

April 23, 2014

**VIA ELECTRONIC MAIL**

Ms. Melissa Jurgens  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

**Re: *Request for Comment on ICE Swap Trade, LLC's Self-Certification of Package Trade Rule***

Dear Ms. Jurgens:

On behalf of The Commercial Energy Working Group (the “**Working Group**”), Sutherland Asbill & Brennan LLP hereby submits these comments in response to the Commodity Futures Trading Commission’s (the “**CFTC**” or “**Commission**”) *Request for Comment on ICE Swap Trade, LLC's Self-Certification of Package Trade Rule*.<sup>1</sup> The Working Group supports ICE Swap Trade, LLC’s (“**ICE Swap Trade**”) proposed rule amendment that includes “packaged transactions”<sup>2</sup> in its block trade rules.

The Working Group is a diverse group of commercial firms in the energy industry whose primary business activity is the physical delivery of one or more energy commodities to others, including industrial, commercial and residential consumers. Members of the Working Group are producers, processors, merchandisers and owners of energy commodities. Among the members of the Working Group are some of the largest users of energy derivatives in the United States and globally. The Working Group considers and responds to requests for comment regarding regulatory and legislative developments with respect to the trading of energy commodities, including derivatives and other contracts that reference energy commodities.

While the Working Group’s general focus is on matters more directly relevant to the energy industry, ICE Swap Trade’s proposal underscores the need to adopt approaches to the trading of customized transactions and the fostering of lesser liquid markets that current exchange trading rules (SEF or DCM) may not entirely contemplate. The Working Group anticipates that similar approaches may be necessary in the future with respect to similar products used by the energy industry.

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<sup>1</sup> CFTC Seeks Public Comment on ICE Swap Trade, LLC’s Self-Certification of Package Trade Rule (March 24, 2014), available at <http://www.cftc.gov/PressRoom/PressReleases/pr6890-14>.

<sup>2</sup> The Commission has described Packaged Transactions as “transactions involving more than one swap or financial instrument (often referred to as “component legs”) and at least one swap subject to the trade execution requirement.” See, <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/letter/14-12.pdf>.

The Working Group commends the Commission's efforts to address how to best structure a market design that not only implements the Commission's trade execution requirement but also allows market participants to properly manage their businesses and market risk by entering into transactions that do not fit a standardized model. The Division of Market Oversight's February 10, 2014 no-action letter granting swaps executed as packaged transactions relief from the trade execution requirement is a positive development in ensuring a proper market design.<sup>3</sup> Although the relief is granted only for a limited time, until May 15, 2014, the Working Group welcomes the Commission's relief as in recognition that market participants need access to customizable derivatives transactions to best manage their businesses and risk.

The Working Group supports ICE Swap Trade's amendment to its rulebook relating to packaged transactions. ICE Swap Trade's proposed treatment of packaged transactions would enable market participants to meet the Commission's trade execution requirement and still enter into highly customized arrangements that clear through a derivatives clearing organization. As Commission staff has acknowledged, the structure of packaged transactions makes them impractical for market participants to execute within the framework of the central limit order book of a regulated exchange.<sup>4</sup>

For example, while one component of a packaged transaction may be available on an exchange, another component may not be available on that same platform. It is impractical to subject such packaged transactions to a traditional trade execution requirement where the pricing of the entire packaged transaction is based on both components. Rather than losing the utility of a packaged transaction by rigidly subjecting them to mandatory execution through a central limit order book, ICE has developed a reasonably tailored solution that protects regulatory concerns while preserving the product that commercial parties need to manage risk. Accordingly, the Working Group respectfully suggests that while ICE Swap Trade's self-certification should be approved.

The Working Group appreciates this opportunity to provide comments on the Commission's approach to regulating packaged transactions and respectfully requests that the Commission consider the comments set forth herein.

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<sup>3</sup> No-Action Relief from the Commodity Exchange Act Sections 2(h)(8) and 5(d)(9) and from Commission Regulation §37.9 for Swaps Executed as Part of a Packaged Transaction, CFTC Letter No. 14-12, Division of Market Oversight, February 10, 2014.

<sup>4</sup> *Id.*

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If you have any questions, please contact the undersigned.

Respectfully submitted,

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