, 2011.

Upon its registration as a DCO, ICE Trust will be regulated by the CFTC and it will be subject to the 18 Core Principles set forth in Section 5b(c)(2) of the Commodity Exchange Act. As such, it will be subject to regular audits or risk reviews by the CFTC based on the Core Principals.

In addition, upon the Dodd-Frank Transition, the laws and regulations applicable to ICE Trust and its Clearing Members will require that any Clearing Member that purchases, sells, or holds CDS positions for others (including for funds) must be registered as a futures commission merchant ("FCM") with the CFTC for CDS that are swaps and/or a broker-dealer or security-based swap dealer registered with the Commission for CDS that are security-based swaps. Accordingly, ICE Trust plans to admit FCMs and broker-dealers as Clearing Members.

As a result, certain aspects of the Non-Member Framework are expected to change to reflect the use of FCM and broker-dealer clearing members for customer business rather than the existing financial institution clearing members. Upon the Dodd-Frank Transition, clearing members will hold margin assets of Third Party Clients in segregation as required for margin of swap customers in new Section 4d(f) of the Commodity Exchange Act and new Section 3E(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

Applicable Law

Section 17(f) of the 1940 Act and the rules promulgated thereunder impose certain requirements on funds with respect to the custody of their financial assets. In relation to such requirements, the legislative history evidences a Congressional objective of ensuring that fund assets are held by a financially secure entity with sufficient safeguards against misappropriation.[14] Under Section 17(f), a fund's assets generally must be held, subject to rules and regulations promulgated by the Commission, by (1) banks meeting certain minimum asset levels, (2) members of a national securities exchange, (3) a national securities depository, or (4) the fund itself.

Regulatory guidance is available concerning whether particular types of margin are considered fund assets. In the context of fund trading of futures contracts, the Commission and the Staff have indicated that a fund's initial margin payments are fund assets and therefore must be maintained in a manner that complies with Section 17(f).[15] The Commission, however, has drawn a distinction between initial margin and variation margin. Variation margin, referred to in the ICE Trust Rules as "mark-to-market margin," consists of margin payments required to be paid due to losses on a party's position.[16] These payments, when made by a fund, represent payments for liabilities of the fund and are therefore not fund assets.[17] Accordingly, unlike

[14] Investment Trusts and Investment Companies: Hearings on S 3580 before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 264 (1940).

[15] Custody of Investment Company Assets with Futures Commission Merchants and Commodity Clearing Organizations, Investment Company Release No. 20313 (May 24, 1994) [hereinafter *Rule 17f-6 Proposing Release*]; Delta Government Options Corp. (pub. avail. Sept. 27, 1990).

[16] Rule 17f-6 Proposing Release at notes 57, 74.

[17] *Id.*

initial margin, variation margin paid by a fund is not subject to Section 17(f)'s requirements, although initial margin received by a fund is subject to Section 17(f).

As already outlined, the Commission has also promulgated Rule 17f-6 permitting a fund to deposit initial margin in respect of its commodity futures transactions with a FCM and for such margin to be held either by the FCM or a commodity clearing organization. Commodity futures investors generally initiate their trades by posting margin directly with an FCM, which then posts that margin either directly to a commodity clearing organization or with one or more other FCMs that will subsequently effect the transaction through the clearing organization. (This is substantially the same model that exists for CDS transactions initiated with ICE Trust's Clearing Members, both currently and upon the Dodd-Frank Transition.)

Rule 17f-6 permits funds to participate in such transactions. Rule 17f-6 states that: (1) a fund may maintain custody of cash, securities, and similar investments with any unaffiliated person registered as an FCM as necessary to effect the fund's transactions in exchange-traded futures contracts and commodity options, and (2) an FCM may post the margin received from the fund with a commodity clearing organization or another FCM as necessary to effect the fund's transaction. The result is that funds engage in commodity futures transactions under the same terms as non-fund commodity futures investors, thus creating an equal playing field between funds and non-funds in that market.

Rule 17f-6 also provides for certain requirements governing the FCM's maintenance of the fund's assets. The first requirement is that the contract between the fund and FCM provide that: (a) the FCM shall comply with the margin segregation requirements or secured amount requirements of the Commodity Exchange Act ("CEA") and the rules thereunder, (b) if the FCM transfers the fund's margin to another entity to effect the fund's transaction, the FCM shall obtain an acknowledgement that such assets are held in accordance with the CEA, and (c) the FCM will provide records pertaining to the fund's assets to the Commission upon its request. The rule also requires that any gains on fund transactions, other than de minimis amounts, may be maintained with the FCM only until the next business day following receipt. (ICE Trust Rules and related documentation currently provide for substantially similar requirements, as detailed further below. Upon the Dodd-Frank Transition, these CEA requirements will apply directly.)

Like Rule 17f-6 does for FCMs, 1940 Act Rule 17f-4 imposes certain requirements on the relationship between the fund and a "securities depository" if the fund has direct dealings with it. One definition of a "securities depository" under the rule is a clearing corporation that is registered with the Commission as a clearing agency. The rule requires that the contract between the fund and the depository or the depository's written rules must obligate the depository to (1) exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary, and (2) provide, promptly upon request by the fund, such reports as are available concerning the internal accounting controls and financial strength of the securities depository.

Analysis

Under the guidance applicable to futures, initial margin required to be posted by a fund in respect of CDS transactions submitted for clearing to ICE Trust would constitute fund assets and therefore must comply with the custody requirements of Section 17(f) of the 1940 Act. On the other hand, what the ICE Trust Rules refer to as "mark-to-market margin" constitutes variation margin, and, in accordance with guidance from the Commission and the Staff, such margin does not constitute fund assets.

As will be discussed in more detail below, the operations of the Clearinghouse and the Clearing Members resemble a number of permitted custody arrangements, but we and ICE Trust are concerned that there is sufficient ambiguity that – absent interpretive or no-action guidance – funds will be slow to adopt use of the Clearinghouse or will seek unduly cumbersome custody arrangements in doing so. In addition, the "tri-party" arrangements frequently relied upon in some margin contexts do not appear to offer an effective solution.

Bank custody

We note that under Section 17(f)(1)(a) of the 1940 Act, a bank can maintain custody of fund assets subject to rules promulgated by the Commission. Section 2(a)(5) of the 1940 Act provides several definitions of the term "bank," one of which is "a member bank of the Federal Reserve System." ICE Trust is a member bank of the Federal Reserve and thus a bank for this purpose (as are a number of the current Clearing Members). Yet ICE Trust would be holding a fund's margin payments at least partially for the benefit of its central clearing operations, rather than in the more pure custody context typically contemplated for a fund's bank custodians. In particular ICE Trust would have access to such margin in certain circumstances provided in its rules in the case of a default by the Clearing Member resulting in losses on Client-Related Transactions. While the Clearing Members likewise may be banks for this purpose, they also may be deemed not to be holding the assets in a strictly custodial capacity. Notwithstanding that the ICE Trust Rules provide clear protection of client margin and substantially replicate widely followed practices under rules adopted under Section 17(f), funds may be reticent to rely on Section 17(f)(1)(A) to use the Clearinghouse without the no-action assurances requested under this letter.

Rule 17f-4

Funds likewise may be reticent to rely on Rule 17f-4 in respect of their margin provided to ICE Trust by a Clearing Member, as one element of the rule's definition of "securities depository" is that the entity holding fund assets is a registered clearing agency with the Commission. Although the Clearinghouse performs clearing agency functions with the approval of the Commission and meets standards that the Commission has noted are "generally consistent with the requirements of Section 17A under the Exchange Act,"[18] the Clearinghouse does so not as a

[18] ICE Trust March 2009 Order. The Commission noted that the temporary exemption from clearing agency registration was based in part on the Trust's representation that it meets the standards set forth in the Committee on Payment and Settlement Systems and International Organization of Securities Commissions report entitled: Recommendation for Central Counterparties ("RCCP"). The Commission noted that the RCCP establishes a

registered clearing agency but rather pursuant to temporary conditional exemptions from clearing agency registration granted by the Commission. This ambiguity could be addressed by your no-action position.

Should the Clearinghouse become a clearing agency registered with the Commission, it would qualify as a securities depository for purposes of the rule (that registration also would allow the Clearinghouse to meet the Uniform Commercial Code definition of a "clearing corporation," which is another requirement of Rule 17f-4 for a securities depository). The interplay between Rule 17f-4 and the terms of the Clearinghouse's Non-Member Framework then effectively would require that access to the Clearinghouse be through a Clearing Member that itself qualifies as a "custodian" for purposes of the 1940 Act.[19] It is not certain, however, that funds would consider a Clearing Member to be eligible to serve as a custodian when acting in their Clearing Member capacity, even if the Clearing Member otherwise qualifies as a custodian for purposes of Section 17(f). A fund, when posting margin to a Clearing Member, will effectively do so looking to the Clearing Member in two capacities, as an agent and custodian in terms of the acceptance of margin to be held at ICE Trust and as the fund's transactional counterparty under the terms of the relevant CDS. We expect that some funds may view that dual role – although we believe any conflicts to be mitigated by the broader circumstances – as potentially disqualifying to whether the Clearing Member also can be a Section 17(f) custodian for purposes of Rule 17f-4. This ambiguity also could be addressed by your no-action position.

Rule 17f-6

The Clearinghouse's structure, both prior to and upon the Dodd-Frank Transition, closely approximates arrangements for FCMs and commodity clearing organizations already approved for custody of fund assets under Rule 17f-6. As noted above, a fund wishing to engage in a commodity futures transaction makes a trade with an FCM and posts margin to that FCM. The FCM may in turn submit the trade directly to a commodity clearing organization, or may post the fund's margin to one or more FCMs which will submit the trade for clearing.

For ICE Trust's current clearing structure, the analogue of an FCM is a Clearing Member, and ICE Trust performs a similar role to that of the commodity clearing organization. A fund wishing to use ICE Trust's clearing services would engage in a CDS transaction with a Clearing Member, which posts the fund's margin with ICE Trust under the ICE Trust Rules.

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framework that requires a central counterparty to have: (1) the ability to facilitate the prompt and accurate clearance and settlement of CDS transactions and to safeguard its users' assets; and (2) sound risk management, including the ability to appropriately determine and collect clearing funds and monitor its users' trading.

[19] This is in that Rule 17f-4 allows access to a securities depository either by a fund's custodian or an intermediary custodian acting on behalf of the fund (under paragraph (a) of Rule 17f-4) or by direct dealings between the fund and the depository (under paragraph (b) of Rule 17f-4). The terms of the Non-Member Framework do not, however, allow funds direct access to the Clearinghouse, making paragraph (b) apparently unavailable. Meanwhile, paragraph (a) is available only if the Clearing Member selected by a fund would qualify as the fund's custodian.

As suggested above, ICE Trust's clearing structure replicates key protections available to funds under Rule 17f-6 and, following the admission of FCM clearing members as part of the Dodd-Frank Transition, will even more closely align with the rule. Indeed, it bears noting that upon the Dodd-Frank Transition, ICE Trust's operations will be, for purposes of analysis under Rule 17f-6, substantially similar to those of another CDS clearinghouse that recently received corresponding no-action relief.[20] Relevant protections that apply, and will apply, to ICE Trust's clearing structure include:

- The requirement that Clearing Members document their relationship with Third-Party Clients under a written contract (ICE Trust Rule 405(a));
- Capital and other requirements for Clearing Members, including a rigorous Clearing Member application process maintained by the Clearinghouse (ICE Trust Rule 201)[21];
- Segregation and transfer of margin of Third-Party Clients to the ICE Trust client omnibus margin account (ICE Trust Rule 405(b) and (c) and ICE Trust Standard ISDA Annex – as further described below, for current clearing members,);
- Right of Third Party Clients to the return of their initial and variation margin (ICE Trust Rules 402 and 405 and ICE Trust Standard ISDA Annex – as further described below, for current clearing members);
- Recordkeeping by Clearing Members of transactions and margin of Third Party Clients (ICE Trust Rules 310 and 405(l) – as further described below).

Under Rule 17f-6, a fund's margin is protected through the segregation requirements of Section 4d of the Commodity Exchange Act and rules thereunder. Under these requirements, client assets provided as margin must be held in a manner segregated from the FCM's own assets. Use of such assets by the FCM is restricted, although client assets may be used to satisfy the FCM's margin obligations with respect to client transactions with a relevant derivatives clearing

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[20] *See CME Group*, SEC No-Action Letter (pub. avail. Jul. 16, 2010).

[21] Specifically, each Clearing Member is required to have a minimum of $5 billion in tangible net worth, as computed in accordance with the Federal Reserve Board's definition of Tier 1 capital. Each Clearing Member that is an FCM will be required to have a minimum of $1 billion in adjusted net capital, as defined in CFTC rules. (ICE Trust Rule 201(b)(ii)) This capital requirement is substantially in excess of the minimum regulatory capital requirement for FCMs generally (for which the capital requirement can be as low as $1,000,000, although many FCMs have a higher risk-based capital requirement) and the minimum capital requirement for bank custodians under Section 17(f) of the Investment Company Act (which is that a U.S. bank should have at least $500,000 in aggregate capital, surplus and undivided profits – as an additional point of reference, while Rule 17f-5 under the Investment Company Act no longer includes any capital requirements, it previously specified a requirement of $200 million in shareholders' equity for non-U.S. banks). In addition, Clearing Members must be regulated for capital adequacy (either directly or as part of a consolidated holding company group) by a competent authority, such as the Federal Reserve Board, Office of the Comptroller of the Currency, UK Financial Services Authority, the CFTC or the Commission. As part of the application process, Clearing Members must also demonstrate operational and risk management competence in CDS transactions. Clearing Members are required to notify ICE Trust in the event of certain material adverse changes in financial condition or adverse regulatory actions. (ICE Trust Rule 206) ICE Trust may terminate a Clearing Member's status, or impose limitations on its activities, if it fails to satisfy ongoing membership requirements. (ICE Trust Rule 207)

organization. As described in Rule 17f-6(a)(1)(ii), FCMs may only hold client assets with another FCM, a clearing organization, or a U.S. or foreign bank.

ICE Trust has developed a segregation framework under its Rules and related documentation that provides a level of protection substantially similar to that under Commodity Exchange Act Section 4d. Under ICE Trust Rule 405 and the ICE Trust Standard ISDA Annex, Clearing Members are required to segregate initial margin received from clients from their own assets. Under the ICE Trust Rules, the required level of ICE Trust initial margin is required to be transferred to the segregated omnibus account for that Clearing Member at the Clearinghouse. Under the ICE Trust December 2009 Order, any additional initial margin required by a Clearing Member must be held either in the segregated omnibus account at the Clearinghouse or in a custodial account at a third party U.S. or foreign bank that satisfies the requirements of the order.[22] Margin provided by a Third Party Client may not be used to satisfy obligations of the Clearing Member in respect of its proprietary positions, and may only be used to satisfy amounts owed by the Third Party Client to the Clearing Member and, in certain cases, amounts owed by the Clearing Member to the Clearinghouse in respect of Client-Related Transactions as described above. This framework is consistent with the requirements and protections of Section 4d, and, in ICE Trust's view, should therefore also satisfy the requirements of Rule 17f-6(a)(1)(i) and (ii).[23] (Upon the Dodd-Frank Transition, these rule provisions can be directly satisfied in that ICE Trust and the Clearing Members will be subject to the FCM rules and regulations referred to by Rule 17f-6(a)(1)(i) and (ii) and parallel requirements under Exchange Act Section 3E(b),

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[22] In this regard, the requirements of the ICE Trust framework may be more protective than those under the Section 4d framework.

[23] A key component of the ICE Trust segregation framework is to provide for the protection of client margin in the event of the default of a Clearing Member. In ICE Trust's view, the protection under this framework is consistent with that provided by the futures model, with appropriate differences to reflect the nature of the CDS product, the different categories of members of ICE Trust, which largely include U.S. and foreign banks, and the legal and regulatory framework applicable to those members. As discussed in more detail in the ICE Trust December 2009 Order and related request letter, the segregation provisions of the Rules and the Standard Annex are designed to provide, consistent with the relevant insolvency law regimes applicable to its Clearing Members, that in the case of a Clearing Member default, the Client would be entitled to the return of its initial margin held at the Clearinghouse (after the satisfaction of amounts owed by the Member to the Clearinghouse in respect of Client-Related Transactions and amounts owed by the Client to the Member in connection therewith).

Footnotes 11 - 13 to the Rule 17f-6 Adopting Release discuss corresponding FCM insolvency and default provisions. That discussion ultimately concluded that maintaining assets with an FCM "is not without risk" in the event of the FCM's insolvency, but that the risks were substantially mitigated by the overall Rule 17f-6 framework. We and ICE Trust believe a similar conclusion is warranted here and refer again, in particular, to the detailed ICE Trust segregation arrangements and the much higher capital requirements applicable to Clearing Members under the ICE Trust Rules relative to any parallel rules specific to FCMs. Also of note is the view of the Commission expressed in the ICE Trust November 2010 Order:

> ... we [the Commission] are ... mindful that [ICE Trust's representations] cannot provide legal certainty that customer collateral in fact would be protected in the event [a Clearing Member] were to become insolvent. We believe that the segregation framework ... represents a reasonable step to help protect the collateral posted by customers of [Clearing Members] from threat of loss in the event of [a Clearing Member] insolvency.

although positions and margin will be held in the OTC account class for swaps rather than the futures account class.)

The Clearing Member is further required to keep records with respect to assets received from Third Party Clients.[24] In addition, as a condition under the ICE Trust December 2009 Order, the Clearing Member must provide to the Commission upon request any information in its possession or control related to cleared CDS transactions under the order.[25] Collectively, in ICE Trust's view, these requirements should satisfy the requirements of Rule 17f-6(a)(1)(iii). (Upon the Dodd-Frank Transition, these rule provisions can be directly satisfied in that ICE Trust and the Clearing Members will be subject to the FCM rules and regulations referred to by Rule 17f-6(a)(1)(iii).)

Rule 17f-6(a)(2) requires that funds have access to gains on the cleared transactions carried with FCMs. Under the ICE Trust framework, the ICE Trust Standard ISDA Annex imposes an obligation on the Clearing Member to return excess mark-to-market margin, or to provide mark-to-market margin in favor of the Third Party Client, as the case may be, as a result of movements in the mark-to-market value of the position, following a demand therefor from the Third Party Client in accordance with the terms of the standard annex. These provisions would permit Third Party Clients that are funds to comply with the requirements of Rule 17f-6(a)(2). Following the Dodd-Frank Transaction, these rule provisions can be directly satisfied in that ICE Trust and FCM Clearing Members will be subject to the FCM rules and regulations, and related account documentation and practice, referred to by Rule 17f-6(a)(2).

Rule 17f-6(a)(3) requires that funds withdraw assets from a Rule 17f-6 custody arrangement as soon as practicable after determining that the arrangement no longer meets the requirements of Rule 17f-6. To comply with this requirement, we expect that funds will incorporate a process to monitor their arrangements with ICE Trust and the Clearing Members that is substantially similar to the processes already in place throughout the industry in respect of FCM and commodity clearing organization custody arrangements. This is possible currently and will continue to be possible upon the Dodd-Frank Transition.

We also note the Clearing Members are, and under the Clearinghouse's member application process will continue to be, institutions that are (or are within the corporate groups of) among the world's largest financial services companies (see note 4 supra). As such, each is subject to ongoing supervision by one or more securities and/or banking regulators.

Although ICE Trust Clearing Members are not currently registered as FCMs with the CFTC under the Commodity Exchange Act (prior to the Dodd-Frank Transition), Clearing Members are regulated financial institutions (or affiliates thereof subject to consolidated supervision) and in addition are subject to specific requirements and conditions under the ICE Trust Rules and the ICE Trust December 2009 Order (key provisions of the order are discussed in the following

[24] Rule 405(l).

[25] ICE Trust December 2009 Order (d)(3)(ii)(F).

paragraph). U.S.-based Clearing Members are typically regulated as banks under U.S. law. Non-U.S.-based Clearing Members are typically regulated as banks or other financial institutions (such as broker-dealers) in their home jurisdictions. Like FCMs, Clearing Members are subject to regulation by their principal regulator as to most aspects of their business, including capital, dealings with customers, recordkeeping and reporting. Clearing Members are also subject to ongoing supervision and examination by their principal regulators, and typically have detailed internal compliance policies and procedures relating to their businesses. With respect to the protection and segregation of margin of Third Party Clients, Clearing Members are required under the ICE Trust Rules and the ICE Trust December 2009 Order to segregate such margin, either with the Clearinghouse or in a segregated custody account at an independent custodian.[26] In addition, under the ICE Trust December 2009 Order, as a condition to their exemptive relief from various broker-dealer registration and other regulatory requirements, a Clearing Member must be in material compliance with the ICE Trust Rules and applicable laws and regulations relating to capital, liquidity[27] and segregation (and related books and records requirements). The Clearing Member must provide annually an assessment of its compliance with the requirements of the order, and a report of its independent auditor with respect to such assessment.[28]

In addition to the regulation of ICE Trust and its Clearing Members by their primary regulators as just described, the ICE Trust November 2010 Order also contemplates a significant role for the Commission, as follows:

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[26] ICE Trust Rule 405(c)-(e), ICE Trust December 2009 Order (d)(3)(ii)(C).

[27] As we have emphasized throughout, capital, liquidity and segregation requirements are viewed as important customer protection components to any financial clearing operation. This letter has commented on the ICE Trust Clearing Member capital requirements and segregation protocols in some detail. In terms of liquidity, the following additional detail may be useful. Margin used to satisfy the ICE Trust Minimum Margin Requirement is limited to cash, U.S. government securities and certain highly rated G7 government securities. A significant portion of this margin is required to be posted in cash. ICE Trust currently holds this cash margin in an account that ICE Trust, as a member of the Federal Reserve System, maintains with the Federal Reserve Bank of New York (although ICE Trust may also choose to invest cash margin in overnight reverse repurchase transactions in Treasury securities). This arrangement provides enhanced security for the cash margin and ensures ready access to the funds as necessary, including in times of market disturbance or stress. (We also note that other, non-bank clearinghouses typically would not have direct access to such an account.)

The remainder of the margin posted in respect of Third Party Client positions (i.e., that in excess of ICE Trust Minimum Margin Requirements) is limited to a slightly broader range of high-quality assets. In addition, having the required margin sit at the Clearinghouse or its custodian (as opposed to a series of different arrangements with multiple custodians that vary party to party) also facilitates ready access by the Clearinghouse to margin. Collectively, these quality and treatment of margin requirements, together with centralization of margin under the control of the Clearinghouse, are designed to provide the Clearinghouse ready access to funds when necessary for clearinghouse operations following a Clearing Member default, to the benefit of affected Third Party Clients in such event.

[28] ICE Trust December 2009 Order (d)(3)(i), (d)(3)(ii)(E).

Commission Oversight of ICE Trust

- The Commission has ongoing inspection authority regarding ICE Trust's Clearinghouse operations, and the Commission has reviewed those operations on multiple occasions. ICE Trust also agreed to specific recordkeeping requirements intended to facilitate the Commission's oversight and inspection programs.
- ICE Trust committed to notify the Commission of any material event affecting its Clearinghouse operations, including any significant systems outages.
- ICE Trust committed to notify the Commission of any changes to the ICE Trust Rules and related procedures.
- ICE Trust committed to notify the Commission about material disciplinary actions taken against any of the Clearing Members, such as suspension of clearing privileges.
- ICE Trust committed to third-party audits generated in accordance with risk assessment of areas set forth in the Commission's Automation Review Policy Statements applicable to self-regulatory organizations and to provide those audit reports to the Commission.

Commission Oversight of Clearing Members

- A Clearing Member must agree to provide the Commission with access to information relating to their ICE Trust-related CDS clearing activities. "Access to information" includes, for this purpose, both information or documents and a commitment to allow testimony of the Clearing Member's personnel and assistance in taking testimony of other persons.
- In the case of non-U.S. entities, as a condition to the ICE Trust November 2010 Order, no Clearing Member will be permitted to participate in the Non-Member Framework unless it is regulated by a regulator that is a signatory to a memorandum of understanding providing for specified cooperation with the Commission.
- No Clearing Member may rely on the ICE Trust November 2010 Order's exemptions applicable to Clearing Members absent the Clearing Member's material compliance with the ICE Trust Rules, as well as applicable laws and regulations relating to capital, liquidity and segregation of customers' funds and securities and related books and records provisions with respect to CDS clearing.
- Failure to comply with these and other conditions of the ICE Trust November 2010 Order would void the Clearing Member's ability to claim that it is an exempt broker-dealer in respect of its CDS clearing activities, potentially exposing the Clearing Member to Commission sanctions and rescission rights by Third Party Clients and others. The ICE Trust Rules, when viewed together with the requirements of the Commission's order, thus have a quasi-regulatory character.[29]

Despite those similarities to the Rule 17f-6 structure, however, Rule 17f-6 may not be viewed as directly available to funds wishing to access the Clearinghouse. Currently, Clearing Members

[29] Under the ICE Trust Rules, Clearing Members are required to comply with the terms of the ICE Trust November 2010 Order. In addition, ICE Trust has committed to implement a program to monitor compliance with its segregation framework by its Clearing Members.

may not be FCMs within the meaning of that rule.[30] More fundamentally, Rule 17f-6 is available only in respect of instruments that are:

> ...commodity futures contracts, options on commodity futures contracts, and options on physical commodities traded on or subject to the rules of: (i) Any contract market designated for trading such transactions under the Commodity Exchange Act and the rules thereunder; or (ii) Any board of trade or exchange outside the United States, as contemplated in Part 30 under the Commodity Exchange Act.

It is not clear that a CDS would be a qualified instrument under that definition, and that issue is presented both currently and after the Dodd-Frank Transition.

Tri-party arrangements

Prior to the Commission's adoption of Rule 17f-6, funds seeking to trade in commodity futures could not post margin directly to the FCM with which the fund had engaged in a commodity transaction, but rather had to rely on a third-party custodial arrangement as permitted by no-action positions from the Staff.[31] Pursuant to those no-action positions, funds placed margin relating to a commodity futures transaction in a special account with a third-party custodian bank. The account was in the FCM's name or the name of its clearing bank, and provided that only the FCM or its clearing bank would be permitted to withdraw the deposited margin or cover only upon a fund's default.

The Commission later found that those third-party custodial arrangements drained liquidity from the financial system and, at least in the context of Rule 17f-6, also were redundant in view of the safeguards for customer assets afforded by the CEA and the rules of the Commodity Futures Trading Commission.[32] An applicant for later no-action relief in a central clearing context also noted that the arrangements were operationally difficult and that, on its facts, imposed increased cost on both the clearing organization and the funds with little corresponding benefit.[33]

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[30] As a related matter, the definition of an FCM for purposes of Rule 17f-6 does not include an FCM that is an affiliated person of a fund seeking to rely on the rule or an affiliated person of such a person. This definitional carve-out serves to prevent a fund from posting margin to an FCM that is inappropriately closely related to the fund. We would expect that any relief extended to ICE Trust under this letter would provide for a similar limitation on dealings between a fund and a Clearing Member that is an affiliated person of a fund seeking to rely on such relief or an affiliated person of such a person.

[31] Delta Government Options Corp. (pub. avail. Sept. 27, 1990); Prudential-Bache IncomeVertible Plus Fund, Inc. (pub. avail. Nov. 20, 1985).

[32] Custody of Investment Company Assets with Futures Commission Merchants and Commodity Clearing Organizations, Investment Company Release No. 22389 (Dec. 11, 1996).

[33] Fixed Income Clearing Corp. (pub. avail. July 21, 1989).

ICE Trust preliminarily believes that tri-party agreements such as those described above would be impracticable. Pursuant to ICE Trust's Non-Member Framework, any third-party custodial arrangement would have to be coordinated with ICE Trust, one or possibly several Clearing Members, the fund, and the custodian. In particular, in the event of a Clearing Member default, ICE Trust would need access, to the extent permitted by the ICE Trust Rules and to the same extent as for other Third Party Clients, to the required margin of the fund to satisfy losses as a result of the closing-out of Client-Related Transactions and to protect the Clearinghouse and the positions of other Clearing Members and their customers. Need for such access as a result of a Clearing Member default would likely occur at a time of considerable market stress, and custody of such assets at a third party would, at the very least, complicate and potentially slow such access. As an operational matter, such an arrangement would also require additional systems and relationships with third party custodians that ICE Trust does not currently have. For these reasons (as well as the prior experience with tri-party arrangements in the futures context), ICE Trust does not believe that such arrangements would be a practical or, from a systemic risk perspective, a desirable alternative.

Additional Representations

With respect to the timeframe during which ICE Trust will continue under its existing supervisory framework, i.e., prior to the Dodd-Frank Transition, ICE Trust has represented that it will, and has confirmed that the Clearing Members to be covered by the requested no-action position likewise will, comply with all of the representations made by ICE Trust on its behalf or in respect of such Clearing Members in the ICE Trust November 2010 Commission Order, including but not limited to the following:

- ICE Trust will keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts and other such records as shall be made or received by it relating to its cleared CDS clearance and settlement services. These records shall be kept for at least five years and for the first two years shall be held in an easily accessible place;
- ICE Trust will supply information and periodic reports relating to its cleared CDS clearance and settlement services as may be reasonably requested by the Commission, and will provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), records, and personnel related to ICE Trust's cleared CDS clearance and settlement services;
- Each Clearing Member will be in material compliance with the ICE Trust Rules;
- Each Clearing Member will be in material compliance with applicable laws and regulations relating to capital, liquidity, and segregation of fund assets (and related books and records provisions) with respect to CDS cleared by ICE;
- Each Clearing Member will provide disclosure that, among other things, applicable insolvency law may affect a fund's ability to recover assets, or the speed of any such recovery, in any insolvency proceeding involving the Clearing Member;
- Each Clearing Member will transfer fund assets as promptly as practicable after receipt to the Custodial Client Omnibus Margin Account, and to the extent that there is any delay in such

transfer, the Clearing Member will effectively segregate fund assets in a way that is reasonably expected to effectively protect such assets from the Clearing Member's creditors;

- Each Clearing Member annually will provide ICE Trust with a self-assessment that it is in compliance with the representations in the ICE Trust November 2010 Commission Order along with a report by the Clearing Member's independent third party auditor that attests to that assessment; and
- Each Clearing Member will provide the Commission upon request with any information or documents within the possession, custody, or control of the Clearing Member, any testimony of personnel of the Clearing Member, and any assistance in taking the evidence of such persons, that the Commission requests and that relates to certain CDS transactions.

Conclusion

We believe that deposit of cash or securities with ICE Trust or its Clearing Members, both prior to and subsequent to the Dodd-Frank Transition, is consistent with the principles of good custody established by Congress and the Commission in Section 17(f) of the 1940 Act and the rules thereunder. Although funds wishing to use ICE Trust's clearing services may not be able to rely on Rules 17f-4 or 17f-6 because ICE Trust is not a registered clearing agency or futures clearing organization and its Clearing Members may not be broker-dealers or FCMs (at least prior to the planned transition), the structure of the Clearinghouse (which has been closely examined by the Commission in connection with the exemptive orders that it has granted ICE Trust) provides, and will provide, sufficient, and generally similar, protection for client assets.

Based on the facts and circumstances described above, we believe ICE Trust is a proper candidate for the requested no-action relief. We also look forward to further discussions with the Staff in the future regarding corresponding relief to apply upon the Dodd-Frank Transition. As suggested above, it is ICE Trust's intention that any post-transition request for relief that it would make would be structured to avoid any "break period" in which access to its clearinghouse operations by funds might be restricted.

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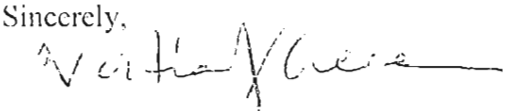
Thank you for your consideration. If for any reason the Staff is considering declining to issue guidance along the lines requested, we and ICE Trust would ask that we be given the opportunity to further discuss our request with you at that time.

I am available at 212-848-4668 or ngreene@shearman.com. My partner Geoffrey Goldman is also familiar with these matters and is at 212-848-4867 or geoffrey.goldman@shearman.com.

Sincerely,



Nathan J. Greene