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**WRITTEN TESTIMONY OF
CHARLES A. VICE, CHIEF OPERATING OFFICER
INTERCONTINENTAL EXCHANGE, INC.
BEFORE THE HOUSE
COMMITTEE ON AGRICULTURE, SUBCOMMITTEE ON GENERAL FARM
COMMODITIES AND RISK MANAGEMENT**

March 28, 2012

Chairman Conaway, Ranking Member Boswell, I am Chuck Vice, President and Chief Operating Officer of IntercontinentalExchange, Inc., (ICE). I appreciate the opportunity to appear before you today to testify on the extraterritorial application of the Dodd/Frank Wall Street Reform and Consumer Protection Act and in particular, the "Swap Jurisdiction Certainty Act" and the "Swap Data Repository and Clearinghouse Indemnification Correction Act of 2012."

Background

Since the launch of its Atlanta, Georgia based electronic OTC energy marketplace in 2000, ICE has expanded both in the U.S. and internationally. Over the past ten years, ICE has acquired or founded three derivatives exchanges and five clearing houses in the U.S., the U.K., Brazil and Canada. Through our global operations, ICE's exchanges or clearing houses are directly regulated by the U.K. Financial Services Authority (FSA), the U.S. Commodity Futures Trading Commission (CFTC), the Securities and Exchange Commission (SEC) and the Manitoba Securities Commission. In addition, each exchange and clearing house is subject to lesser regulation or registration requirements with dozens of other jurisdictions. As such, ICE is uniquely impacted by the financial reforms efforts in the U.S. and abroad.

ICE has been supportive of the global financial reform efforts. Appropriate regulation of derivatives is of utmost importance to the financial system. ICE believes that increased transparency and proper risk and capital management, coupled with legal and regulatory certainty, are central to reform and to restoring confidence to these vital markets.

However, regulators need clear lines of jurisdiction. Regulators need certainty that they have the power to take actions to uphold the public good. Likewise, market participants need the certainty that their business transactions will not be held to conflicting standards of conduct. Further, regulatory certainty eliminates the possibility of regulatory arbitrage, or long-term damage to the competitiveness of the U.S. in a highly competitive global environment.

The need for certainty extends beyond U.S. borders. It is vital to recognize that the derivatives markets are international: the majority of the large companies globally use derivatives, and they conduct these transactions with U.S. counterparties. Thus, U.S. regulators must work with international regulators from a common set of regulatory principles. With this comes the recognition that no single country can regulate the entire global derivatives market.

The Unclear Extraterritorial Application of Dodd-Frank Creates Uncertainty

Unfortunately, the broad mandates of the Dodd/Frank Act create great uncertainty for international transactions and global businesses. The sole recognition of applicability of



Dodd/Frank to international transactions is in Section 722 of Dodd/Frank which states “[t]he provisions of this Act relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010...shall not apply to activities outside the United States unless those activities:

(1) have a direct and significant connection with activities in, or effect on, commerce of the United States, or

(2) contravene such rules or regulations as the Commission may prescribe...or to prevent the evasion of any provision of this Act...

While the CFTC and SEC have issued dozens of proposed and final regulations implementing the Dodd-Frank Act, to date, neither agency has defined what activity has a direct and significant impact on the United States. In particular, many of the CFTC's final rules require ICE to come into compliance without ICE knowing whether our business is within the scope of Dodd/Frank. For example, our U.K.-based clearing house, ICE Clear Europe operates as a U.K. regulated Recognized Clearing House and a U.S. CFTC regulated Derivatives Clearing Organization and SEC regulated Clearing Agency. ICE Clear Europe clears European and Asian energy contracts which have little to no U.S. participation. However, it is unclear to ICE whether Dodd/Frank will apply to these transactions, even though the U.S. connection is negligible. Moreover, as an illustration of the complication of overlapping regulators, ICE Clear Europe is expected to seek approval for energy swaps from U.K. FSA, the CFTC and the SEC. Having to file approvals to clear swaps with three primary regulators, including one, the SEC, with no expertise in energy derivatives, hampers Dodd/Frank by making clearing swaps much more difficult for a clearing house.

Before Dodd/Frank, this overlap in regulation was not the case. Since 1984, Section 4(b) of the Commodity Exchange Act expressly excluded foreign transactions from CFTC jurisdiction. The CFTC relied on foreign regulators to regulate foreign transactions and worked with regulators to adopt common principles that all regulated markets should adopt. This approach was very successful, as it led to greater harmonization of regulation, yet allowed foreign regulators to oversee their institutions. Importantly, many of the key goals of Dodd/Frank, such as swaps clearing and electronic trading, originally came from foreign markets.¹

H.R. 3283, the Swap Jurisdiction Certainty Act

ICE welcomes the introduction of H.R. 3283, the Swaps Jurisdiction Certainty Act, which would make two important clarifications to Dodd/Frank by defining U.S. person and non-U.S. person and by clarifying the applicability of Dodd/Frank requirements on international transactions. ICE believes that H.R. 3283 is an important step forward to defining what transactions and participants are subject to Dodd/Frank.

Swap Data Repository and Clearinghouse Indemnification Correction Act of 2012

ICE also welcomes the introduction H.R. 4235, the Swap Data Repository and Clearinghouse Indemnification Correction Act of 2012. One of ICE's subsidiaries, Trade Vault, has applied for registration with the CFTC as a Swap Data Repository (SDR). Section 728 of Dodd/Frank requires foreign regulators to indemnify a SDR for any expenses resulting from litigation for data

¹ EUREX pioneered electronic trading and the London Clearing House founded SwapsClear, an early clearing solution for OTC derivatives.



provided by the SDR to the foreign regulator. ICE believes that this provision is in error as most foreign regulators would be legally unable to indemnify a SDR. This would result in forcing an SDR to create separate subsidiaries in other countries to provide swaps transparency to foreign regulators. ICE believes the Swap Data Repository and Clearinghouse Indemnification Correction Act will correct this provision of Dodd/Frank and allow U.S. SDRs to provide transparency for international swaps transactions.

Conclusion

ICE has always been and continues to be a strong proponent of open and competitive markets, and appreciates the opportunity to work closely with Congress and regulators in the U.S. and abroad to address the evolving regulatory challenges presented by derivatives market.

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

BIOGRAPHY

Charles A. Vice
President and Chief Operating Officer
IntercontinentalExchange

Chuck Vice is a founding member of IntercontinentalExchange (NYSE: ICE). He has served as Chief Operating Officer since July 2001 and President since October 2005. Mr. Vice works with the executive management team in setting corporate objectives and strategies and has day-to-day responsibility for technology, operations, and product development.

Mr. Vice has been a leader in the management and application of information technology in the energy industry for nearly two decades. Prior to the formation of ICE in 2000, Mr. Vice was a Director at Continental Power Exchange (CPEX), an electronic spot market for electric power. Before joining the CPEX startup in 1994, he was a Principal at Energy Management Associates, where he provided consulting services to the electric power and natural gas industries. From 1985 to 1988, Mr. Vice was a Systems Analyst with Electronic Data Systems (General Motors) where he designed and marketed management information systems for auto, airline and financial service industry clients.

Mr. Vice earned a Bachelor of Science degree in Mechanical Engineering from the University of Alabama and a Master of Business Administration from the Owen Graduate School of Management at Vanderbilt University.



Committee on Agriculture
U.S. House of Representatives
Required Witness Disclosure Form

House Rules* require nongovernmental witnesses to disclose the amount and source of Federal grants received since October 1, 2009.

Name: Charles A. Vice

Organization you represent (if any): ICE, Inc.

1. Please list any federal grants or contracts (including subgrants and subcontracts) you have received since October 1, 2009, as well as the source and the amount of each grant or contract. House Rules do **NOT** require disclosure of federal payments to individuals, such as Social Security or Medicare benefits, farm program payments, or assistance to agricultural producers:

Source: None Amount:

Source: Amount:

2. If you are appearing on behalf of an organization, please list any federal grants or contracts (including subgrants and subcontracts) the organization has received since October 1, 2009, as well as the source and the amount of each grant or contract:

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Please check here if this form is NOT applicable to you: X

Signature: Charles A. Vice

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