

**Written Testimony of  
ICE Futures U.S. President and COO Benjamin Jackson  
before the  
House Committee on Agriculture  
Subcommittee on Commodity Exchanges, Energy and Credit**

**March 25, 2015**

Chairman Scott, Ranking Member Scott, I am Ben Jackson, President and Chief Operating Officer of ICE Futures U.S. I appreciate the opportunity to discuss the reauthorization of the Commodity Futures Trading Commission (CFTC).

Over the past five years, ICE Futures U.S. and other derivatives markets participants have been implementing U.S. and global financial reform rules. While the overall intent of financial reform was to regulate the over the counter swaps markets, many of the rules, both in the United States and globally, have made significant changes to the futures markets, which were the model of regulation for the Dodd-Frank Act. At this point, reexamining the Commodity Exchange Act (CEA) and Dodd-Frank is of critical importance to make sure that the important risk management and price discovery functions provided by the futures markets are not constrained by regulation. My testimony today will focus on the self-regulatory functions ICE Futures U.S. undertakes and the overlap, particularly regarding position limits, with the CFTC. In addition, I would like to discuss the recent conflicts in the global financial reform process.

### **ICE Futures U.S. Self-Regulatory Functions**

As background, ICE Futures U.S. is a designated contract market owned by Intercontinental Exchange which is the leading global network of regulated exchanges and central counterparty clearing houses for financial and commodity markets.

ICE Futures U.S. lists a broad array of contracts on the exchange including North American power and natural gas, and international agricultural commodities such as sugar, coffee, cocoa and cotton.

ICE Futures U.S. and its predecessor exchanges, which date back to 1870, have a strong history of overseeing position limits, accountability levels and exemption requests. We have market regulation teams in New York and Chicago. These teams employ market experts with decades of surveillance and compliance experience working in the derivatives markets that they oversee. This extensive, direct experience has guided our self-regulatory functions. In particular, the rules and procedures developed and used by our exchange to perform this important function were designed to incorporate the specific needs and differing practices of the commercial participants in each of our markets as those needs and practices have developed over time.

### **Self-Regulation Functions and Bona Fide Hedging**

ICE Futures U.S.' flexibility and market expertise are very important in the context of *bona fide* hedge exemptions. In addition to the swap market reforms, Dodd-Frank made changes to long standing position limit and hedge exemption rules in futures. The CFTC, in interpreting these rules, is broadly transforming the role of the CFTC in the daily administration of position limits and the granting of hedge exemptions, from an oversight role to direct regulation of markets over which the futures exchanges currently exercise such authority. As outlined in recent CFTC meetings of the Agriculture Advisory Committee and the Energy and Environmental Markets Advisory Committee, these changes to the current exchange structure and the limiting of *bona fide* hedge exemptions will likely cause risk

management issues for commercial users of the derivatives markets. As one example, the prohibitions or limitations on anticipatory hedging are likely to greatly constrain the risk management practices of energy and agricultural firms. It is worth pointing out that limiting hedging and risk management by commercial firms was obviously not the intent of the Dodd-Frank financial reforms.

In revisiting the CEA, we believe that the Committee should encourage the CFTC to reexamine the position limit proposal and in particular the effects on *bona fide* hedging and position limits in the non-spot month. For administering hedge exemptions, the CFTC's constrained resources and the significant time and resources that such an undertaking would require coupled with the time sensitive nature of exemption requests, we believe that the existing current structure reflects an efficient allocation of responsibility and resources that ensures commercial market participants will be able to continue to hedge their risks in a timely manner. In regard to position limits in non-spot months, the current position accountability regime has proven to be effective at balancing liquidity both in nearby month expiries and future month expiries. Our concern is that the implementation of limits that will apply in any month and all months may have the unintended consequence of concentrating volume and liquidity toward the prompt delivery months only. This would constrain an end user's ability to effectively hedge a long dated exposure. We believe that the current regime is efficient from a resource standpoint and has proved to result in well-functioning markets that aid the price discovery and risk management needs of end users. Therefore the current regulatory regime, which is overseen by the CFTC and incorporates rules subject to CFTC review, should remain in effect.

### **Conflicts in Global Financial Reform Efforts**

Over the past two years, regulators in the United States and Europe have been working to address conflicts in the two major financial reform efforts: Dodd-Frank in the U.S. and EMIR in Europe. Currently, the negotiations are focused on harmonizing the clearing rules between the two jurisdictions. ICE Futures U.S. appreciates the hard work that the CFTC and its counterparts are putting into equivalence; however, we note that many of these issues arise from the implementation of very prescriptive financial reform rules. After addressing the conflicts on clearing regulation, U.S. and European regulators must address conflicts in a number of other areas as the EU finishes its financial reform legislation. Each of these conflicts, if left unresolved, could seriously hamper the operation of the derivatives markets, given their inherently international nature.

Before financial reform, these conflicts in regulation were the exception, not the norm, because financial regulation was based on a common set of regulatory principles. For example, 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. Likewise, European regulators took a similar approach to U.S. markets. This approach was very successful, as it led to greater harmonization of regulation, yet allowed foreign regulators to oversee their institutions. We strongly encourage a return to this approach.

I would like to mention one more regulatory conflict: the one between global financial reform's commitment to derivatives clearing and the implementation of the Basel III capital requirements by international regulators. As noted by this Committee, the implementation of Basel III penalizes clearing by assessing a capital charge on initial margin collected by banks operating as clearing firms. Due to the way the capital charge is calculated, the impacts will be particularly acute on firms that hedge, given their directional exposure to the clearing firm. In addition, perversely, the capital rules discourage the collection of initial margin, which is the biggest risk mitigation of a derivatives transaction. Finally, the Basel Committee has delayed implementation of capital rules for uncleared transactions, which further disadvantages clearing.

### **Conclusion**

## Intercontinental Exchange

In conclusion, I would like to note our appreciation of Chairman Massad's and the CFTC's efforts to address many of the issues I have noted today through reexamining some of the rules affecting the futures markets. We also appreciate the efforts of this Committee to reexamine the CEA and the impact of Dodd-Frank.

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