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April 23, 2014

Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Submitted via www.cftc.gov

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

Dear Sir/Madam:

Markit[1] is pleased to submit the following comments to the Commodity Futures Trading Commission (the "***CFTC***" or the "***Commission***") in relation to its request for comment on "ICE Swap Trade, LLC's Self-Certification of Package Trade Rules" (the "***ICE Amendment***").[2]

Introduction

Markit is a provider of financial information services to the global financial markets, offering independent data, valuations, risk analytics, and related services across regions, asset classes and financial instruments. Our products and services are used by a large number of market participants to reduce risk, increase transparency, and improve the operational efficiency in their financial markets activities.

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[1]Markit is a financial information services company with over 3,000 employees in North America, Europe, and Asia Pacific. The company provides independent data and valuations for financial products across all asset classes in order to reduce risk and improve operational efficiency. Please see www.markit.com for additional information.
[2] CFTC Seeks Public Comment on ICE Swap Trade, LLC's Self-Certification of Package Trade Rule, PR-6890-14 (Mar. 24, 2014), http://www.cftc.gov/PressRoom/PressReleases/pr6890-14.

Most of Markit's processing services are provided by MarkitSERV,[3] a company that offers confirmation, connectivity, and reporting services to the global OTC derivatives markets, making it easier for participants in these markets to interact with each other. Specifically, MarkitSERV provides trade processing, confirmation, and matching services for OTC derivatives across regions and asset classes, as well as universal middleware connectivity for downstream processing such as clearing and reporting. MarkitSERV acts on behalf of a number of SEFs and other execution platforms, including reporting transactions to designated data repositories and sending trades to DCOs for clearing.

Such middleware services, which are offered also by various other providers, are widely used by participants in these markets today and are recognized as tools to increase efficiency, reduce cost, and secure legal certainty. With globally over 1,500 firms using the various MarkitSERV platforms and services that process, on average, 80,000 OTC derivative transaction events every day, our legal, operational, and technological infrastructure plays an important role in supporting the OTC derivatives markets in North America, Europe, and the Asia-Pacific region.

Other services provided by Markit that are relevant in the context of regulatory reform in the swaps markets are our pre-trade credit checking service Credit Centre, our compression services, and margin calculation and optimization capabilities.

Markit has been actively and constructively engaged in the discussion related to regulatory reform of the financial markets. We regularly provide regulatory authorities, including the CFTC, with our insights on current market practice, for example in relation to valuation methodologies, liquidity measurement, the use of reliable and secure means to provide daily marks, or to performing pre-trade credit checks to achieve clearing certainty. We have also advised regulatory bodies on potential approaches to enable the timely and cost-effective implementation of newly established requirements, for example through the use of multi-layered phase-in or by providing participants with a choice of means for satisfying their regulatory obligations. Over the last several years, we have submitted over 100 comment letters to regulatory authorities around the world and participated in numerous stakeholder

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[3] MarkitSERV, a wholly owned subsidiary of Markit Group Limited, provides a single gateway for OTC derivatives trade processing. The company offers trade processing, confirmation, matching, and reconciliation services across regions and asset classes, including interest rate, credit, equity, and foreign exchange derivatives. MarkitSERV also connects dealers and buy-side institutions to trade execution venues, CCPs, and trade repositories. Please see www.markitserv.com for additional information.

meetings.

General comments

Determining which swaps should be subject to the trade execution mandate, including through made available to trade ("**MAT**") determinations, is important given its potentially significant impact on the liquidity and functioning of the swaps markets.[4] Based on our experience in supporting the swaps markets we believe that for most package transactions neither sufficient liquidity nor adequate execution mechanisms exist to support their mandatory trading on swap execution facilities ("**SEFs**") or designated contract markets ("**DCMs**").[5] As described further below, requiring such transactions to be traded on SEFs or DCMs, with the resultant pre-trade transparency, could hinder the use of package transactions or, at a minimum, further degrade their liquidity. We therefore agree with the several SEFs who recently submitted MAT determinations that did not include package transactions.[6]

The ICE Amendment is, in general, a welcome initiative because it would clarify that package transactions are "Permitted Transactions" (*i.e.*, they are not subject to the trade execution requirement). We believe that these results would encourage market participants to trade package transactions on or through SEFs and DCMs, furthering the goals of the Dodd-Frank Act.[7] In addition, even if the Commission objects to the ICE Amendment and determines to treat package transactions involving a MAT swap as "Required Transactions" (subject to the trade execution requirement), we believe that the trade execution requirement should only apply to package transactions where *all* legs of the transaction are Required Transactions.

The ICE Amendment is also consistent with No-Action Letter 14-12, which provides that the Division of Market Oversight will not recommend an enforcement action (until May 15, 2014) against market participants, SEFs or DCMs for executing or facilitating package

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[4] *See* Markit's response to Certification of Designated Contract Market and Swap Execution Facility Available-to-Trade Determinations for Interest Rate and Credit Default Swaps (Nov. 29, 2013).

[5] Commission regulation 37.10(b) sets forth factors to be considered in making a MAT determination, "each of [which] is an indicator of trading activity" in a swap. *See* Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement under the Commodity Exchange Act, 78 Fed. Reg. 33,606, 33,613 (June 4, 2013) (hereinafter, the "**Final MAT Procedures**").

[6] *See* Swaps Made Available to Trade, *available at* http://sirt.cftc.gov/sirt/sirt.aspx?Topic=SwapsMadeAvailableToTradeDetermination (last visited Apr. 21, 2014).

[7] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

transactions without complying with the trade execution requirement or methods of execution mandated for Required Transactions.[8] To the extent that package transactions qualify as Required Transactions,[9] the no-action letter provides time-limited relief from related requirements. Similarly, the ICE Amendment would not treat package transactions as Permitted Transactions; instead, it would categorize them as block trades, which can be either Permitted or Required Transactions and therefore exempt from the trade execution requirement under Commission regulation 37.9(a)(2).

In short, we believe that a package transaction can be subject to the trade execution requirement only if all of its components are Required Transactions and then only once the complete package has been specifically MAT. We therefore recommend that the Commission allow the certification of the ICE Amendment. In any future action relating to package transactions, we urge the Commission to apply the principle underlying Commission regulation 43.6(h)(2): that the least liquid component of a multicomponent or package transaction should determine whether or not a block trade exemption is available.

Below we submit our answers to the Commission's specific questions relating to the ICE Amendment's proposed treatment of certain package transactions.

Response to the Commission's questions

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.

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[8] *See* CFTC No-Action Letter 14-12 (Feb. 12, 2014).
[9] As described above, we do not believe that package transactions currently qualify as Required Transactions because each SEF to address the subject excluded package transactions from their MAT determinations. *See* note 6 and accompanying text.

We believe that the definition of package transactions in the ICE Amendment complies with the Commission's definition of a "block trade" because no package transactions have been MAT. Moreover, we note that the term "Required Transaction," which covers the swaps that are subject to the trade execution requirement, covers "any transaction involving a swap that is subject to the trade execution requirement in section 2(h)(8) of the Act."[10] The term "involving a swap" should not be interpreted expansively to encompass any transaction containing a MAT swap component – instead it should be read plainly to cover a transaction involving the MAT swap itself.

This interpretation is also consistent with the terms of the Commodity Exchange Act ("CEA"). The CEA extends the trade execution requirement to "swaps subject to the clearing requirement."[11] The CEA notably does not extend the trade execution requirement to package swaps containing a swap subject to the clearing requirement.

Even if the Commission subjects "involving a swap" in the definition of "Required Transaction" to an overbroad reading that would encompass any transaction containing a Required Transaction component, a package swap containing a Permitted Transaction component falls under Commission regulation 37.9(a)(2)'s block trade exemption from the trade execution requirement.[12] Under Commission regulation 43.6(h)(2) "parties to a swap transaction with composite reference prices may elect to apply the lowest appropriate minimum block size or cap size applicable to one component reference price's swap category of such publicly reportable swap transaction."[13] The principle behind Commission regulation 43.6(h)(2) is that the least liquid component of a multicomponent swap should determine whether or not a block trade exemption is available. A package transaction with a "Permitted Transaction" component (i.e. a component not liquid enough to be subject to the clearing and trade execution requirements) is not subject to the trade

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[10] Commission regulation 37.9(a).

[11] CEA section 2(h)(8).

[12] 17 CFR 37.9(a)(2) ("Each Required Transaction that is not a block trade as defined in §43.2 of this chapter shall be executed on a swap execution facility in accordance with" the trade execution requirement.").

[13] "[F]or example, a locational basis swap (e.g., a natural gas Rockies Basis swap) that utilizes a reference price based on the difference between a price of a commodity at one location (e.g., a Henry Hub index price) and a price at another location (e.g., a Rocky Mountains index price))." 77 FR 15,460, 15,488 available at http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-5950a.pdf (Mar. 15, 2012).

execution requirement and therefore effectively enjoys a block trade size threshold of zero.[14]

We also believe that "package transactions" involving non-derivatives, e.g., involving U.S. Treasuries, should be eligible for a categorical block trade exemption. Commission regulation 43.6(b)(5) identifies the relevant categorization scheme for swaps in the "other commodity" asset class. Subsections (i) and (ii) of that rule identify the relevant categories for swaps that are economically related to certain futures contracts, and subsection (iii) of that rule (*i.e.*, Commission regulation 43.6(b)(5)(iii)) is a catch-all provision. As the Commission stated in its final rule regarding block sizes, "[t]he third set of swap categories, covered under proposed § 43.6(b)(5)(iii), would establish swap categories for all other commodity swaps that are not categorized under proposed § 43.6(b)(5)(i) or (ii)."[15] This category is not limited to physical commodities, and includes other esoteric underliers such as weather, emissions and multiple commodity indices.[16]

Under Commission regulation 43.6(e)(2), "[a]ll swaps or instruments in the swap categories described in paragraph[] . . . (b)(5)(iii) of this section shall be eligible to be treated as a block trade."[17] We believe that package transactions involving non-derivative components should be categorized along with other swaps in Commission regulation 43.6(b)(5)(iii).

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

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[14] A reading of Commission regulation 43.6(h)(2) that would not apply this de facto block trade size threshold of zero for Permitted Transactions would result in absurd consequences. A package transaction with all liquid, Required Transaction components would be subject to the lowest appropriate minimum block size threshold of its component swaps while a package transaction with Required and illiquid Permitted Transaction components would be subject to the lowest appropriate minimum block size threshold of its Required Transaction component. This outcome would be at odds with the principle behind Commission regulation 43.6(h)(2) which is that the least liquid component of a multicomponent swap should determine whether or not a block trade exemption is available.

[15] Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades; Final Rule, 78 Fed. Reg. 32,866, 32,887 (May 31, 2013).

[16] *See* 17 C.F.R. pt. 43 appx. D.

[17] 17 C.F.R. § 43.6(e)(2).

trading system or platform, but pursuant to the rules of a SEF or DCM. Please include detailed explanations.

We have addressed the legal rationale for permitting package transactions to be executed as block trades in our response to Question 2, above. For the reasons described above, we believe that the ICE Amendment is consistent with the Commodity Exchange Act and the Commission's regulations.[18]

In terms of an economic rationale, we also believe that such package transactions lack the liquidity necessary to warrant becoming subject to the trade execution requirement and immediate public reporting. This view seems supported by the SEFs with certified MAT determinations.[19] Indeed, the Commission has acknowledged concerns about the "costs imposed upon market participants if illiquid swaps [subject to the clearing requirement] are made available to trade and become subject to the trade execution requirement."[20] Unless particular package transactions demonstrate adequate liquidity as detailed in a MAT determination, subjecting them to the trade execution requirement would harm liquidity in such transactions and impose costs on market participants and the markets as a whole.

We also believe that there are legitimate business reasons to treat package transactions involving a Permitted Transaction component as block trades. Specifically, we believe that requiring package transactions involving a Permitted Transaction component to be executed as Required Transactions and subjecting them to immediate post-trade public reporting would impose significant risks on market participants that currently use such package transactions. These market participants would be forced to choose between incurring the liquidity costs imposed by having to subject illiquid package transactions to the trade execution requirement, *e.g.*, by soliciting three quotes, or transacting the legs of a package transaction separately. Businesses choosing the latter approach would incur basis risk between the time the underlying risk is incurred, the time that the liquid leg of the package transaction hedge is executed, and the time that the illiquid legs are executed.

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[18] *See* 17 C.F.R. § 40.6(c)(3) (permitting the Commission to object to a rule submitted by a registered entity for self-certification only "on the grounds that the proposed rule or rule amendment is inconsistent with the Act or the Commission's regulations.").

[19] *See* Swaps Made Available to Trade, available at
http://sirt.cftc.gov/sirt/sirt.aspx?Topic=SwapsMadeAvailableToTradeDetermination, last visited Apr. 21, 2014.

[20] Final MAT Procedures, 78 Fed. Reg. at 33,622.

These liquidity costs are often significant, and we encourage the Commission to consider these costs before requiring package transactions involving a Permitted Transaction component to be executed on a SEF or DCM or subjecting them to immediate real time reporting. As described by the Commission, a party's solicitation of quotes alerts the market of liquidity demand and would give non-transacting parties "a strong incentive to exact a premium from the liquidity provider" to the package transaction.[21] This liquidity premium is, in turn, passed onto the end-user with legitimate commercial risks. As for the basis risks, these become most problematic when the need to hedge, *e.g.*, in periods of market stress, are greatest.

Moreover, requiring package transactions to be executed as separate legs would interfere with the ability of clearinghouses to provide for cross-margining to parties to package transactions   This holds true as clearinghouses currently review each leg separately, thus, while the risk of the complete package may fall well within permitted credit limits, each individual leg may fail to have sufficient credit to be approved on its own. A traditional "package" trade has a combined risk that is less than that of any individual leg. The Commission should continue to encourage the efficiencies gained by viewing the risk of a position created by a package of transactions as it has done in the past when approving cross-margining initiatives.[22]

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.

As described in in our response to Question 2, above, we believe that package transactions involving a Permitted Transaction component should be treated like other esoteric contracts categorized under Commission regulation 43.6(b)(5)(iii). As a result, we believe that package transactions, along with all other swaps and instruments categorized under Commission regulation 43.6(b)(5)(iii), should be treated as block trades regardless of their notional amount.

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[21] Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 77 Fed. Reg. 15,460, 15,466 (Mar. 15, 2012) (hereinafter, the "***Block Size Proposal***").
[22] See e.g., In the Matter of the Options Clearing Corporation to Implement Non-Proprietary Cross-Margining Program (Nov. 5, 2004), available at http://www.cftc.gov/files/tm/occ4dorder.pdf.

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.

We believe that package transactions should be afforded the time delay available to other "block trades." As described above, we believe that package transactions do not qualify as Required Transactions under Commission regulation 37.9(a)(1), and should be treated as Permitted Transactions.

We also note that the Commission's primary arguments in favor of applying real-time reporting requirements to illiquid contracts (namely, fostering competition and price discovery in illiquid markets[23]) are inapplicable to package transactions. Package transactions are generally individually tailored, so market participants would not benefit from the real-time reporting of such contracts because of their generally limited price discovery function. While some package transactions may provide a price discovery function, we think the package transaction itself should be specifically MAT before being subject to the trade execution requirement and real-time reporting.

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 believe that the scope of the ICE Amendment is, if anything, too narrow and could extend beyond swaps with offsetting legs to any multicomponent swap. We note that the Commission did not limit the block trade definition for "swaps with composite reference prices" to those with offsetting components.[24] Similarly, we believe that package

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[23] *See* Real-Time Public Reporting of Swap Transaction Data, 77 Fed. Reg. 1,182, 1,1189 (Jan. 9, 2012)..

[24] "[A]ssume that the appropriate minimum block size for swap category E is $50 million and for swap category F is $200 million. If a single swap transaction with a corresponding singular reporting obligation is based on a composite reference price that itself is based on the weighted average of (1) one component in swap category E; (2) a second component in swap category E; and (3) a component in swap category F (33% equal weightings for each), and the notional size of the swap is $75 million (i.e., $25 million for each component swap), then the swap would not qualify as a block trade or large notional off- facility swap based on either the

transactions should be permitted to qualify as block trades even if they do not necessarily entail offsetting components that are approximately equivalent in size.

Conclusion

We agree with the ICE Amendment's finding that "package transactions" should not be subject to the trade execution requirement and should be eligible for execution as block trades. This approach would encourage trading package transactions on DCMs and SEFs and protect liquidity in package transactions. The following chart summarizes our view on the trade execution requirement status of package transactions, as articulated in greater detail above:

Package Transaction Type:	All Required Transactions	Combination of Required and Permitted Transactions (including Non-Swaps)
Can they be subject to trade execution requirement?	Yes	No – under Commission regulation 43.4(h)(2) the Permitted Transaction component makes the entire package transaction eligible for a block trade exemption from the trade execution requirement under Commission regulation 37.3(a)(2)
Have they been MAT?	No – no SEF MAT determinations included package transactions and they are therefore "Permitted Transactions" under Commission regulation 37.9(c)	No

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swap category E or the swap category F appropriate minimum block size."   Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, Final Rule, 78 Fed. Reg. 32,866, 32,902 (May 31, 2013).

We believe that only package transactions involving all Required Transaction components can be subject to the trade execution requirement and only once they have been specifically MAT could the Commission subject them to the trade execution requirement. We recommend that the Commission continue to apply the principle underlying Commission regulation 43.6(h)(2): that the least liquid component of a multicomponent or package transaction should determine whether or not a block trade exemption is available.

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Markit appreciates the opportunity to comment on the Commission's request for comment. We would be happy to elaborate or further discuss any of the points addressed above. In the event you may have any questions, please do not hesitate to contact the undersigned or Salman Banaei on salman.banaei@markit.com.

Yours sincerely,

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