

DEPARTMENT OF THE TREASURY

Order Granting Temporary Exemptions From Certain Government Securities Act Provisions and Regulations in Connection With a Request From ICE Clear Credit LLC (Formerly ICE Trust U.S. LLC) Related to Central Clearing of Credit Default Swaps, and Request for Comments

AGENCY: Department of the Treasury, Office of the Assistant Secretary for Financial Markets.

ACTION: Notice of temporary exemptions.

SUMMARY: The Department of the Treasury (“Treasury” or “We”) is granting by order temporary exemptions from certain Government Securities Act of 1986 provisions and regulations regarding transactions in credit default swaps that reference government securities. ICE Clear Credit LLC requested these temporary exemptions for itself, its Clearing Members, and certain brokers that are not registered as government securities brokers. Treasury will revisit these exemptions when the Commodity Futures Trading Commission and the Securities and Exchange Commission issue final rules or guidance to implement Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The temporary exemptions could become unavailable if the facts and circumstances, as represented in the request, change. Treasury is also soliciting public comment on this order.

DATES: Effective date: July 16, 2011. Submit comments on or before September 19, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

You may download this order from <http://www.regulations.gov> or the Bureau of the Public Debt’s Web site at <http://www.treasurydirect.gov>. You may also e-mail comments to govsecreg@bpd.treas.gov.

Paper Comments

Send paper comments to Department of the Treasury, Bureau of the Public Debt, Government Securities Regulations Staff, 799 9th Street, NW., Washington, DC 20239–0001.

Please submit your comments using only one method and provide your full name and mailing address. We will post all comments on the Bureau of the Public Debt’s Web site at <http://www.treasurydirect.gov>. The order and comments will also be available for

public inspection and copying at the Treasury Department Library, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment. In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena, Kurt Eidemiller, or Kevin Hawkins, Department of the Treasury, Bureau of the Public Debt, at 202–504–3632.

SUPPLEMENTARY INFORMATION:

I. Section 15C of the Securities Exchange Act of 1934

Section 15C of the Securities Exchange Act of 1934 (“Exchange Act”), as amended by the Government Securities Act of 1986 (“GSA”) ¹ governs transactions in government securities ² by government securities brokers ³ and government securities dealers. ⁴ Treasury regulations promulgated under the GSA impose obligations on government securities brokers and government securities dealers concerning financial responsibility, protection of customer securities and balances, and recordkeeping and reporting.

Section 15C(a) of the Exchange Act (Title I of the GSA) requires government

¹ Public Law 99–571, 100 Stat. 3208 (1986).

² The term *government securities*, as defined at 15 U.S.C. 78c(a)(42), means: (A) Securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States; (B) securities which are issued or guaranteed by the Tennessee Valley Authority or by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors; (C) securities issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the SEC; and (D) generally “any put, call, straddle, option, or privilege” on a government security other than one that is traded on a national securities exchange or for which quotations are disseminated through an automated quotation system operated by a registered securities association. Certain Canadian government obligations are also included for certain purposes.

³ A *government securities broker* generally is “any person regularly engaged in the business of effecting transactions in government securities for the account of others,” with certain exclusions. 15 U.S.C. 78c(a)(43).

⁴ A *government securities dealer* generally is “any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise,” with certain exclusions. 15 U.S.C. 78c(a)(44).

securities brokers and government securities dealers that effect transactions in or induce the purchase or sale of government securities to be registered with the Securities and Exchange Commission (“SEC”).⁵ This registration requirement does not apply to financial institutions or brokers and dealers that are already registered under the Exchange Act, as long as written notice is filed with the appropriate regulatory agency.⁶ All government securities brokers and government securities dealers are required to comply with the requirements in Treasury’s GSA regulations that are set out at 17 CFR parts 400–449.⁷ Treasury’s GSA regulations, for the most part, incorporate with some modifications SEC rules for non-financial institution government securities brokers and government securities dealers and the appropriate regulatory agency⁸ rules for financial institutions that are required to file notice as government securities brokers and government securities dealers.

Section 15C(a)(5) of the Exchange Act provides that the Secretary of the Treasury (“Secretary”):

By rule or order, upon the Secretary’s own motion or upon application, may conditionally or unconditionally exempt any government securities broker or government securities dealer, or class of government securities brokers or government securities dealers, from any provision of subsection (a), (b), or (d) of this section, other than subsection (d)(3), or the rules thereunder, if the Secretary finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of [the Exchange Act].

Treasury, in coordination with the SEC, has previously issued several temporary exemptive orders to ICE Trust U.S. LLC (“ICE Trust”) to facilitate the central clearing of credit default swaps (“CDS”)⁹ that reference

⁵ 15 U.S.C. 78o–5(a)(1)(A).

⁶ 15 U.S.C. 78o–5(a)(1)(B).

⁷ 17 CFR part 400 Rules of general application; 17 CFR part 401 Exemptions; 17 CFR part 402 Financial responsibility; 17 CFR part 403 Protection of customer securities and balances; 17 CFR part 404 Recordkeeping and preservation of records; 17 CFR part 405 Reports and audit; 17 CFR part 420 Large position reporting; and 17 CFR part 449 Forms, section 15C of the Securities Exchange Act of 1934. The GSA regulations also include requirements for custodial holdings by depository institutions at 17 CFR part 450, which were issued under Title II of the GSA.

⁸ The definition of *appropriate regulatory agency* with respect to a government securities broker or a government securities dealer is set out at 15 U.S.C. 78c(a)(34)(G). The definition includes the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and in limited circumstances the SEC.

⁹ A CDS is a bilateral contract between two parties, known as counterparties. The value of this

exemptions in connection with these provisions.²⁴

III. ICE Clear Credit LLC (“ICE Credit”) Request for Exemption

On July 6, 2011, Treasury received a letter (“the ICE Credit request”) ²⁵ from ICE Credit requesting that, to avoid legal uncertainty, Treasury grant an exemption from the registration provisions of the GSA and Treasury regulations thereunder to ICE Credit and its Clearing Members ²⁶ and unregistered government securities brokers ²⁷ who enter into transactions with ICE Credit Clearing Members involving CDS that reference government securities and are submitted to ICE Credit for clearance and settlement.

In its request, ICE Credit contends that central clearing has several important market efficiency and investor protection benefits over clearing CDS on a bilateral basis. ICE Credit asserts that: a highly regulated central counterparty with significant financial resources substantially reduces the risk of counterparty default; the ICE Credit Rules allow a streamlined process for a party to a CDS transaction to move one or more pieces of its CDS portfolio from one Clearing Member to another (portability), which will result in a more efficient CDS marketplace, greater investor choice, and meaningful investor protection; central clearing provides a robust mechanism for the segregation and protection of margin provided by market participants; and the central counterparty model improves transparency.

²⁴ 15 U.S.C. 78mm(b).

²⁵ Letter from Kevin R. McClear, General Counsel, ICE Trust U.S. LLC to the Commissioner of the Public Debt, Van Zeck, July 6, 2011, available at: <http://www.treasurydirect.gov/insttit/statreg/gshareg/gshareg.htm>. As noted in its request, on July 16, 2011, ICE Trust reorganized its corporate structure. ICE Trust changed from a New York-chartered limited purpose trust company to a Delaware limited liability company. ICE Trust also changed its name from ICE Trust U.S. LLC to ICE Clear Credit LLC and became a DCO with respect to swaps.

²⁶ The ICE Credit rulebook defines a Clearing Member as “a person that has been approved by ICE Credit for the submission of an agreement or contract and that is party to an agreement with ICE Credit specifically relating to transactions in agreement or contract. Under ICE Credit rules, a Clearing Member must meet substantial eligibility criteria prior to being permitted to become a Clearing Member, which criteria include standards of business integrity, financial capacity, creditworthiness, operational capability, experience and competence as may be established by ICE Credit from time to time.” The ICE Credit rulebook is publicly available online at https://www.theice.com/publicdocs/clear_us/ICE_Trust_Rules.pdf.

²⁷ In its request, ICE Credit refers to unregistered government securities brokers as “inter-dealer brokers.” See note 25, *supra*.

ICE Credit’s request also acknowledges that ICE Credit will be subject to a new regulatory framework that includes comprehensive oversight of aspects of its CDS business including eligibility requirements, books and records, systems, and margin requirements of both ICE Credit and its Clearing Members. It also acknowledges that all rule changes must be approved by the SEC in accordance with regulations promulgated under Section 19(b) of the Exchange Act, and either self-certified with or approved by the CFTC in accordance with the CEA. Further, upon the effective date of Title VII of the Dodd-Frank Act, ICE Credit will be deemed registered ²⁸ as a derivatives clearing organization (“DCO”) ²⁹ with the CFTC and will be subject to regular audit or risk reviews by the CFTC based on the 18 Core Principles set forth in the CEA. ³⁰

ICE Credit’s request notes that it will be subject to regulation of all aspects of its clearing activities, including eligibility requirements, margin required from Clearing Members, and the procedures relating to default. ICE Credit Clearing Members effecting customer transactions in CDS will be registered as futures commission merchants (“FCMs”) ³¹ with the CFTC and as either broker-dealers or securities-based swaps dealers with the SEC.

ICE Credit is also requesting an exemption for certain unregistered government securities brokers. ICE Credit explains that its Clearing Members may use the facilities of unregistered government securities brokers to execute CDS and submit such transactions for clearance and settlement to ICE Credit. ICE Credit notes that the use of unregistered government securities brokers by CDS market participants is a means of promoting an orderly and efficient market for CDS that reference government securities.

ICE Credit also contends in its request that CDS that reference government securities may not be exempt from the definition of “security” under the Exchange Act. As a result, and in the absence of relief, ICE Credit, its Clearing Members, and certain unregistered government securities brokers that are engaged in the business of effecting transactions in government securities may have to register as government securities brokers or government

securities dealers in accordance with section 15C of the Exchange Act.

ICE Credit believes that an exemption is warranted in light of the comprehensive regulatory scheme imposed by the Dodd-Frank Act. ICE Credit argues that the registration of ICE Credit, its Clearing Members, and certain unregistered government securities brokers as government securities brokers or government securities dealers could create complex interpretive issues that result in legal uncertainty.

The ICE Credit request states that, to date, the products eligible for clearing at ICE Credit include CDS transactions involving certain indices and CDS contracts based on individual reference entities or securities (single-name CDS contracts) that meet ICE Credit’s risk management and other criteria. The request also states that as of June 1, 2011, ICE Credit has cleared a notional amount of \$666 billion of CDS on behalf of its 15 current Clearing Members. To date, ICE Credit has not cleared any CDS contracts that reference government securities.

IV. Temporary Exemption for ICE Credit, ICE Credit Clearing Members, and Certain Unregistered Government Securities Brokers

In light of the comprehensive regulatory framework established by the Dodd-Frank Act, the application of the GSA registration requirements to ICE Credit, its Clearing Members, and certain unregistered government securities brokers in CDS transactions that are not currently registered or noticed government securities brokers or government securities dealers is not warranted at this time.

Accordingly, the Secretary, by order, is granting a temporary exemption to ICE Credit, its Clearing Members, and certain unregistered government securities brokers from the provisions of section 15C(a), (b), and (d) (other than subsection (d)(3)) of the Exchange Act, and the rules thereunder. ³² This temporary exemption is confined solely to these entities’ transactions in CDS that reference government securities and are cleared by ICE Credit. This temporary exemption does not apply to any ICE Credit Clearing Members or government securities brokers that are registered or noticed as government securities brokers or government securities dealers. ³³

³² See note 5, *supra*.

³³ As used in this order, *registered or noticed government securities brokers or government securities dealers* encompasses all brokers, dealers, and entities required to register or file notice pursuant to section 15C(a)(1) of the Exchange Act.

²⁸ See Dodd-Frank Act section 725(b).

²⁹ 7 U.S.C. 1a(9).

³⁰ See Section 5b(c)(2) of the CEA.

³¹ 7 U.S.C. 1a(28).

V. Temporary Exemption for Registered or Noticed Government Securities Brokers and Government Securities Dealers That Are Not Financial Institutions

The Secretary is also granting a temporary exemption to registered or noticed government securities brokers and government securities dealers that are not financial institutions³⁴ from the regulations in 17 CFR parts 402, 403, 404, and 405, with exceptions.³⁵ This temporary exemption is confined solely to these entities' transactions in CDS that reference government securities and are cleared by ICE Credit.

With respect to noticed government securities brokers and government securities dealers that are financial institutions (and also ICE Credit Clearing Members), the GSA regulations generally adopt the appropriate regulatory agency rules for financial institutions that are comparable to the CFTC rules to which the temporary exemption does not extend. The GSA regulations also incorporate rules of the appropriate regulatory agencies that are otherwise applicable to financial institutions.

Treasury is not extending this temporary exemption to financial institution government securities brokers and government securities dealers. They should continue to comply with existing rules.

Treasury believes that continuing to facilitate the central clearing of CDS transactions through the granting of the temporary exemptions in this order is consistent with the public interest, the protection of investors, and the purposes of the Exchange Act. These temporary exemptions will remain in effect unless Treasury revokes or modifies them. As of the effective date of Treasury's order, the CFTC and the SEC have not issued final rules or interpretive guidance to implement Title VII of the Dodd-Frank Act.³⁶ When they do, Treasury will revisit these exemptions.

While providing temporary exemptions from certain provisions of section 15C of the Exchange Act, Treasury is not making a determination, for purposes of this order, on whether particular CDS that reference government securities are "government securities" as defined by the Exchange

Act. The exemptions being granted in this order are not intended to limit regulatory authority of other regulators.

VI. Consultations and Considerations

In granting these temporary exemptions, Treasury has consulted with and considered the views of the staffs of the CFTC, the SEC, and the appropriate regulatory agencies for financial institutions.

Treasury bases this order on the facts and circumstances presented and representations made by ICE Credit in its request. These temporary exemptions could become unavailable if the facts or circumstances change such that the representations in the request are no longer materially accurate. If this were to happen, the status of existing positions in cleared CDS that reference government securities would remain unchanged, but no new positions could be established pursuant to the temporary exemptions unless approved by Treasury.

ICE Credit must promptly notify Treasury in writing if any of the relevant information provided to obtain these temporary exemptions changes.

VII. Solicitation of Comments

We request comments on the temporary exemptions we are granting in this order to accommodate central clearing of CDS that reference government securities by ICE Credit. We are also soliciting public comment on whether there is a need for broader exemptive relief from provisions of the GSA and Treasury regulations in light of the Dodd-Frank Act amendments to the Exchange Act. For example, is it necessary to provide similar exemptive relief to other entities that engage in transactions in CDS that reference government securities and are not submitted to a central counterparty ("uncleared")?

Treasury will continue to monitor ICE Credit's progress and the development of central counterparties for the CDS market and determine to what extent, if any, additional action might be necessary.

Treasury also will continue to consult with the staffs of the CFTC, the SEC, and the appropriate regulatory agencies for financial institutions on this matter.

VIII. Conclusion

It is hereby ordered, pursuant to section 15C(a)(5) of the Exchange Act, that:

(a) *Temporary Exemption for ICE Clear Credit LLC ("ICE Credit"), ICE Credit Clearing Members, and Certain Government Securities Brokers.*

(1) *Persons eligible.* This temporary exemption is available to a) ICE Credit and b) ICE Credit Clearing Members and unregistered government securities brokers who enter into transactions with ICE Credit Clearing Members involving CDS that reference government securities and are submitted to ICE Credit for clearance and settlement. However, this temporary exemption is not available to ICE Credit Clearing Members and government securities brokers that are registered or noticed as government securities brokers or government securities dealers under section 15C(a)(1) of the Exchange Act.

(2) *Scope of the temporary exemption.* Subject to the exclusions in paragraph (a)(1), such entities shall temporarily be exempt from the provisions of section 15C(a), (b), and (d) (other than subsection (d)(3)) of the Exchange Act, and the rules thereunder.

(b) *Temporary Exemption for Registered or Noticed Government Securities Brokers and Government Securities Dealers that are not Financial Institutions.*

ICE Credit Clearing Members and government securities brokers that are registered or noticed government securities brokers and government securities dealers but not financial institutions are exempt from the regulations in 17 CFR parts 402, 403, 404, and 405 with respect to their transactions with ICE Credit Clearing Members involving CDS that reference government securities and are submitted to ICE Credit for clearance and settlement. However, this order does not exempt registered or noticed government securities brokers or government securities dealers that are not financial institutions from the following:

(1) The capital requirements for registered government securities brokers and government securities dealers in part 402 of the GSA regulations (which are comparable to SEC Rule 15c3-1 on net capital);

(2) The provisions of part 403 of the GSA regulations that incorporate and modify SEC Rule 15c3-3 on reserves and custody of securities;

(3) The provisions of parts 404 and 405 of the GSA regulations that incorporate and modify SEC Rules 17a-3 through 17a-5, 17h-1T and 17h-2T, on records and reports; and

(4) The provisions of part 404 of the GSA regulations that incorporate and modify SEC Rule 17a-13 on quarterly security counts.

The temporary exemptions contained in this order are based on the facts and circumstances presented in the request. These temporary exemptions could

³⁴ A *financial institution* is defined in 15 U.S.C. 78c(a)(46).

³⁵ This order does not exempt registered or noticed government securities brokers or government securities dealers that are not financial institutions from the regulations regarding capital requirements, reserves and custody of securities, records and reports, and quarterly security counts.

³⁶ See notes 21 and 22, *supra*.

become unavailable if the facts or circumstances change such that the representations in the request are no longer materially accurate. ICE Credit must promptly notify Treasury in writing if any of the information provided to obtain these temporary exemptions changes. If an underlying representation were to no longer be accurate, the status of existing positions in cleared CDS that reference government securities would remain unchanged, but no new positions could be established pursuant to the temporary exemptions unless approved by Treasury.

IX. Paperwork Reduction Act

There is no new collection of information contained in this order, and, therefore, the Paperwork Reduction Act does not apply.

Mary J. Miller,

Assistant Secretary for Financial Markets.

[FR Doc. 2011-18307 Filed 7-15-11; 4:15 pm]

BILLING CODE 4810-39-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Determination of Substitute Agent for a Consolidated Group.

DATES: Written comments should be received on or before September 19, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Elaine Christophe, (202) 622-3179, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through

the Internet at Elaine.H.Christophe@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Determination of Substitute Agent for a Consolidated Group.

OMB Number: 1545-1793.

Revenue Procedure Number: 2002-43 (TD 9255).

Abstract: Revenue Procedure 2002-43 provides any instructions that apply to any designation of a substitute agent, notification of the existence of a default substitute agent, a request for the designation of a substitute agent, and request for replacement of a previously designated substitute agent. The instructions also provide for the automatic approval of requests by a terminating common parent to designate its qualifying successor as a substitute agent.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Average Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 6, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011-18255 Filed 7-19-11; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C.

3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8804-C, Certificate of Partner-Level Items to Reduce Section 1446 Withholding, and Special Rules to Reduce Section 1446 Withholding.

DATES: Written comments should be received on or before September 19, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe, (202) 622-3179, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at Elaine.H.Christophe@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Certificate of Partner-Level Items to Reduce Section 1446 Withholding.

OMB Number: 1545-1934.

Form Number: Form 8804-C.

Abstract: Form 8804-C will be a form a foreign partner would voluntarily submit to the partnership if it chooses to provide a certification that could reduce or eliminate the partnership's need to withhold 1446 tax.