April 16, 2014

Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581
Attn: Mr. Vincent McGonagle, Director, Division of Market Oversight

Re: ICE Swap Trade, LLC Proposed Rule Amendments in respect of Package Transactions Submission No. 14-02 (February 11, 2014)

Dear Mr. McGonagle:

ICE Swap Trade, LLC ("IST"), a temporarily registered swap execution facility,[1] respectfully submits this letter, at the request of Commodity Futures Trading Commission ("Commission") staff, in support of IST's proposed rule amendments relating to so-called "package transactions" (as more fully described below, the "Proposed Amendments").

On February 11, 2014, IST submitted to the Commission for self-certification pursuant to Commission Rule 40.6 a series of amendments to its rulebook (IST Submission No. 14-02). That submission included the Proposed Amendments, which consist, in relevant part, of a new Rule 701(k) dealing with package transactions and conforming changes to definitions and to Rule 701(a). On February 26, 2014, the Commission stayed the self-certification of the Proposed Amendments and on March 24, 2014 sought public comment on the Proposed Amendments.[2]

As provided in proposed IST Rule 701(k), a "packaged transaction" is a transaction in which (i) the transaction consists of two or more components that are priced as a package; (ii) the execution of each component is contingent upon the execution of each other component; (iii) one or more components have been "Made Available to Trade," within the meaning of Commodity Exchange Act (the "Act") Section 2(h)(8) and Commission regulations thereunder; and (iv) the size of offsetting components are approximately equivalent (measured by the amount of risk of

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1 The Commission granted IST granted temporary registration as a SEF pursuant to Part 37 of the Commission's Regulations on September 20, 2013.

2 The comment period ends April 23, 2014. As of the date hereof, no substantive comments have been submitted.

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fluctuation of a specified asset)[3]. Rule 701(k) permits SEF market participants to arrange a package transaction off-facility but execute it through the facilities of IST in accordance with the IST rules in the same manner as a "Block Trade" is executed.

IST designed Rule 701(k) to treat package transactions in a manner analogous to Block Trades (recognizing that package transactions may not necessarily be of block size). The Commission and its staff have developed a detailed legal framework for Block Trades in swaps, and in IST's view package transactions and Block Trades share certain characteristics that support treating them similarly.[4] In particular, under the Part 37 rules, a Block Trade that would otherwise have to be executed on a SEF may be arranged off of the SEF, but executed subject to the SEF rules. This approach recognizes the difficulties that may arise in executing trades of block size through a trading facility without adversely affecting the pricing or availability of transactions. As discussed herein, it is similarly neither feasible nor desirable from an economic perspective for market participants to enter into package transactions through the current framework for mandatory execution of transactions on a SEF, at least without losing the benefits of the package transaction execution. As a result, IST believes that the Block Trade framework provides the right execution model for a package transaction. Rule 701(k) would thus permit arrangement of a package transaction off-facility, while bringing such transactions appropriately within the jurisdiction of the SEF and SEF rules.

Although we note that public dissemination of data about Block Trades is delayed under Part 43 of the Commission's rules, the reporting delay is not IST's principal motivation in using the Block Trade framework for package transactions. As discussed below, IST is prepared to modify the Proposed Amendments so that there would be no dissemination delay for package transactions below block size.

We note that pursuant to Commission staff no-action letter No. 14-12 ("Letter 14-12"), issued February 10, 2014, market participants have generally been granted relief from the mandatory trade execution requirement in connection with package transactions until May 15, 2014. Letter 14-12 has a broadly similar definition of package transaction for this purpose to that proposed in IST Rule 701(k)[5] and recognizes the challenges in facilitating trade execution of

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3 The definition used in the Proposed Amendments is generally consistent with those suggested by other market participants and industry groups. See, e.g., ISDA Request for Relief from the Trade Execution Requirement for Packaged Transactions (January 10, 2014), in response to which Letter 14-12 (as defined below) was issued.

4 As defined in Section 43.2 of the Commission's regulations, a Block Trade is a publicly reportable swap transaction that (1) involves a swap that is listed on a registered swap execution facility (SEF) or designated contract market (DCM); (2) occurs away from the SEF's or DCM's trading system or platform, but pursuant to the rules of the SEF or DCM; (3) has a notional or principal amount at or above the appropriate minimum block size applicable to such swap; and (4) is reported subject to the rules and procedures of the registered SEF or DCM and the rules prescribed in part 43 of the Commission's regulations.

5 For purposes of its no-action relief, CFTC Letter No. 14-12, the Commission defined a package transaction as a transaction involving two or more instruments: (1) that is executed between two counterparties; (2) that is priced or quoted as one economic transaction with simultaneous execution of all components; (3) that has at least one component that is a swap that is Made Available to Trade and therefore is subject to the trade execution requirement in Section 2(h)(8) of the Act; and (4) where the execution of each component is contingent upon the execution of all other components.

package transactions. Accordingly, IST believes that it will be necessary to implement a rule to address package transactions no later than the expiration of Letter 14-12. Moreover, IST believes that market participants should not be prohibited from executing package transactions in a manner analogous to Block Trades even prior to the expiration of such letter, for the reasons discussed herein.

As a temporarily registered SEF, IST supports the goals set forth in the Dodd-Frank Act and the Commission's rules of facilitating trading of swaps on SEFs and thereby enhancing pre- and post-trade price transparency of swaps. IST's current trading facility allows trading of "Made Available to Trade," or "Required Transactions,"[6] through its central limit order book ("CLOB") and request for quotation ("RFQ") methodologies, in accordance with Commission regulations, as well as Block Trades in such transactions. As the Commission is aware, however, mandatory trade execution for package transactions presents many challenges which make it impractical at this time to trade package transactions in the same manner as other Required Transactions. While some market participants have suggested that package transactions should generally be excluded entirely from mandatory trading requirements, IST believes that allowing such transactions to be traded in the same manner as a Block Trade (even if they would not otherwise be of block size) is a better alternative. In IST's view, use of the Block Trade workflow allows transactions to be arranged off-facility, in a way that takes into account the particular characteristics of package transactions. Unlike a complete exemption, however, use of the Block Trade workflow brings such transactions within the scope of the SEF rules generally, including the applicable reporting and surveillance requirements. As set forth below, IST is prepared to make certain modifications to the Proposed Amendments in order to facilitate this approach.

IST's approach thus provides a middle ground between fully exempting package transactions and mandating all package transactions be executed as Required Transactions which in many cases is not feasible or may significantly harm pricing, liquidity and risk. For purposes of requirements other than real-time reporting, package transactions should be treated in the same manner as Block Trades. For purposes of Part 43 of the Commission's regulations, only package transactions above the Block Trade threshold would benefit from delayed reporting.

Discussion

Package transactions are widely used by market participants in a variety of scenarios where simultaneous execution of related transactions is desirable. At present, package transactions arranged on an over-the-counter basis providing parties the flexibility to arrange the particular combination of transactions they want and agree a price that reflects all of the transactions as a group, taking into account the fact that the components are contingent upon each other and may involve offsetting risks. For these reasons, it is not generally viewed as feasible, at least at present, to execute such transactions via a CLOB (or even an RFQ system), as the pricing of each component of a package transaction is dependent on each other component and such public disclosure of the price may negatively affect the price at which a party would

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6 As defined in Section 37.9(a)(1) of the Commission's regulations, a "Required Transaction" means any transaction involving a swap that is subject to the trade execution requirements in section 2(h)(8) of the Act.

ultimately transact and/or hedge its risk. In addition, the combination of transactions in a package (even if some or all of the components could be executed on a CLOB or RFQ system) may not be sufficiently standardized to permit trading in a CLOB, or even an RFQ system, or for there to be meaningful liquidity on such a platform. This is particularly true where component transactions are not otherwise required to trade on a SEF (and, as discussed below, where it may not be permissible for such components to be traded on a SEF). Moreover, pre-trade credit or limit checks, as required by Commission regulations,[7] are currently done on a transaction-by-transaction basis, and market participants and relevant service providers have not yet developed the technical capabilities to run a pre-trade credit/limit check on the package as a whole, rather than individual components. Even if a package transaction can be broken down into separate components for purposes of SEF execution, that approach would defeat the purpose of a package, which is to obtain pricing on all of the components together (in a manner in which each component is contingent on the others, and taking into account economically offsetting positions). Requiring market participants to price each component separately could adversely affect overall pricing, would increase transaction costs and would entail a significant departure from current market practice for package transactions.

Package transactions generally fall into three categories, each of which presents somewhat different challenges in connection with SEF trading. These include transactions where:

- Each component of the package transaction is a "Required Transaction";
- The package transaction consists of a combination of swaps that are Required Transactions and swaps that are Permitted Transactions[8]; or
- The package transaction includes at least one component that is not a swap subject to regulation by the Commission (e.g. a security-based swap or the spot or forward purchase or sale of a security).

We address each category in turn.

Packages of Only Required Transactions

With respect to package transactions where each component is a Required Transaction, we recognize that it may in time be feasible to treat such package transactions as subject to the trade execution requirement. However, as has been noted to the Commission, there are significant operational issues with such a requirement. In particular, trading protocols, and quoting conventions, will have to be adjusted, and in some cases (with respect to quoting conventions) standardized across all market participants and platforms in order to permit the quotation of a package price through a CLOB or RFQ. In addition, the design of current CLOBs and RFQ systems may not support simultaneous execution of one or more transactions as a

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[7] *See* Commission Rule 1.73.

[8] As defined in Section 37.9(c)(1) of the Commission's regulations, a "Permitted Transaction" means any transaction in a swap that is not subject to the trade execution requirement in section 2(h)(8) of the Act.

package. Further, the pre-trade credit or limit check services currently used by futures commission merchants (as well as the relevant internal systems of futures commission merchants) do not at this time support a review of multiple, offsetting components of a package transaction. These checks are carried out by the futures commission merchants or their service providers on a per transaction basis, which could result in one component being approved, while the others are not (which would be inconsistent with the purpose of a package transaction). Given the range of potential transactions that may be included in a package transaction, requiring SEF execution will necessitate systems development and additional operational capabilities which require the SEFs to devote significant time and other resources. If the Commission determines that this category should be required to trade on a SEF as a Required Transaction (i.e. through a CLOB or RFQ model), it should provide SEFs and market participants sufficient time to make the necessary operational changes. (IST believes that a period of at least 9 months would be appropriate.) Consistent with other Required Transactions, Block Trades in such package transactions should be permitted, so long as the package transaction is in the aggregate equal to the requisite block size.[9]

Packages Including Permitted Transactions

With respect to package transactions in the second category, where the transaction consists of both swaps that are Required Transactions and swaps that are Permitted Transactions, the same systems operational issues are relevant, but heightened. In addition, by definition, at least one component of these package transactions is not of a type that would otherwise be subject to the mandatory SEF trading requirement (i.e. a Permitted Transaction). One would expect that in such cases, either the Permitted Transaction component is not subject to mandatory clearing, or does not have sufficient liquidity or other trading characteristics to support a "Made Available to Trade" definition. In this context, IST does not believe it is appropriate, or feasible, to attempt to force a package transaction of this nature into a CLOB or RFQ model.[10]

In this situation, IST believes that either Block Trade execution, or, in the alternative, an analogous new category of package transaction execution, provides an appropriate middle ground between mandatory trade execution and the flexibility given to Permitted Transactions. In IST's approach, a package transaction involving a Permitted Transaction component could be arranged off-facility and executed through the facilities of the SEF. Such execution, like a Block Trade, would be subject to the SEF's rules as to reporting, recordkeeping and conduct of trading, as well as to the SEF's disciplinary authority, trade surveillance and overall jurisdiction. This will provide a heightened level of oversight as compared to fully off-facility Permitted Transactions.

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9 In this regard, IST believes that market participants should be permitted to aggregate the CFTC-regulated components of the package transaction for purposes of determining whether the transaction meets the applicable Block Trade delayed reporting thresholds, as package transactions are effectively one transaction from the perspective of the parties involved.

10 IST does not believe it is likely that a market participant could effectively use a package transaction in this way as a practical means of evading the mandatory clearing or exchange trading requirement. IST further believes that the Commission has sufficient anti-evasion authority under its existing rules to address any such attempt without the need to attempt to force into mandatory trading types of transactions that are not suited to it.

For this limited purpose, a package transaction would not need to be of "block size" in order to be executed in this manner under the IST rules. Because of the concerns noted about price transparency, IST is prepared to modify its Proposed Amendments such that a package transaction that is not of block size would not be entitled to a delay in reporting under Part 43 of the Commission's regulations (and thus would be reported within the same time frame as other Required Transactions).[11] In all other respects, the package transaction would be treated as a Block Trade for regulatory purposes. However, for the purposes of clarification, a package transaction that exceeded the requisite minimum block size would be entitled to the reporting delay.

Packages Including Non-CFTC-Regulated Transactions

The last category involves a transaction in which one or more components are not swaps regulated by the Commission. Such a leg could include a security-based swap, for example, but could also include a transaction for the spot or forward purchase or sale of a debt or equity security or other asset. This type of transaction presents the most obvious and difficult challenges. In addition to the problems discussed above for the second category, it may not even be possible to engage in the non-required leg of the transaction on a SEF, let alone through a CLOB or RFQ model. For example, if the component is a security transaction, it may be necessary for the component to be executed through a registered broker-dealer. Forcing such a component into a mandatory trading environment could thus have regulatory implications for the SEF, such as requiring registration as a broker-dealer, security-based swap execution facility, securities exchange or alternative trading system. It is further not clear that the requirements applicable to such trading activity under other laws are consistent with the requirements that apply to SEF trading (and in some cases the framework for such trading has not yet been adopted, such as for security-based swaps).

As a result, IST does not believe it is feasible at this time to mandate a particular form of trading for such package transactions. SEFs and other market participants will need time to consider further the regulatory framework under which such transactions must be conducted, and it may be necessary for platforms to consult with other regulators on such matters. To the extent that a platform determines that it is otherwise permissible to do so, however, IST believes that the Commission should permit block-style execution for this type of package as well, on the same terms as described above for the second category above.

Conclusion

In light of current market practice for execution of package transactions, the benefits such transactions bring to market participants, and the lack of necessary trading systems and functionalities, IST does not believe that it is feasible or appropriate to require the trading of package transactions in the same manner as Required Transactions (i.e., through a CLOB or RFQ system). In some cases, such as package transactions in the first category above composed solely of components that are Required Transactions, it may in time become feasible to execute non-block sized transactions through a CLOB or RFQ system. IST believes that further no-action relief would be needed to provide the market time to implement such a solution. In other

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11 See supra note 9.

cases, where components are Permitted Transactions or transactions not subject to CFTC jurisdiction, it is unlikely that, even with additional time, all package transactions could be subject to mandatory trade execution.

IST recognizes the Commissions' interest in bringing the benefits of SEF execution to package transactions, to the extent possible. IST believes that treating such transactions in a manner analogous to Block Trades, which may be arranged off-facility but executed through the facilities of the SEF, provides the best compromise between these objectives, at least in the near term, and will minimize unnecessary market disruption. Such treatment will ensure the economic benefits of a package transaction are retained while subjecting such transaction to the SEF rules, thereby protecting the market and requiring the post-execution reporting of price, size, and other relevant terms of the transactions. As noted above, however, IST is prepared to modify its Proposed Amendments such that a package transaction that is otherwise not of block size would not be entitled to a delay in reporting under Part 43 of the Commission's regulations.

If the Commission as a technical matter would prefer not to characterize package transactions as "Block Trades", IST suggests the Commission nonetheless authorize swap execution for these package transactions in a similar manner (perhaps as part of a separate transaction category), either through a rule or other appropriate order or relief that addresses the concerns raised herein. Consistent with the foregoing, and until the Commission adopts a formal position on package transactions that requires a different approach, we urge the Commission to permit IST to implement the Proposed Amendments with the modifications proposed herein.

We appreciate the opportunity to respond to the Commission's and its staff's questions with respect to the Proposed Amendments. Please do not hesitate to contact Peter Barsoom at (212) 323-8508 or peter.barsoom@theice.com or Robert Laorno at (212) 323-8543 or robert.laorno@theice.com if you have any questions regarding this letter.

Respectfully submitted,

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