

consummation has not been effected by NSR's filing of a notice of consummation by March 11, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: February 27, 2009.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. E9-4878 Filed 3-10-09; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 558 (Sub-No. 12)]

Railroad Cost of Capital—2008

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of decision instituting a proceeding to determine the railroads' 2008 cost of capital.

SUMMARY: The Board is instituting a proceeding to determine the railroad industry's cost of capital for 2008. The decision solicits comments on: (1) The railroads' 2008 current cost of debt capital; (2) the railroads' 2008 current cost of preferred stock equity capital (if any); (3) the railroads' 2008 cost of common stock equity capital; and (4) the 2008 capital structure mix of the railroad industry on a market value basis. Comments should focus on the various cost of capital components listed above using the same methodology followed in the *Cost 07* decision, with the exception of applying the Ex Parte No. 664 (Sub No. 1) decision in calculating the cost-of-equity.

DATES: Notices of intent to participate are due no later than March 20, 2009. Statements of the railroads are due by April 20, 2009. Statements of other interested persons are due by May 20, 2009. Rebuttal statements by the railroads are due by June 19, 2009.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should submit a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation

Board, *Attn:* STB Ex Parte No. 558 (Sub No. 12), 395 E Street, SW., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez (202) 245-0333. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: The Board's decision is posted on the Board's Web site, <http://www.stb.dot.gov>. In addition, copies of the decision may be purchased by contacting the office of Public Assistance, Governmental Affairs, and Compliance at (202)-245-0235. Assistance for the hearing impaired is available through FIRS at 1-800-877-8339.

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10704(a).

Decided: March 5, 2009.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Kulunie L. Cannon,
Clearance Clerk.

[FR Doc. E9-5138 Filed 3-10-09; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34554 (Sub-No. 11)]

Union Pacific Railroad Company— Temporary Trackage Rights Exemption—BNSF Railway Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Partial revocation of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, revokes the class exemption as it pertains to the modified trackage rights described in STB Finance Docket No. 34554 (Sub-No. 10)¹ to permit the

¹ On December 23, 2008, Union Pacific Railroad Company (UP) concurrently filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by BNSF Railway Company (BNSF) to extend the expiration date of the local trackage rights granted to UP over BNSF's line of railroad between BNSF milepost 579.3 near Mill Creek, OK, and BNSF milepost 631.1 near Joe Junction, TX, a distance of approximately 51 miles. UP submits that the trackage rights are only temporary rights, but, because they are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights under 49 CFR 1180.2(d)(8). See

trackage rights to expire on or about December 31, 2009, in accordance with the agreement of the parties,² subject to the employee protective conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

DATES: This exemption is effective on April 10, 2009. Petitions to stay must be filed by March 23, 2009. Petitions to reopen must be filed by March 31, 2009.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34554 (Sub-No. 11) must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, a copy of all pleadings must be served on petitioner's representative: Gabriel S. Meyer, Union Pacific Railroad Company, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Julia Farr (202) 245-0359. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision.

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company, STB Finance Docket No. 34554 (Sub-No. 10) (STB served Jan. 8, 2009).

² The trackage rights were originally granted in *Union Pacific Railroad Company—Temporary Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34554 (STB served Oct. 7, 2004). Subsequently, the parties filed notices of exemption several times based on their agreements to extend expiration dates of the same trackage rights. See STB Finance Docket No. 34554 (Sub-No. 2) (decision served February 11, 2005); STB Finance Docket No. 34554 (Sub-No. 4) (decision served March 3, 2006); STB Finance Docket No. 34554 (Sub-No. 6) (decision served January 12, 2007); and STB Finance Docket No. 34554 (Sub-No. 8) (decision served January 4, 2008). Because the original and subsequent trackage rights notices were filed under the class exemption at 49 CFR 1180.2(d)(7), under which trackage rights normally remain effective indefinitely, in each instance the Board granted partial revocation of the class exemption to permit the authorized trackage rights to expire. See STB Finance Docket No. 34554 (Sub-No. 1) (decision served November 24, 2004); STB Finance Docket No. 34554 (Sub-No. 3) (decision served March 25, 2005); STB Finance Docket No. 34554 (Sub-No. 5) (decision served March 23, 2006); STB Finance Docket No. 34554 (Sub-No. 7) (decision served March 13, 2007); and STB Finance Docket No. 34554 (Sub-No. 9) (decision served March 20, 2008). At the time of the extension authorized in STB Finance Docket No. 34554 (Sub-No. 8), the parties anticipated that the authority to allow the rights to expire would be exercised by December 31, 2008. However, the parties filed on December 23, 2008 in STB Finance Docket No. 34554 (Sub-No. 10) their most recent notice of exemption so that the trackage rights could be extended to December 31, 2009, and in STB Finance Docket No. 34554 (Sub-No. 11) their latest petition to partially revoke the class exemption to permit expiration, which we are addressing here.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Decided: March 5, 2009.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. E9-5141 Filed 3-10-09; 8:45 am]

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DEPARTMENT OF THE TREASURY

Order Granting Temporary Exemptions From Certain Provisions of the Government Securities Act and Treasury's Government Securities Act Regulations in Connection With a Request on Behalf of ICE US Trust 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) is granting temporary exemptions from certain provisions of the Government Securities Act of 1986 (GSA) and Treasury's GSA regulations in connection with a request on behalf of ICE US Trust LLC related to the central clearing of credit default swaps that reference government securities. These temporary exemptions are consistent with temporary exemptions the Securities and Exchange Commission recently granted to ICE US Trust LLC related to the central clearing of credit default swaps. Treasury is also soliciting public comment on this Order.

DATES: *Effective:* March 6, 2009.

FOR FURTHER INFORMATION CONTACT: Lori Santamarena, Executive Director; Lee Grandy, Associate Director; or Kevin Hawkins, Government Securities Specialist; Bureau of the Public Debt, Department of the Treasury, at 202-504-3632.

SUPPLEMENTARY INFORMATION: The following is Treasury's exemptive order:

I. Introduction

Treasury and other financial regulators have raised concerns related to the over-the-counter ("OTC") market in credit default swaps ("CDS"). These concerns relate to the potential systemic risk to the financial system posed by such CDS markets. The President's Working Group on Financial Markets

("PWG") noted in November 2008 that its:

Top near-term OTC derivatives priority is to oversee the successful implementation of central counterparty services for credit default swaps. A well-regulated and prudently managed CDS central counterparty can provide immediate benefits to the market by reducing the systemic risk associated with counterparty credit exposures. It also can help facilitate greater market transparency and be a catalyst for a more competitive trading environment that includes exchange trading of CDS.¹

In this context, the Securities and Exchange Commission ("SEC") recently issued to ICE US Trust LLC ("ICE Trust"), certain participants in ICE Trust, and others, exemptions from certain provisions of the Securities Exchange Act of 1934 ("Exchange Act").² The SEC's exemptions did not cover the Exchange Act provisions applicable to government securities.

IntercontinentalExchange, Inc. ("ICE") and The Clearing Corporation ("TCC") requested that Treasury grant, pursuant to its authority under Section 15C of the Exchange Act, an exemption for ICE Trust, participants in ICE Trust and their affiliates,³ and interdealer brokers ("IDBs") from the provisions of Section 15C(a), (b), and (d) (other than subsection (d)(3)) and the Treasury rules thereunder applicable to government securities brokers and government securities dealers,⁴ to the extent they "would otherwise be applicable to the activities of any of the foregoing in connection with the offer, execution, termination, clearance, settlement, performance and related activities involving" CDS entered into by participants in ICE Trust with other

such participants and submitted to ICE Trust for clearance and settlement.⁵

Based on the facts presented and the representations made in the request on behalf of ICE Trust ("the request"),⁶ and for legal certainty and other reasons discussed in this Order, the Secretary of the Treasury ("Secretary") is granting two temporary exemptions. First, the Secretary is granting a temporary exemption to ICE Trust, certain participants in ICE Trust ("ICE Trust Participants"),⁷ and certain eligible contract participants ("ECPs"),⁸ as defined in the Commodity Exchange Act ("CEA"), from the registration requirements under Section 15C and certain regulations applicable to registered or noticed government securities brokers or government securities dealers.⁹ The temporary exemption applies to these entities' transactions in "Cleared CDS" as defined in this Order,¹⁰ which generally are CDS submitted to ICE Trust where the CDS reference a government security. In general, this exemption does not apply to any ICE Trust Participant that is registered or noticed as a government securities broker or a government securities dealer pursuant

⁵ See Letter from Johnathan Short, IntercontinentalExchange Inc. and Kevin McClear, The Clearing Corporation, to the Commissioner of the Public Debt, Van Zeck, February 26, 2009, available at <http://www.treasurydirect.gov/instit/statreg/gsareg/gsareg.htm>.

⁶ The temporary exemptions contained in this Order are based on the facts and circumstances presented in the 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. The status of Cleared CDS submitted to ICE Trust prior to such change would be unaffected.

⁷ For purposes of this Order, *ICE Trust Participant* means any participant in ICE Trust that submits CDS that reference a government security to ICE Trust for clearance and settlement exclusively (i) for its own account or (ii) for the account of an affiliate that controls, is controlled by, or is under common control with the participant in ICE Trust.

⁸ ECPs are defined in Section 1a(12) of the Commodity Exchange Act ("CEA"), 7 U.S.C. 1 *et seq.* The use of the term ECPs in this Order refers to the definition of ECPs as in effect on the date of this Order, and excludes persons that are ECPs under Section 1a(12)(C). Treasury's exemption provided in this Order to ECPs includes IDBs that are ECPs.

⁹ As used in this Order, *registered or noticed government securities brokers or government securities dealers* encompass all brokers, dealers, and entities required to register or file notice pursuant to Section 15C(a)(1) of the Exchange Act. See note 18, *infra*.

¹⁰ For purposes of this Order, *Cleared CDS* means a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to ICE Trust, that is offered only to, purchased only by, and sold only to ECPs (as defined in Section 1a(12) of the CEA as in effect on the date of this Order (other than a person that is an ECP under paragraph (C) of that section)), and that references a government security.

¹ See "PWG Announces Initiatives to Strengthen OTC Derivatives Oversight and Infrastructure." U.S. Department of the Treasury press release issued November 14, 2008. Available at: <http://www.treasury.gov/press/releases/hp1272.htm>. The Secretary of the Treasury serves as chairman of the group, which includes the chairmen of the Federal Reserve Board, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, and which worked with the Office of the Comptroller of the Currency and the Federal Reserve Bank of New York on these initiatives.

² Securities Exchange Act Release No. 34-59527 (March 6, 2009). Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection with Request on Behalf of ICE US Trust LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments. See <http://www.sec.gov>. The SEC's order relates only to and is necessary only for CDS that are not swap agreements under Section 206A of the Gramm-Leach-Bliley Act.

³ The ICE Trust request defines *affiliate* to mean an entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or under common control with, an ICE Trust Participant.

⁴ 17 CFR Chapter IV parts 400-405, and 449 were issued under Section 15C(a), (b), and (d). See Part II Section 15C of this Order, *infra*.