



Atlanta Calgary Chicago Houston London New York Singapore

**WRITTEN TESTIMONY OF
JEFFREY C. SPRECHER, CHAIRMAN AND CHIEF EXECUTIVE OFFICER
INTERCONTINENTALEXCHANGE
BEFORE THE
HOUSE COMMITTEE ON AGRICULTURE**

May 21, 2013

Chairman Lucas, Ranking Member Peterson, I am Jeffrey C. Sprecher, Chairman and Chief Executive Officer of IntercontinentalExchange, Inc., or ICE. I am grateful for the opportunity to comment on the Commodity Exchange Act (CEA) as this Committee undertakes reauthorization.

As background, ICE was established in 2000 as an over-the-counter (OTC) marketplace with the goal of bringing needed transparency and a level playing field for the opaque, fragmented energy market that existed at the time. Since then, ICE has met that objective and expanded its markets through organic growth as a result of innovation. We have acquired futures exchanges and brought competition, new products, technology, and risk management services to a centuries-old business. Today ICE is a leading operator of regulated, global marketplace for futures and OTC derivatives across agricultural and energy commodities, foreign exchange, credit derivatives and equity indexes. Commercial market participants ranging from producers to end users rely on our liquid, transparent markets to hedge and manage risk.

On December 20th of last year, ICE announced its transaction to acquire NYSE Euronext. As a result of this transaction, which we expect to close this year, ICE's range of products and our global reach will expand even further, adding to our operations in Europe, Asia, North America and South America across the derivatives and equities markets. ICE's businesses are regulated by multiple regulators in multiple jurisdictions, including the United State's Commodities Futures Trading Commission and the Securities and Exchange Commission, among others. My testimony today focuses on some of the issues we see in operating in such diverse markets.

International Harmonization

In 2009, in response to a global financial crisis, the G20 nations met in Pittsburgh to agree on reforming the global financial markets. This agreement led to Congress passing the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which was passed that same year and has been in the implementation process over the past three years. Appropriate regulation of derivatives is of utmost importance to the proper functioning of the financial system. ICE believes that increased transparency, risk management and capital sufficiency, coupled with legal and regulatory certainty, are central to reform and to restoring confidence to these vital markets.

Today, given that the CFTC has passed the majority of the applicable rules under Dodd-Frank, ICE's US businesses have largely implemented the new rules, and continue to support market participants in doing the same. We are now turning toward rule-makings and implementation in Europe and Asia as they finalize their financial reform laws. As we look at the various regimes and work with global regulators, we have concluded that, contrary to the G20 goals, global financial reform efforts are not being harmonized and substantial differences remain between regulatory regimes.

IntercontinentalExchange
2100 RiverEdge Parkway
Suite 500
Atlanta, GA 30328

phone 770 857 4700
fax 770 951 1307
online www.theice.com



If regulators fail to harmonize, the effects of uncertainty and the prospect for regulatory arbitrage will be damaging. Because markets are global and capital flows across borders, no single country or regulatory regime oversees the derivatives market. In order to make long-term business decisions, market participants require certainty that their transactions will not be judged on conflicting standards. The derivatives markets are international: the majority of companies that operate globally use derivatives to manage price risks, and they conduct these transactions with both U.S. and non-U.S. counterparties. The likely outcome will be that regulators deem other countries' financial regulatory systems as "nonequivalent", which would lead to those countries erecting barriers to its financial markets. It is crucial to understand that if countries erect these barriers, WE markets and market participants will be damaged. Currently, the U.S. derivatives markets are home to vital global benchmark contracts in agriculture, energy, financial asset classes. These have become benchmark contracts because Asian and European market participants have direct access to U.S. markets. Importantly, the long-standing global nature of the derivatives markets and the resulting international competition has led to advances in transparency, risk management, and historically, regulatory cooperation.

Over the past year, ICE has been delivering this message to domestic and international regulators, yet regulations continue to diverge, particularly in the U.S. and Europe. We ask the Committee, in its oversight role, to impress upon the Commodity Futures Trading Commission the importance of working with European and Asian counterparts to harmonize regulation and avoid creating unintended, unpredictable impacts on financial markets and their users. The time for agreement is closing. In June, Europe will begin the process of deeming the U.S. equivalent or nonequivalent under its regulations. These issues must be solved in the next few months.

Commodity Exchange Act Reauthorization

In passing the original Commodity Exchange Act, Congress wisely added a sunshine provision to the law. Every few years, Congress re-examines the CEA to make sure that the law has kept pace with the rapidly evolving derivatives markets. Importantly, this CEA reauthorization marks the third anniversary of the passage of the Dodd-Frank Act. When Dodd-Frank was passed, the derivatives markets were very different than today. Over the past three years, these markets have become more standardized, transparent, and key derivative contracts are now subject to mandatory clearing. Last week, the CFTC finalized rules to that will lead to mandatory trading on regulated Swap Execution Facilities. Last year, ICE itself transitioned its OTC energy contracts to regulated futures contracts.

Given these sweeping changes, CEA reauthorization is a key opportunity for Congress to review the law, as well as the oversight of the CFTC, to ensure that the law and the Commission are in step with today's derivatives markets. In reviewing the CEA, ICE believes that the Commission should focus on two key areas. First, given the recent Futures Commission Merchant (FCM) bankruptcies, a focus on modifications to the bankruptcy provisions of the CEA to ensure that customer funds are protected in future FCM bankruptcies. ICE has been working with other exchanges and market participants on this issue and we look forward to working with you and your staff to advance this objective.

Second, the market would benefit from a clarification of Dodd-Frank rules on position limits. As the US District Court for the District of Columbia stated last year, the position limit rules in Dodd-Frank are contradictory. If position limits are applied incorrectly, markets could be constrained in serving a price discovery function. Of particular concern, is the Dodd-Frank Act's limitation of a bona fide hedge, which is the exemption used by end users. The narrow definition of bona fide hedge will likely hurt commercial end users that these markets are intended to serve, and thus



support the bona fide hedge exemption relied upon historically would bring greater certainty to end users in executing their risk management operations.

Conclusion

ICE has always been and continues to be a strong proponent of open, regulated and competitive markets, and appreciates the opportunity to work with Congress and global regulators to address the evolving derivatives markets. We will continue to engage you and your staff on the wide variety of CEA-related issues under the Committee's jurisdiction.

Mr. Chairman, thank you for the opportunity to share our views with you. I would be happy to answer any questions you may have.