Written Testimony of Jeffrey C. Sprecher
Chairman and Chief Executive Officer
IntercontinentalExchange, Inc.
Committee on Agriculture
Subcommittee on General Farm Commodities and Risk Management
U.S. House of Representatives

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Introduction

Chairman Boswell, Ranking Member Moran, I am Jeffrey C. Sprecher, Chairman and Chief Executive Officer of IntercontinentalExchange, Inc., or "ICE." We are grateful for the opportunity to provide comments on the position limit rulemaking pending before the Commodity Futures Trading Commission (Commission).

As background, ICE was established in 2000 as an over-the-counter (OTC) marketplace with the goal of providing transparency and a level playing field for the previously opaque, fragmented energy market. Since that time, ICE has grown significantly through organic growth fostered by product, technology and clearing innovation, and by acquisition of futures exchanges that have broadened its product offerings and risk management services. Today, ICE operates a leading global marketplace for futures and OTC derivatives across a variety of product classes, including agricultural and energy commodities, foreign exchange and equity indexes. Commercial market participants rely on our products to hedge and manage risk and investors in these markets provide necessary liquidity.

ICE believes proper regulation is essential for ensuring that market participants— as well as the broader public — have confidence in the price formation process that takes place in our markets. This assurance of integrity lies at the heart of the futures exchange model. The U.S. energy futures markets, governed by the Commission's comprehensive-but-flexible regulatory structure, have permitted commercial and professional market users to hedge future price risk in an efficient and cost-effective manner.

Position Limits

The Dodd/Frank Wall Street Reform and Consumer Protection Act gives the Commission new authority to set aggregate position limits on both energy futures and swaps and to have those position limits apply across competing exchanges and trading venues. This authority was granted by Congress because economically equivalent contracts may vary only where they are listed for trading, or in how they are settled, and have repeatedly been shown to trade as ***a single market*** up until the final days of trading.[1]

ICE supports aggregate position limits across trading venues if administered by the Commission in a fair, non-discriminatory manner. In summary, ICE's position on this subject is clear:

1) Different sized position limits for different exchanges, or so-called "concentration limits", were considered and rejected by Congress, and should not form a part of the Commission's proposed rules because they are conceptually inconsistent with the "single market" theory and anti-competitively favor larger exchanges; and

2) To avoid negatively impacting liquidity that is relied upon by commercial end users to hedge their risk, aggregate position limits should be set at levels taking into account both existing futures volumes and the broader OTC markets

The Dodd/Frank Act gives the Commission 180 days to implement the position limit provisions for energy. ICE believes that the position limit rulemaking would be easier and less costly to implement if the Commission focused its rulemaking on implementing the core requirements of Dodd/Frank, namely aggregate position limits across markets—and avoids consideration of experimental rules and such as single-exchange concentration limits that have already been rejected by Congress.

Concentration Limits for Single Exchanges Were Rejected by Congress and Are Redundant and Anti-Competitive

In the Commission's previous position limit rulemaking, which was withdrawn in anticipation of the passage of Dodd Frank, the Commission proposed an aggregate position limit regime across markets, but with separate "concentration limits" for individual exchanges and trading venues. The concentration limit would be set at 30% of the given exchange or venue's open interest for all months, and 20% of open interest in any single month, with each percentage based on the exchange's open interest in the previous year. The Commission's rationale for the concentration limit was to prevent concentrated positions from causing abrupt price movements and distortions in a market, and to "fragment" the market to allow multiple traders to step in where a smaller number of traders may have existed previously. The theory rested upon the unproven assumption that large traders are crowding out smaller participants.

[1] *Excessive Speculation in the Natural Gas Markets*, Staff Report, Senate Permanent Subcommittee on Investigations (June 2007), pgs 36-38.
http://hsgac.senate.gov/public/_files/REPORTExcessiveSpeculationintheNaturalGasMarket.pdf

ICE disagrees with setting exchange specific concentration limits in any new rulemaking as they ignore the premise that economically equivalent contracts operate as a single aggregate market, were expressly rejected by Congress in drafting Dodd/Frank; and may have significant anticompetitive implications.[2] Exhaustive hearings by Congress and the Commission over the last several years have concluded that economically equivalent contracts traded on two separate exchanges operate as ***a single aggregate market***. In testimony before this Subcommittee in September 2007, Dr. James Newsome, former Commission Chairman and then President of NYMEX, stated "the two competing trading venues [ICE and NYMEX] are now tightly linked and highly interactive and in essence are simply two components of a broader derivatives market."[3] This is because participants arbitrage between economically equivalent markets, causing prices to converge. As this Subcommittee is well aware, the one market concept was the impetus for provisions in the Farm Bill which mandate regulation of swaps determined to be Significant Price Discovery Contracts in an equivalent manner as futures. Thus, the idea of imposing concentration limits on an "individual exchange" basis is unnecessary given the aggregate limit, which will serve the same purpose.

Importantly, Congress expressly rejected a concentration limit in Dodd/Frank when it dropped language in the Section 738 of the Act in the House version of the legislation[4] requiring foreign boards of trade to set position limits based upon "relative" market size. In addition, having market specific concentration limits appears inconsistent with other parts of Dodd Frank, which contemplates multiple competing Swap Execution Facilities with open access to central clearing houses where swap positions would be traded into on one SEF and out of on another SEF.[5] It is not apparent how this could be accomplished with SEF-specific concentration limits based upon open interest at an open-access clearinghouse used by multiple platforms.

Finally, a single exchange concentration limit is anticompetitive. The Commodity Exchange Act mandates that the Commission "regulate the futures markets by the least anticompetitive means available." By design, a concentration position limit will impose smaller, or stricter, concentration limits in smaller markets. A smaller market with fewer market participants has its open interest concentrated in these market participants. Thus, applying a concentration limit for an individual exchange will inhibit competition by impeding liquidity, given that smaller markets are concentrated. This would effectively lock in the market share of existing exchanges. A nascent exchange with such restrictions

[2] H.R. 4173, Section 3155.
[3] Testimony of Dr. James Newsome, Chief Executive Officer, New York Mercantile Exchange, before the Subcommittee on General Farm Commodities and Risk Management, United States House of Representatives (September 26, 2007).
[4] See, supra note 1.
[5] Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 723(3).

would likely face insurmountable odds in establishing a market and competing with incumbents. In addition, large market participants will effectively be prevented from leaving one market for another that offers a competitive advantage due to its inability to carry a similar sized position on the second market due to the "concentration limit." This would substantially curtail innovation and the choice that exists in today's markets. Slowly, over time, the dominant market will continue to gain market share, as liquidity attracts liquidity. In the end, concentration limits may create the opposite of what the Commission intends: a diverse, highly competitive market for execution of derivatives.

Position Limits Across Futures and OTC Markets Should Be Set to Avoid Negatively Impacting Liquidity Available to Commercial users of the Markets and Should be Based Upon Data of Each Market

In setting aggregate position limits across futures and OTC markets, the Commission should act only after taking into account trading data from ***both*** the futures markets and the broader OTC swaps markets. Failing to take into account accurate data from each market risks setting aggregate position limits at artificially low levels that could negatively impact the liquidity relied upon by commercial users to efficiently hedge their price risk. Dodd/Frank requires the Commission for the first time to regulate previously un-regulated OTC markets that have themselves been used by segments of the commercial market to hedge risk. Should the Commission not take into account the size of this market in setting speculative position limits in the now-combined market, liquidity could be adversely impacted with commercial end users paying wider spreads to hedge their price risk. This would certainly be an unintended consequence and inconsistent with Dodd/Frank's broader goals.

Conclusion

ICE is a strong proponent of open and competitive derivatives markets, and of appropriate regulatory oversight of those markets. As an operator of global futures and OTC markets, and as a publicly-held company, we understand the essential role of trust and confidence in our markets. To that end, we are pleased to work with Congress to address the challenges presented by derivatives markets, and we will continue to work cooperatively for solutions that promote the best marketplace possible.

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

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, 2007.

Name: Jeffrey C. Sprecher

Address: 2100 RiverEdge Parkway Atlanta GA 30339

Telephone: 770 738-2116

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

1. **Please list any federal grants or contracts (including subgrants and subcontracts) <u>you</u> have received since October 1, 2007, as well as the source and the amount of each grant or contract. House Rules do <u>NOT</u> require disclosure of federal payments to individuals, such as Social Security or Medicare benefits, farm program payments, or assistance to agricultural producers:**

Source: N/A **Amount:** None

Source: ______ **Amount:** ______

2. **If you are appearing on behalf of an organization, please list any federal grants or contracts (including subgrants and subcontracts) <u>the organization</u> has received since October 1, 2007, as well as the source and the amount of each grant or contract:**

Source: N/A **Amount:** None

Source: ______ **Amount:** ______

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

Signature: ______

* Rule XI, clause 2(g)(4) of the U.S. House of Representatives provides: *Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof. In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by any entity represented by the witness.*

PLEASE ATTACH DISCLOSURE FORM TO EACH COPY OF TESTIMONY.

Jeffrey C. Sprecher

Biography

Jeff Sprecher is a founder of IntercontinentalExchange (NYSE: ICE), serving as the company's Chief Executive Officer since May 2000 and as the Chairman of the Board since November 2002. Under Mr. Sprecher's guidance, ICE expanded into global markets for agriculture, chemicals, credit default swaps, emissions, energy, equity indexes and foreign exchange, and extended its business into central clearing. Today, ICE operates four regulated futures exchanges, two over-the-counter (OTC) markets and five clearing houses globally.

As a power plant developer, Mr. Sprecher recognized the need among energy market participants for an accessible, standardized electronic marketplace for OTC energy contracts. He purchased Continental Power Exchange (CPEX) in 1997 to achieve his vision of an efficient market that would bring transparency and capital efficiency to previously opaque and fragmented markets. IntercontinentalExchange was formed in 2000 and the company completed its initial public offering in 2005.

Mr. Sprecher's leadership has been characterized by a focus on innovation, transparency and capital efficiency in the global derivatives markets. He has led numerous strategic initiatives that have enabled ICE to expand from a single asset class — energy — into five asset classes today. These initiatives have included numerous acquisitions, including the International Petroleum Exchange of London (2001), the New York Board of Trade (2007), Creditex (2008), The Clearing Corporation (2009) and the Climate Exchange (2010).

In addition to expanding through acquisitions, Mr. Sprecher has focused ICE's resources on organic growth, including developing the industry's first cleared OTC contracts (2002), building the first new major clearing house in the U.K. in over a century (2008), and launching the world's leading clearing house for credit derivatives (2009).

Mr. Sprecher's leadership has been recognized by BusinessWeek, Institutional Investor and a number of other industry publications. He was selected as a finalist in Ernst & Young's Entrepreneur of the Year program in 2002 and by MarketWatch as one of five finalists in the "MarketWatch CEO of the Year" program in 2006. Also in 2006, ICE's stock was named the best 1-year performer by The Wall Street Journal, and in 2010 the company was named as the fastest growing company in the Financial Services category by Fortune magazine.

Mr. Sprecher serves on the U.S. Commodity Futures Trading Commission (CFTC) Global Market Advisory Committee and is a member of the Energy Security Leadership Council.

Prior to acquiring CPEX, Mr. Sprecher held a number of positions in the power industry. For 14 years, he served as President of Western Power Group, Inc., a developer, owner and operator of large central-station power plants in California.

Raised in Wisconsin, Mr. Sprecher earned a Bachelor of Science degree in Chemical Engineering from the University of Wisconsin at Madison and a Master of Business Administration from Pepperdine University in Malibu, California