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September 6, 2012

Via Electronic Submission:

<http://comments.cftc.gov/PublicComments/CommentForm.aspx?id=1252>

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

**Re: Clearing Requirement Determination Under Section 2(h) of the CEA
RIN Number 3038-AD86**

Dear Mr. Stawick,

IntercontinentalExchange, Inc. (“ICE”) appreciates the opportunity to respond to the Commodity Futures Trading Commission (“Commission”) request for public comment with respect to the proposed *Clearing Requirement Determination Under Section 2(h) of the CEA*¹ (the “Determination”) for certain classes of credit default swaps (“CDS”) and interest rate swaps (“IRS”).

As background, ICE operates four regulated futures exchanges: ICE Futures Europe, ICE Futures Canada, the Chicago Climate Exchange, and ICE Futures U.S. ICE also owns and operates five derivatives clearinghouses: ICE Clear U.S., a Derivatives Clearing Organization (“DCO”) under the Commodity Exchange Act, located in New York and serving the markets of ICE Futures U.S.; ICE Clear Europe, a DCO, a Recognized Clearing House and a Securities Clearing Agency located in London that serves ICE Futures Europe, ICE’s OTC energy markets and operates as ICE’s European CDS clearinghouse; ICE Clear Canada, a recognized clearinghouse located in Winnipeg, Manitoba that serves the markets of ICE Futures Canada; The Clearing Corporation, a DCO, and ICE Clear Credit, a U.S.-based DCO and Securities Clearing Agency.

ICE strongly supports the Commission’s proposed Determination for the CDX and iTraxx classes of CDS.

Implementing the requirement that the liquid and standardized segments of the swaps markets be cleared by DCOs is one of the cornerstones of the Dodd-Frank Act. The

¹ 77 Fed Reg. 47170-47222 (August 7, 2012).

proposed rule promotes the objectives of mitigating systemic risk and increasing transparency – all essential elements of well-functioning financial markets.

A. Swap Class Specification

The CDX and iTraxx contract classes listed in proposed §50.4 satisfy the five statutory factors that the Commission is required to consider for clearing requirement determinations, as the Commission’s analysis demonstrates.² These contract classes are cleared today in significant volumes and we thus agree with the Commission that “there is already a blueprint for clearing and appropriate risk management.”³ As of August 31, 2012, ICE has cleared \$17.6 trillion CDX and €8.9 trillion iTraxx since inception with open interest of \$393 billion CDX and €170 billion in iTraxx. With respect to the inclusion of additional CDX tenors, the current ICE Clear Credit risk management framework and methodology support the additional tenors. ICE Clear Credit has filed to clear the 3- and 7-year tenors of the CDX IG Indices.⁴

B. European Untranching iTraxx Indices

ICE Clear Europe is clearing all of the iTraxx swaps listed in proposed §50.4 for the inter-dealer market. ICE Clear Europe is pursuing regulatory approval to offer clearing of the iTraxx swaps to all market participants (“client clearing”). In addition, ICE Clear Credit intends to seek regulatory approval to clear Untranching iTraxx Indices.

The inclusion of Restructuring as a credit event in the iTraxx index introduces some complexities relative to CDX. However, ICE has worked closely with market participants and DTCC to develop an industry wide solution for processing a Restructuring credit event. ICE Clear Credit has already implemented the portion of this solution that applies to its emerging market sovereign single-name and EM CDX index credit default swaps. Although a Restructuring credit event for corporate events requires certain additional processes, these are already contemplated as part of the industry wide solution and ICE does not foresee any insurmountable issue with such an

² In summary, the five factors are (i) the existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data; (ii) the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded; (iii) the effect on the mitigation of systemic risk taking into account the size of the market for such contract and the resources of the DCO available to clear the contract; (iv) the effect on competition including appropriate fees and charges applied to clearing; and (v) legal certainty in the event of insolvency in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.

³ 77 Fed Reg. 47172 (August 7, 2012).

⁴ ICE Clear Credit filing dated August 9, 2012, available at:

<http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/rul080912icecc001.pdf>

implementation. ICE has engaged in testing of the Restructuring solution with market participants and will engage in further such testing during the remainder of 2012.

In summary, we recommend that the Commission maintain the full proposed CDX and iTraxx product scope in its final Determination. In addition, we concur with the Commission's classification scheme for CDS indices and believe it is appropriate for the Commission to approve swaps as a class. Proposed §50.6 allows a DCO to add new swaps in a timely and efficient manner and rely on the DCO's risk management processes and governance for adding new products to an existing class.

Sincerely,

A handwritten signature in cursive script that reads "Scott Hill".

Scott Hill