April 22, 2014

Ms. Melissa Jurgens
Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, DC 20581

Re: Comment on Self-Certification by ICE Swap Trade, LLC of Package Transaction Rule

Dear Ms. Jurgens:

The International Swaps and Derivatives Association, Inc. [1] ("**ISDA**") appreciates this opportunity to provide comments to the Commodity Futures Trading Commission (the "**Commission**") on certain rule amendments self-certified by ICE Swap Trade, LLC ("**ICE**") [2] concerning the treatment of "package transactions". This letter is a response to the Commission's request for public comment dated March 24, 2014, and our responses to the Commission's questions are set forth below.

Question 1:

What are the current prevailing market conventions regarding the execution of package transactions? Please include detailed explanations.

Package transactions are currently executed over-the-counter as well as on swap execution facilities ("**SEFs**").

For package transactions executed over-the-counter, the package is executed as a whole over the phone, often by one individual at each market participant, although some package transactions may require the involvement of multiple desks at one firm (e.g. where a swap is traded against a swaption, the options desk may need to work with the swaps desk to price the package transaction). The package transaction is then executed as a single transaction at the same time. Post-execution, any leg of a package transaction that does not contain a swap is typically settled

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1 Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 64 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure including exchanges, clearinghouses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's web site: www.isda.org.

2 Letter from ICE Swap Trade, LLC to the Commission, Made Available to Trade Submission of Certain Credit Default Swaps and Interest Rate Swaps pursuant to Section 40.6 of the Commission's Regulations (Submission 14-02) dated February 11, 2014 (hereinafter, "**ICE Submission**").

pursuant to the market conventions for the relevant asset (e.g. for a Treasury spread package transaction, the swap leg and the Treasury leg would be executed simultaneously and the Treasury leg would typically settle through Fedwire or other standard settlement mechanism). If the swap leg is subject to mandatory clearing, it would generally be submitted for clearing using existing middleware like any other bilaterally-traded and cleared swap. Any reporting or documentation requirements would apply and be complied with in a typical manner.

Some package transactions are currently listed on SEFs. For example, several SEFs currently list U.S. dollar swap spreads, curves and butterflies for execution. Such package transactions are priced as one trade and are contingent on the concurrent execution of both legs, which conforms with the definition of "package transaction" indicated in the Commission's Letter No. 14-12, issued February 10, 2014. It is our understanding that SEFs that execute U.S. dollar swap spreads (which are packages of on-the-run U.S. Treasuries and benchmark interest rate swaps (a "**U.S. Dollar Spread**")) provide for separate settlement of the swap leg and the Treasury leg. As noted above, the swap leg settles through a derivatives clearing organization and the SEF participants arrange for settlement of the Treasury leg through Fedwire or other settlement mechanisms. Because the SEF is responsible for certain operational obligations that apply to swap trading, it undertakes the back-end processing of the swap leg that would otherwise be done by one or more of the counterparties to the swap.

Question 2:

Do package transactions comply with the definition of "block trade" set forth in § 43.2 of the Commission's regulations? As defined in § 43.2, 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. Please include detailed explanations.

Package transactions do not meet the block trade definition. The ICE submission does not define package transactions as "block trades". The submission only proposes that package transactions can be executed in the same way that block trades are executed. Rule 701 of ICE sets out provisions for the execution of block trades, including Rule 701(e), which provides that block trade prices will not trigger unexecuted orders in the order book.

Question 3:

Please identify each legal, economic and business rationale for permitting package transactions to be executed as block trades, as defined in § 43.2 of the Commission's regulations. In particular, please identify each rationale for permitting package transactions to occur away *from a registered SEF or DCM's trading system or platform, but pursuant to the rules of a SEF or DCM. Please include detailed explanations.*

We believe the "made available to trade" ("**MAT**") analysis should not apply to the individual legs of a package transaction. Instead, the MAT analysis should apply to a package transaction in its entirety or, put another way, the package transaction should be regarded as a transaction in its own right. As a result, a package transaction should not be a block trade unless one of the components of the package transaction equals or exceeds the appropriate block size for the package transaction (as discussed below).

Imposing the MAT analysis on individual legs, which introduces the potential of split execution of the package transaction, would result in significantly increased costs and risks to market participants. These costs and risks arise primarily from three sources: (1) separately trading the legs of a package transaction incurs the possibility of the market moving between executions of each component because such executions cannot be precisely time-matched, (2) there are likely to be differences in contract specifications, mode of execution, clearing/settlement workflows and relative liquidity when legs of a package transaction are executed separately and/or on different venues, and (3) accessing potentially different sources of liquidity for a leg traded on a DCM or SEF and over-the-counter or a physical leg incurs additional bid/offer spreads. Simultaneous execution with a single counterparty using a single execution method alleviates the timing, mechanical, and bid/offer costs. Execution of such transactions as packages can lower costs by isolating the bid/offer to that of the intended risk. For further discussion, see ISDA's January 10, 2014 letter to the Commission requesting relief from the trade execution requirement for package transactions.

The view that the MAT analysis should apply to the package transaction as a whole is consistent with 17 CFR §37.9, which implements the trade execution requirement. §37.9(a) defines Required Transactions as "any transaction involving a swap that is subject to the trade execution requirement." We believe that the phrase "subject to the trade execution requirement" should be interpreted to refer to "transaction" rather than to "swap." As a result, this definition could be read so that the relevant transaction meets the trade execution requirement if such a transaction is executed through the relevant SEF platforms. This view is supported by the statute (Sec. 2(h)(8) of the Commodity Exchange Act) which requires that the relevant <u>transaction</u> be executed on a SEF or DCM. The alternative view, that "subject to the trade execution requirement" refers to the "swap", could lead to unintended results. Pursuant to this interpretation, for example, a Required Transaction could include a share acquisition which is entered into concurrently with a MAT Swap, because the acquisition "involves" a MAT Swap. Such a result is clearly inappropriate, since the acquisition and the MAT Swap are not contingent on the occurrence of the other, and are not priced as a fundamental package. However, when a MAT Swap is a part of a package transaction in which all legs are contingent on each other, that package transaction should be considered a "transaction" for the purposes of §37.9.

In addition, requiring package transactions to be subject to MAT determinations has a number of practical benefits. Primarily, it ensures that the execution protocol pertaining to Required Transactions applies to package transactions which are listed on SEFs and have sufficient liquidity. While certain package transactions (e.g. U.S. Dollar Spreads and package transactions where all legs are swaps subject to MAT) are very liquid, other package transactions are traded very infrequently. Many of such illiquid package transactions are highly customized and privately negotiated, and therefore require more flexible methods of execution and settlement. Furthermore, a package transaction with sufficient liquidity may become subject to MAT once it is listed on a SEF, and thereby become subject to Required Transaction execution if a SEF designates such a package as MAT. The MAT submission procedures have been successfully used by a number of SEFs and could readily be used for package transactions.

As applied to package transactions, the reasoning in the above paragraphs indicates that the trade execution requirement should apply to the package transaction as a whole. This is because the transaction being entered into is the entire package, rather than the individual legs, and each leg is contingent upon the execution of the other. We therefore propose that a package transaction should be considered as a single transaction for purposes of §37.9 and §37.10 of the CFTC regulations. Package transactions that are not determined to be MAT under §37.10 should be treated as "Permitted Transactions".

If the Commission disagrees with our view that MAT analysis should be applied to the package transaction in its entirety, we request that the Commission, in determining what execution protocols to apply to packages, ensures that its solution enables market participants to continue executing package transactions as a single transaction without risking split execution. Forcing participants to separately execute individual legs would result in the costs and risks described above. As mentioned in the opening response to this question, we do strongly believe the MAT analysis should not apply to the individual legs of a package transaction. As a result of this view, a package transaction should not be treated as a block. However, if the Commission does not agree with this broader approach, it may be appropriate to further consider treating the entire package transaction as a block trade in lieu of requiring SEF execution of individual legs. Such a package transaction, like a block trade, would not be executed on SEF platforms but would be registered with SEFs post-trade.

Question 4:

Rule 701(a) states that block trades, among other requirements, must "satisfy such minimum notional requirements [pursuant to Commission regulations] or be a Packaged Transaction. . . ." Please identify each legal, economic, and business rationale for permitting package transactions to be executed as block trades, in particular without fulfilling the appropriate minimum block sizes prescribed under part 43 of the Commission's regulations. Please include detailed explanations.

We believe that a package transaction should be treated as a block trade if any leg of a package transaction that is subject to a MAT determination exceeds the relevant block size for that leg. As discussed below, we expect that package transactions will, for the immediate future, be reported separately for each leg. As a result, the determination of block size should be based on whether any leg (that is subject to a MAT determination) exceeds the relevant block size. Of course, if any leg of a package transaction does exceed the relevant block size, then the execution and reporting of such transaction should be made in accordance with the block trade rules.

Question 5:

Section 43.5(d) of the Commission's regulations provides certain time delays for the public dissemination of transaction and pricing data for block trades that are executed pursuant to the rules of a registered SEF or DCM. Please identify each legal, economic, and business rationale for providing such time delays to package transactions. Please include detailed explanations.

Unless package transactions meet the relevant size thresholds (as discussed above), we are not advocating that they be reported as block trades. More generally, in respect to reporting of package transactions, we believe each leg that is regulated by the Commission should be reported separately. Current systems do not support reporting the package as a whole. This approach would be consistent with exchange for related position transactions ("**EFRP**"), where only the regulated future or option leg is reported to the Commission. As with EFRPs, the reporting and recordkeeping requirement would create an audit trail to ensure that market participants are not evading Commission regulation. In addition, ISDA and its members are willing to work towards a goal of reporting swaps in a way that identifies them as part of a package transaction if Commission staff determines that such reporting is desirable.

Question 6:

Rule 701(k) defines a "Packaged Transaction" as a transaction that, among other things, consists of offsetting components that are approximately equivalent in size (measured by the amount of risk of fluctuation of a specified asset). Please provide comment on these criteria, in particular with respect to the degree of size equivalence that would be required between the components.

We would prefer that package transactions be defined without reference to a size constraint, as the Commission staff did in its no-action letter. However, we recognize that a SEF such as ICE may want to use a size condition in defining a package transaction.

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ISDA appreciates the opportunity to respond to the Commission's request for comment regarding the treatment of package transactions in the ICE Submission. Please feel free to contact the undersigned at your convenience.

Sincerely,

Robert Pickel
Chief Executive Officer
ISDA

cc: The Honorable Scott D. O'Malia
The Honorable Mark P. Wetjen