Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Interpretive Letter #1113
March 2009
12 USC 84
12 CFR 7.1017(a)

March 4, 2009

Subject: **[ ]** ("Bank") Membership in The IntercontinentalExchange US Trust ("ICE Trust") Credit Default Swap Clearinghouse

Dear **[ ]**:

This responds to your request that the Office of the Comptroller of the Currency ("OCC") confirm that it is permissible for the Bank to participate as a clearing member of ICE Trust, a clearinghouse for over-the-counter ("OTC") credit default swaps ("CDS").[1] ICE Trust is a New York trust company, which will be a member of the Federal Reserve System and subject to the regulatory and supervisory requirements of the Federal Reserve Board ("FRB") and the New York State Banking Department. ICE Trust will meet the statutory requirements for a multilateral clearing organization ("MCO"),[2] as a State member bank. As an MCO, ICE Trust will be permitted to clear CDS, as OTC derivatives.[3]

[1] A CDS is a bilateral OTC contract designed to transfer the credit exposure of specified products between parties. The buyer of a CDS receives credit protection, whereas the seller of the swap guarantees the credit worthiness of the obligor on the product in exchange for a fixed payment or a series of fixed payments. Effectively, the risk of default is transferred from the buyer of the CDS to the seller.

[2] An MCO is a system utilized by more than two participants in which the bilateral credit exposures of participants arising from the transactions cleared are effectively eliminated and replaced by a system of guarantees, insurance, or mutualized risk of loss. 12 U.S.C. § 4421(1).

[3] *See* 12 U.S.C. § 4401 *et seq.*, and ICE Trust Rule ("Rule") 611. OTC derivative transactions are defined in 12 U.S.C. § 4421 to include any agreement, contract, or transaction that is a credit spread or credit swap or that is a swap on one or more occurrences of any event, equity security, or other equity instrument, debt security or other debt instrument. CDS fit within this definition of OTC derivatives.

For the reasons discussed below, we conclude that the Bank may participate as a clearing member of ICE Trust, provided the Bank, prior to becoming a member, establishes a comprehensive risk management framework[4] to govern the risks associated with its membership, and receives a written supervisory no-objection from its examiner-in-charge ("EIC").

Background

ICE Trust will provide CDS clearing services to its clearing participants ("members"). Membership is open to market participants that meet the clearinghouse's membership criteria.[5] The Bank proposes to become an ICE Trust clearing member.

ICE Trust will novate and clear the trades executed by its members**.**[6] Bilateral contracts entered into by its members will be replaced by two superseding CDS contracts between ICE Trust and each party to the bilateral transactions. Under the new contracts, ICE Trust will assume the counterparties' obligations under the original contracts and effectively become the central counterparty (*i.e.*, the buyer to every seller and the seller to every buyer) to CDS trades.

For admission to ICE Trust, member applicants must have a minimum tangible net worth (Tier 1 capital) of $5 billion.[7] Potential members or their parents must have a minimum long term rating of at least "A" or its equivalent from designated or equivalent rating agencies or otherwise demonstrate to the satisfaction of the FRB that it satisfies stringent credit criteria.[8] A member (or its affiliate) must be licensed and regulated for capital adequacy by a "competent authority."[9] Members must provide initial and mark-to-market margin, and contribute collateral ("Required Contributions") to ICE Trust's guaranty fund ("Fund"),[10] which is available to cover a member's default.[11] The

[4] The risk management framework should focus on the qualitative controls necessary to address the risks of the Bank's activities and, in addition, provide for the Bank's compliance with quantitative restrictions discussed below.

[5] Membership criteria are designed to insure that each member has sufficient operational capabilities, financial resources, risk management experience and regulatory oversight to be permitted to become an ICE Trust member. ICE Trust Risk Management Framework ("RMF") § IV.

[6] Rule 301.

[7] Rule 201(b)(ii) and RMF § IV.

[8] Rule 201(b)(iii) and RMF § IV. This criterion is not met if an applicant is rated below "A" and the applicant will not be admitted as an ICE Trust clearing member. *Id.*

[9] RMF § IV, A. "Competent authorities" include the OCC, the FRB, the U.K Financial Services Authority or any other regulatory body ICE Trust designates from time to time for this purpose. Rule 201(b)(i).

[10] The Fund is designed to provide adequate funds to cover simultaneous losses associated with the default of the two clearing members with the greatest potential up-side (widening spread) losses (*i.e.*, uncollateralized losses). RMF § IV.

Required Contribution is based on the risk profile of the member's portfolio, subject to a $20 million minimum.[12] The Required Contribution is determined based on the nature and scope of, and risk associated with, each member's activities. If a clearing member's portfolio presents greater risk, ICE Trust may require the member to increase the amount of its Required Contribution.[13] ICE Trust calculates each member's Required Contribution on a daily basis.[14] If a member's calculated Required Contribution for a particular day exceeds the prior day's calculated contribution by 5% or exceeds the total Fund by 5%, ICE Trust will make a demand for the member to provide cash or collateral to the Fund, sufficient to cover the deficit, which must be met within one hour.[15]

The Rules define acts that constitute member defaults and describe the actions the clearinghouse may take once it declares a member in default.[16] In the event of a member default, the Fund may be used to pay the costs of closing out a defaulting member's liabilities that exceed the defaulting member's cash/collateral (margin accounts) or guarantee. ICE Trust will notify members whenever it makes a charge to the Fund.[17] ICE Trust may liquidate the losses resulting from a member's default using this priority schedule: (1) the ICE Trust Priority Contribution;[18] (2) the non-defaulting members' Required Contributions (not to exceed an average of $50 million per non-defaulting member) and ICE Trust's Pro Rata Contribution[19] applied pro rata to the loss based on the relative size of such contributions, and (3) the remainder of each non-defaulting member's Required Contribution applied pro rata to the remaining loss based on the relative size of such contributions.[20]

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[11] Rules 401- 404 and 801 and RMF § IV. ICE Trust is also required to make capital contributions to the Fund of up to $100 million, which includes up to $50 million representing a first loss contribution ("ICE Trust Priority Contribution") and the lesser of $50 million or the average Required Contribution ("ICE Trust Pro Rata Contribution"). Rule 801.

[12] RMF, Appendix 3 and ICE Trust Clearing Participant Application Documents ("PAD").

[13] PAD.

[14] RMF § IV.

[15] Rule 801 and RMF § IV.

[16] A member is in default if, for example, the member: (1) fails to meet or is likely to fail to meet the member's contract obligations with the clearinghouse, (2) fails to pay margin by prescribed deadlines, (3) is suspended or expelled or has privileges revoked by ICE Trust, or (4) has a guarantor who fails or is likely to fail to meet any of its obligations or is in default under a guarantee to ICE Trust. Rule 20-605(a).

[17] Rule 802(d).

[18] The "ICE Trust Priority Contribution" is a contribution provided by ICE Trust to the Fund of up to $50 million representing a first loss contribution. Rule 801.

[19] The "ICE Trust Pro Rata Contribution" is a contribution provided by ICE Trust to the Fund that is the lesser of $50 million or the average Required Contribution.

[20] Rules 801 and 802.

If ICE Trust draws on the Fund to cover a member default, resulting in a member having an amount of collateral in the Fund less than the member's Required Contribution, the member must pay to the Fund an amount sufficient to restore the member's Required Contribution ("Additional Assessment") prior to the opening of business on the next business day.[21] This amount is dynamic and can change from one day to the next based on changes in the member's transaction volume. Before the Additional Assessment is due, a non-defaulting member may provide ICE Trust with a notice of intent to withdraw from membership, thus becoming a "Retiring Participant."[22] As a Retiring Participant, the amount of the Additional Assessment going forward may meet, but will not exceed, in total, a member's Required Contribution prior to the default.[23] Thus, a Retiring Participant has the ability to limit its contingent liability for the default of other members to twice the member's Required Contribution as of the day of default, subject to Monthly Adjustments.[24] [25] Following the first day on which the Retiring Participant no longer has any open positions, ICE Trust is not entitled to increase a Retiring Participant's Required Contribution.[26]

If the Fund is insufficient to discharge the obligations of the defaulting member, taking into account the Additional Assessments, *or* ICE Trust determines that a winding up of outstanding CDS is prudent *or* ICE Trust defaults, ICE Trust will determine close-out values for all open positions (Wound-up Contracts) and determine a single net amount

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[21] Rule 802(b)(iv). If the entirety of the ICE Trust Pro Rata Contribution was not paid out under Rules 801(c)(i) and 802(b)(ii), the excess of the contribution will be available up to the ICE Trust Default Maximum, along with any Additional Assessments, to cover a default.

[22] A "Retiring Participant" is a clearing member who has notified ICE Trust of its intention to terminate its status as a clearing member or who has been notified by ICE Trust of its intention to terminate the member's status as a member. Rule 102.

[23] RMF § I.

[24] While ICE Trust calculates each member's Required Contribution daily, ICE Trust does not adjust a member's Required Contribution until month's end, to reflect the average daily Required Contribution for the month (the "Monthly Adjustment"), which may result in a positive or negative change in a Retiring Participant's Additional Assessment. Rules 101 and 801, and RMF § IV. Moreover, a Retiring Participant continues to be responsible for any deficit where the member's Required Contribution for a particular day exceeds the prior day's calculated contribution by 5% or exceeds the total Fund by 5%. Rule 801 and RMF § IV. A Retiring Participant is responsible for the Monthly Adjustment and deficit amounts if the member has open positions at any time during the month with respect to which ICE Trust calculates and demands these amounts. Rule 801. A Retiring Participant's obligations remain outstanding until ICE Trust's return of a Retiring Participant's Fund contribution, which is subject to the timing and formula provisions of Rule 803.

[25] The Bank, as a Retiring Participant, would continue to monitor its activities pursuant to its risk management framework (see text below under Safety and Soundness) in order, among other things, to ensure that the Required Contribution and Additional Assessment did not exceed the Bank's lending limit at the time advances of funds are made to ICE Trust. 12 U.S.C. § 84 and 12 C.F.R. Part 32.

[26] Rule 801.

owed by or to each member.[27] ICE Trust will apply all amounts collected from members who owe ICE Trust a net amount under the Wound-up Contracts, plus all available amounts in the Fund, to pay all net amounts owed by ICE Trust to members under the Wound-up Contracts, subject to ICE Trust's limits on liability.[28] [29]

ICE Trust will return a Retiring Participant's Fund contribution minus any portion used to cover the obligations of a defaulting member or in connection with Wound-up Contracts.[30]

A defaulting member's obligations remain a liability of the member and related guarantor, which ICE Trust may collect from the member's margin, collateral or other assets of such member or guarantor or by legal process.[31] If ICE Trust recovers funds from a defaulting member, it is obligated to repay contributions paid by the clearing members, as reflected in steps (4) through (6) below, subject to the following payment priority: (1) to costs and expenses (including legal fees and expenses related to collection); (2) to certain related unreimbursed costs and expenses (*e.g.*, costs and expenses of sale, opens positions, closing out) (Rule 802(a)); (3) to any deficiencies owed to members under Wound-up Contracts (Rule 804); (4) to members and ICE Trust for contributions to the Fund that were charged for the defaulting member's deficiency under Rule 802(b)(iv) (whether or not the member remains a member at the time of collection), first to members to the extent they were charged after the ICE Trust Default Maximum was reached and thereafter to the members and ICE Trust, in proportion and up to the amount each was charged; (5) to the members whose contributions were charged for the deficiency under Rule 802(b)(iii) in proportion and up to the amount of the charge, and (6) to ICE Trust and any member whose contribution was charged for the deficiency under Rule 802(b)(ii) (whether or not such members remain members at the time of collection) in proportion and up to the amount each was charged, (7) to ICE Trust for and up to the amount of the charge against the ICE Trust Priority Contribution, provided that ICE Trust contributes any amount recovered to the Fund for credit to the

[27] Rule 804(a).

[28] *Id.* Under Rule 312, ICE Trust's liability for member contract obligations is limited to amounts on deposit with the Fund (subject to Additional Assessment limits), the ICE Trust Priority Contribution, the ICE Trust Pro Rata Contribution (including such unpaid amounts up to the ICE Trust Default Maximum, which is no more than $50 million per the calculation under Rule 802(b)(v)), and any amount ICE Trust collects from a member or the member's guarantor for its obligations or Wound-up contracts. ICE Trust's liability to a member for contract obligations may not exceed the aggregate amount paid to ICE Trust by a member within the twelve-month period preceding any claim therefore.

[29] ICE Trust and any Retiring Participant may agree to establish a new general guarantee fund and have ICE Trust accept for clearing, replacements for some or all of the Wound-up Contracts. Rule 804(b).

[30] The timing of ICE Trust's return of a Retiring Participant's Fund contribution is determined under the formula set forth in Rule 803.

[31] Rule 802(c).

ICE Trust Priority Contribution, and (8) the payment of any of the defaulting member's other obligations.[32]

Discussion

For the reasons discussed below, we believe a national bank has authority to become an ICE Trust clearing member under the NBA, provided the bank, prior to becoming a member, establishes a comprehensive risk management framework to govern the risks associated with membership as described below, and receives a written supervisory no-objection letter from its EIC. Banks must limit their exposures to ICE Trust to amounts equal to or below their Section 84 limits, as discussed below.

National Bank Act

The NBA permits national banks to engage in foreign and domestic clearing activities, subject to safety and soundness limitations, as activities that are part of the business of banking because the activities are functionally equivalent to bank permissible credit and financial intermediation activities.[33] The NBA also permits national banks to provide default fund contributions to clearinghouses as bank permissible guaranties and as activities incidental to bank permissible activities.

Clearing is a form of extending credit, one of the main functions of banking institutions.[34] A clearing agent substitutes its credit for that of its customers. A clearing agent is liable to a clearinghouse for performance on all submitted contracts, and assumes, with respect to the clearinghouse, the risk of other member defaults. The clearing function also is akin to two other traditional bank credit functions: providing bankers' acceptances and letters of credit.[35] The credit function provided by the Bank in its clearing capacity is part of the business of banking because a principal business of a bank is to extend credit.[36]

National bank clearing activities also are functionally consistent with the primary role of banks as financial intermediaries. The role of a bank is to act as an intermediary, facilitating the flow of money and credit among different parts of the economy.[37] The role of a bank intermediary takes many forms: providing payments transmission services,

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[32] *Id*.

[33] *See, e.g.* OCC Interpretive Letter No. 1014 (Jan. 10, 2005) ("IL No. 1014"); IL No. 929 (Feb. 11, 2002) ("IL No. 929"); and OCC Interpretive Letter No. 494 (Dec. 29, 1989) ("IL No. 494").

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *See, e.g.*, OCC No-Objection Letter No. 90-1 (Feb. 16, 1990) and OCC No-Objection Letter No. 87-5 (July 20, 1977).

borrowing from savers and lending to users, and participating in the capital markets, as here. As the recognized intermediaries between other, non-bank participants in the financial markets and the payment systems, banks possess the expertise to make exchanges of payments and securities between, and settle transactions for, parties and to manage their own intermediation position.[38]

A long line of OCC precedents support the conclusion that the Bank's proposed clearing services are within the legally authorized powers of national banks.[39] Moreover, the OCC has permitted national banks and their foreign branches to join clearinghouses and other entities that require members to cover a portion of the losses arising from the default of other members, as bank permissible guaranties, where the bank had a substantial interest in being a member and its liability was *de minimis* or limited, and did not exceed Section 84 or lower EIC-established limits.[40] Under 12 C.F.R. § 7.1017(a), a national bank is permitted to guarantee the obligations of another party if the bank has a substantial interest of its own in the transaction. This regulation provides, in part, that "[a] national bank may lend its credit, bind itself as a surety to indemnify another, or otherwise become a guarantor . . . if: (a) The bank has a substantial interest in the performance of the transaction involved."[41]

Here, the Bank has a substantial interest in agreeing to cover a portion of the losses of defaulting ICE Trust clearing members where this obligation is an integral part of permissible clearing activities. The Bank seeks to become an ICE Trust clearing member as an effective and efficient means of clearing CDS trades. The Bank must agree to cover a portion of the losses of defaulting clearing members as a condition of ICE Trust clearing membership. Thus, the Bank has a substantial interest in committing to provide the guarantee as a condition to ICE Trust membership, subject to the limits described below.

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[38] *See* OCC Interpretive Letter 892 (Sept. 8, 2000).

[39] *See, e.g.*, Unpublished Letter (Dec. 13, 1995) (national bank membership in Exchange Clearing House Limited (ECHO)); OCC Operating Subsidiary Notice Application Control No. 94-ML-08-00002 (Sept. 21, 1994) (national bank clearing membership in SIMEX); IL No. 494, *supra* (national bank and operating subsidiary as exchange clearing member); OCC Interpretive Letter No. 422 (Apr. 11, 1988 (national bank and operating subsidiary clearing and exchange memberships); OCC Interpretive Letter No. 384 (May 18, 1987) (same); OCC Interpretive Letter No. 380 (Dec. 29, 1986); (execution, clearance, and exchange membership); and OCC Interpretive Letter No. 372 (Nov. 7, 1986) (same).

[40] *See, e.g.* OCC Interpretive Letter No. 1071 (Sept. 6, 2006) ("IL No. 1071") and IL Nos. 1014 and 929, *supra.*

[41] 12 C.F.R. § 7.1017(a). A nexus between a bank permissible transaction and a guaranty may provide the "substantial interest" for the bank. *See, e.g.*, IL No. 929, *supra* (bank's provision of a default fund contribution/guaranty was incidental to the business of bank's clearing and execution activities and satisfied substantial interest needed for issuance of a guarantee) and OCC Interpretive Letter No. 376 (Oct. 25, 1986) (national bank's guarantee of third party securities borrowers' conduct was incidental to the bank's securities lending program and constituted a sufficient substantial interest).

OCC precedent also clearly establishes that national banks may contribute to funds to guarantee the potential losses of others, in order to engage in bank permissible activities, where the bank's potential liability for the defaults of others is limited. For example, in IL No. 929, the OCC found it permissible for a national bank, via its foreign branch, to contribute to a foreign clearinghouse's default fund in order to clear bank permissible derivative contracts where the liability for other member defaults was limited.[42] Clearinghouse members were required to contribute to the default fund to cover losses caused by any defaulting member. In the event of a member default, the clearinghouse could seek additional contributions to the default fund by non-defaulting members. The non-defaulting members had the option of contributing the additional funds or resigning their membership. Thus, the resignation option provided members the ability to limit their liability for the default of other members to the member's original default fund contribution. The OCC found that the branch's participation in the foreign clearinghouse was permissible because the bank could limit its liability and the bank had a substantial interest in contributing to the default fund so that it could engage in bank permissible clearing activities.

The OCC also concluded that it was permissible for national banks to contribute to the loss allocation system of a domestic clearinghouse as a condition to membership, where liability for the losses of other members was limited.[43] Clearinghouse members were required to maintain clearing fund deposits in an account to be used by the clearinghouse to cover losses in the event of a member default. Any losses remaining after applying the deposit could be allocated to non-defaulting members. In that event, a non-defaulting member could either pay the amount of the loss or terminate its membership. If a netting member terminated its membership, its loss allocation liability was limited to its clearing fund deposit. As a result, a member national bank could limit its liability to its initial required fund deposit. Thus, the OCC determined that a member's obligation to cover the losses of defaulting members was limited and that the bank had a substantial interest in providing the guaranty in order to engage in bank authorized clearing activities.

Similarly, the OCC permitted a national bank to become a member of domestic independent systems operators ("ISOs"), which operate much like clearinghouses, to execute bank permissible electricity derivative transactions.[44] As a condition to membership, the bank was to participate in a program that subjected members to potential unlimited liability for any losses allocated to members arising from member defaults. The ISOs had systems in place to mitigate the risk of additional assessments and the bank's exposure was subject to the limits of Section 84 as a legal matter.[45] The OCC determined that the bank had a substantial interest in covering such potential losses as an integral part of ISO membership and the liability exposure was sufficiently limited where

[42] IL No. 929, *supra*.

[43] IL No. 1014, *supra*.

[44] IL No. 1071, *supra.*

[45] The arrangement was also subject to any additional limits imposed by the bank's EIC.

the ISO had risk of loss mitigants in place and the bank established risk management systems and controls to estimate and maintain its potential liabilities within Section 84 limits or lower limits imposed by the EIC.

Recently, in OCC Interpretive Letter No. 1102 (Oct. 14, 2008), the OCC determined that a national bank had a substantial interest in joining a foreign clearinghouse as a custodian clearing member, where clearing members were subject to potentially unlimited liability for the defaults of other clearinghouse members. In the event that the clearing fund was not sufficient to cover a member default, the clearinghouse had the right to assess the remaining balance against all members in proportion to each member's contribution to the fund. While the by-laws, rules and regulations of the clearinghouse did not specifically limit the Bank's exposure to the clearinghouse, the OCC determined that a national bank could join the clearinghouse where it had systems in place to mitigate the risk of additional assessments, and could limit its exposure to the clearinghouse to its Section 84 limits.

Based on all the foregoing, we conclude that it is permissible under the NBA for the Bank to become a clearing member of ICE Trust, provided the Bank establishes a comprehensive risk management framework and limits its exposures to ICE Trust to its Section 84 limits or a lower exposure limit established by the EIC, in light of the size of the Bank, the nature and volume of its activities, and the characteristics of the clearinghouse.[46] The Bank's membership in ICE Trust should enable the Bank to reduce its counterparty credit risk and operational risk from derivatives transactions since the clearinghouse will act as a central counterparty and net members' positions. However, because each member assumes obligations to cover losses from other defaulting members, membership also can create a complex, contingent forward credit exposure. Accordingly, prior to joining ICE Trust, the Bank should establish a comprehensive risk management framework addressing risks arising from these exposures.

Safety and Soundness

When national banks join clearinghouses or exchanges that impose liability on members for other members' defaults, banks should implement a comprehensive risk management framework to measure and manage the risks arising from these exposures, including:

- Effective oversight by senior management;

- Policies and procedures that identify and quantify the level(s) of counterparty credit risk, at both inception of membership and an on-going basis;

[46] Under the lending limit, 12 U.S.C. § 84 and 12 C.F.R. Part 32, a national bank's loans and extensions of credit to one borrower are limited to 15 percent of the bank's capital and surplus, subject to certain exceptions and with the application of certain loan combination rules. Additionally, a bank's credit exposures must be consistent with safe and sound banking practices. Accordingly, the Bank must limit its exposure to ICE Trust so that amounts of funds advanced as margin or Fund contributions do not exceed an amount equal to, if not below, the Section 84 limits, in light of the size of the Bank, the nature and volume of its activities, and the characteristics of the clearinghouse.

- Limits and other controls on the level(s) of risk with respect to counterparty credit, concentrations, and other relevant market factors;

- A systematic approach to capture exposure in the entire clearinghouse;

- Regular reports that accurately present the nature and level(s) of risk taken, and demonstrate compliance with approved policies and limits; and

- Auditing procedures to ensure the integrity of measurement, control, and reporting systems.

Policies and Procedures

Exchange and clearinghouse memberships should be governed by appropriate policies and procedures. Bank policies should establish a formal process for approving membership in a central counterparty, as well as ongoing monitoring of risk exposure. This process should include the necessary control and oversight functions, including credit risk management, audit, legal, and compliance. Policies should include:

- Clearly defined roles and responsibilities for management of risks associated with membership;
- Guidelines on the types of exchanges and clearinghouses the bank may join;
- A well-defined risk tolerance for exchange and clearinghouse risks so that the bank can establish meaningful risk limits;
- A formal process for approval of membership in exchanges or clearinghouses;
- A comprehensive due diligence review prior to joining an exchange or clearinghouse;
- An initial legal review by bank counsel;
- Ongoing reviews by bank counsel to assess any changes in membership requirements and ensure the bank complies with all membership requirements and other applicable limits and restrictions;
- Periodic credit reviews of current memberships on exchanges and clearinghouses, including monitoring of potential risk exposure and ensuring compliance with board-approved credit limits; and
- Annual reviews by internal audit to assess compliance with bank policies.

Due Diligence

Banks should conduct a thorough due diligence of exchanges or clearinghouses prior to becoming a member. Banks should evaluate the credit assessment that the central counterparty uses for its members, both at inception and on an ongoing basis. The due diligence should be of appropriate depth to enable bank management to develop a thorough understanding of the operational framework of the exchange or clearinghouse, and the quality of its risk management systems. At a minimum, this should include an:

- in-depth knowledge of the central counterparty's role, membership criteria and structure, corporate governance, and management team;
- analysis of the credit quality of the central counterparty;
- understanding of membership agreement and requirements, including the default-sharing protocol;
- analysis of central counterparty credit risk management practices, including collateral, margin, and netting requirements;
- analysis of settlement and default procedures;
- analysis by legal counsel of any default-sharing precedents and any other applicable limits or restrictions;
- understanding of the regulatory requirements of the exchange or clearinghouse; and
- assessment of key risks associated with joining the exchange or clearinghouse.

Bank management should establish internal risk limits that are prudent in light of the bank's financial condition, capital levels, and management's expertise. The bank's risk tolerance for concentrations and credit exposures to central counterparties should be reflected in policies and procedures.

Ongoing Monitoring and Reporting

Bank policies should require a periodic review of all central counterparties for which the bank is a member. The policies should clearly define the scope and responsibilities for conducting these reviews. Bank management should obtain accurate and timely information from the exchange or clearinghouse to assess and monitor potential liability based upon the bank's level of activity and applicable laws, rules, and regulations. Bank management should also keep abreast of changes in membership rules and in member activity, on a periodic basis, to assess how its contingent risk exposure is changing as a part of the process. Potential exposure should be monitored individually and in aggregate for all exchange and clearinghouse memberships.

Bank management should develop contingency strategies to mitigate risks associated with exchange or clearinghouse membership, including establishing risk triggers and an approval process for executing contingency risk mitigation strategies. The contingency risk mitigation strategies should include internal limits when the bank must adjust its activities to avoid exceeding limits on potential advances of funds to the exchange or clearinghouse arising from defaults of other members if at any time the cumulative payments under its contingent obligations approach these limits.

Senior management should ensure a membership compliance review is conducted for each exchange or clearinghouse. This review should be conducted at inception and appropriate intervals thereafter.

The Bank represents that it has established a comprehensive risk management framework addressing the risks associated with its membership in ICE Trust that satisfies the above standards.

Conclusion

We conclude that the Bank may participate as a clearing member of ICE Trust, provided the Bank, prior to becoming a member, establishes a comprehensive risk management framework to govern the risks associated with its membership as described above, and receives a written supervisory no-objection letter from its EIC. Our conclusions are specifically based on the Bank's representations, and any change in facts or circumstances could result in a different conclusion. If you have any questions concerning this letter, please contact Tena M. Alexander, Senior Counsel, Securities and Corporate Practices Division, at (202) 874-4625.

Sincerely,

signed

Julie L. Williams
First Senior Deputy Comptroller
And Chief Counsel