

February 21, 2023

Vince McGonagle  
Division of Market Oversight  
U.S. Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

**Re: Request for Temporary Exemption from the Trade Execution Requirement and Required Methods of Execution in order to Migrate Cleared CDS Trades**

Dear Mr. McGonagle:

The International Swaps and Derivatives Association, Inc. (“**ISDA**”),<sup>1</sup> on behalf of its members, is writing to request that the Division of Market Oversight (“**DMO**”) of the U.S. Commodity Futures Trading Commission (“**CFTC**” or “**Commission**”) issue time-limited no-action relief exempting market participants from complying with sections 2(h)(8) of the Commodity Exchange Act and CFTC Regulation 37.9 (“**the trade execution requirement**” and “**required methods of execution**,” respectively)<sup>2</sup> when migrating executed, cleared trades from ICE Clear Europe Ltd. to other central clearing counterparties (“**CCPs**”).

ISDA requests this time-limited relief in order to ensure an orderly, uninterrupted, and risk-neutral transition of open positions at ICE Clear EU to other CCPs.

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<sup>1</sup> Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1000 member institutions from 78 countries. These members comprise a broad range of 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, such as exchanges, intermediaries, clearing houses 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 website: [www.isda.org](http://www.isda.org).

<sup>2</sup> See section 2(h)(8) of the Commodity Exchange Act. See also Commission Regulation 37.9.

## I. Discussion

In September 2022, the Intercontinental Exchange announced that, by October 27, 2023, it would stop clearing credit default swaps (“CDS”) out of its London clearinghouse, ICE Clear Europe Ltd. (“ICEU”).<sup>3</sup> This discontinuation of CDS clearing services requires that open positions in CDS are transferred from ICEU to a CCP that is able to clear CDS.<sup>4</sup>

Market participants have identified two (2) solutions that would allow for an orderly migration of trades from ICE Clear EU to other CCPs: (1) migration through dealer trades; or (2) migration through a third party post-trade risk reduction service provider (“**third party service provider**”), such as TriOptima. Each solution would require a temporary exemption from the trade execution requirement and required methods of execution.<sup>5</sup>

In the first instance- migration through dealer trades, dealers will help their clients move their exposure from ICE Clear EU to a target CCP. This process would consist of booking equal and opposite transactions at ICE Clear EU and the target CCP (“**switch trades**”). To make these market risk-neutral and profit-neutral, both trades need to be executed at the same price.

For example, as illustrated in Diagram 1 in the Appendix, assume that Client A holds an existing long CDS index position at 98. Client A turns to its Dealer to arrange transfer of the position. Dealer would agree with Client A to offset its exposure to ICEU by selling index CDS at 98; the Dealer would take the other side of the transaction, clearing it with ICEU. The result is that Client A’s position at ICEU is flat, while the Dealer has a long exposure to ICEU. Next, the Dealer will enter into another transaction with the Client, at the same price, and clear it with the target CCP. The result is that the Dealer will now have two equal and opposite positions across ICEU and the target CCP, while Client A now holds a long CDS index position at 98 with the target CCP. This way, Client A’s position has been transferred to the target CCP.

<sup>3</sup> In June 2022, ICEU first announced that they would close the service by March 31, 2023 (see [C22076.pdf \(theice.com\)](#)). In September 2022, they subsequently announced that they would postpone cessation of the service to October 27, 2023 (see [C22109.pdf \(theice.com\)](#))

<sup>4</sup> We understand that both ICE Clear Credit in the US and LCH CDSClear in the EU clear CDS.

<sup>5</sup> We note that while, in theory, using CDS rolls may be possible to effect the transition, it will create a number of operational challenges in practice. In order for a roll to be STP, both legs need to be linked, i.e., there needs to be one object, which is “a roll.” To facilitate moving from one clearing house to another, four new objects per index would have to be created, and then, the index would have to be bought/sold at ICE EU and the target CCP (for example, ICE EU vs. at LCH/ICC). It is just not feasible for the banks and the venues to get this all set up in time, especially for a one-off transfer. Also, the September roll is too close to the ICE EU end date, so it is not clear whether market participants would be willing to facilitate someone else’s preferred clean-up trade, knowing that time is severely limited to exit one’s own trade. Moreover, it would be a huge undertaking, but more importantly, an immense operational risk if the whole market had only two days (the two rolls) to migrate, especially, given that dealers would have to migrate after clients have—meaning all clients would have to move at the March roll.

In the second instance—migration through a third party service provider—the third party service provider will assess the CDS exposures to ICEU for market participants that have a relationship with the relevant third party provider.<sup>6</sup> Using a similar algorithm (but not the same) as those required for other risk-reducing exercises such as portfolio compression, the third party service provider will analyze market participants’ open positions at ICEU, as well as information regarding market participants’ target CCP(s).<sup>7</sup> The algorithm will produce a set of execution instructions and the relevant firms will perform those executions bilaterally, off-Swap Execution Facility (“SEF”) at pre-determined prices in order to transfer their exposure efficiently and effectively from ICEU to their target CCP.<sup>8</sup> It is essential that all trades are executed at the same price/spread for the same index series/tenor to prevent profits and losses from being generated; the trade executions must be non-price forming and market risk neutral for all participants and CCPs, and participants must agree to book all of the proposed trades produced by the algorithm in order to ensure this condition is met (i.e., “all or nothing”). Also, no participant will end up with increased risk in any index. The difference between this approach and the aforementioned “switch trade” approach is scale. Using a third party service provider will reduce the overall number of transactions that need to be conducted, as opposed to if each individual dealer was tasked with developing switch trade strategies and operational processes for each of their clients’ CDS exposure to ICEU and their own CDS exposure to ICEU.<sup>9</sup>

Both methods of migration will require market participants to execute transactions at the target CCP(s). Some of the transactions at issue are currently subject to the Commission’s trade execution requirement and required methods of execution.<sup>10</sup> However, in order for the transactions to be migrated in a market risk-neutral manner, transactions must be executed between designated counterparties at a pre-determined price—which is not possible if market participants are required to execute their transactions on a SEF via the required methods of execution. Therefore, we seek temporary relief from the trade

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<sup>6</sup> We understand that the majority of participants will be dealers, but clients may also avail themselves of such services if they have a relationship with the relevant third party service provider.

<sup>7</sup> We note that TriOptima, a third party service risk-reduction service provider, has already run a number of successful pilot exercises with market participants to test their technology and its application to CDS transactions.

<sup>8</sup> Even if the Commission were to allow pre-arranged trades for the relevant made available to trade (“MAT”) transactions, for this specific purpose, there are still a number of factors as to why it is not possible to put these non-price forming transactions executions on a SEF. While third party service providers are connected to a venue for the rates and FX asset classes and can therefore STP trades in bulk onto a venue for participants, they are not connected to a venue for credit. Moreover, the venue that such providers are connected to for rates and FX do not offer credit products at all. Thus, at this time, it would not be possible for service providers to STP the trades for the participants. Given the October deadline of ICE Clear Europe closing and the lengthy and costly technology builds, as well as the legal documentation necessary to set this up, it is not feasible given the timeframe and the fact that this would only be needed for a “one-off” transfer.

<sup>9</sup> We note that dealers will also likely use this process to lay off any open positions they acquired at ICEU by virtue of conducting any additional switch trades for their clients.

<sup>10</sup> See section 2(h)(8) of the Commodity Exchange Act. See also Commission Regulation 37.9.

execution requirement for market participants that are entering into new CDS transactions for the sole purpose of transferring their open positions from ICEU to a target CCP.

Absent the aforementioned solutions for the orderly migration of trades—which hinges on temporary relief from the trade execution requirement—market participants will have to close out their transactions, leaving each counterparty to move to their target CCP by initiating two new trades: one to close out risk at ICEU and another to open the trade at a target CCP, potentially on multiple SEFs/venues. These two trades will most likely be at different prices, causing unnecessary and unintended disruptions in the CDS market. Such a disorderly migration may introduce market risk, execution and operational risks, and replacement cost risks to market participants.

Notably, to ensure an orderly transition, market participants require relief from all mandatory trading obligations including those in the UK and EU. Accordingly, we have already requested the same relief from the UK Financial Conduct Authority (“FCA”) and the European Securities and Markets Authority (“ESMA”) (i.e., a temporary exemption from compliance with their respective derivatives trading obligations). We intend to keep DMO staff apprised of our discussions with the FCA and ESMA.

## **II. Request for Relief**

For the reasons stated above, we ask DMO staff to provide a temporary exemption from the trade execution requirement and required methods of execution for market participants entering into CDS trades for the sole purpose of migrating their positions from ICEU to a target CCP. We respectfully request that DMO staff provide the temporary exemption as soon as possible, and make the exemption available until the later of October 27, 2023 or such time when ICEU ceases its clearing service for CDS.

Thank you for your consideration of these concerns. Please do not hesitate to contact me, Ulrich Karl (Head of Clearing, [ukarl@isda.org](mailto:ukarl@isda.org)) or Nikki Cone (Associate General Counsel, [ncone@isda.org](mailto:ncone@isda.org)) should you have any questions.

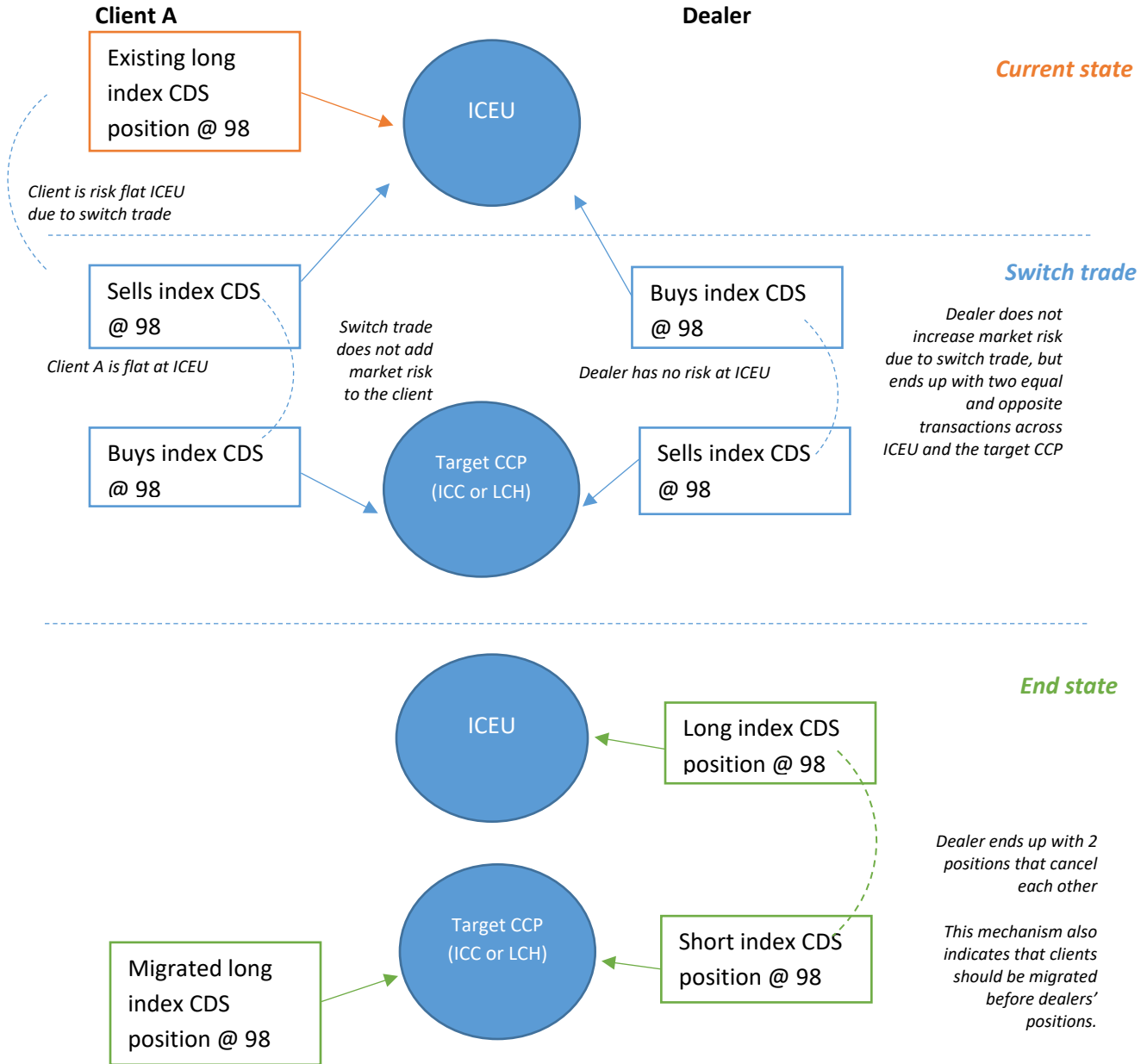
Sincerely,



Bella Rozenberg  
Head of Regulatory and Legal Practice Group  
ISDA  
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APPENDIX

Diagram 1 - Principle of a Switch Trade



**Certification Pursuant to Commission Regulation 140.99(c)(3)**

As required by Commission Regulation 140.99(c)(3), I hereby (i) certify that the material facts set forth in the attached letter dated February 21, 2023 are true and complete to the best of my knowledge; and (ii) undertake to advise the Commission, prior to the issuance of a response thereto, if any material representation contained therein ceases to be true and complete.

A handwritten signature in blue ink, reading "Bella Rozenberg". The signature is fluid and cursive, with the first name "Bella" and the last name "Rozenberg" clearly distinguishable.

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