April 16, 2012

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

RE: *Restrictions on Proprietary Trading and Certain Relationships with Hedge Funds & Private Equity Funds ("Volcker Rule")*

Mr. Stawick:

The IntercontinentalExchange, Inc. ("ICE") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("Commission") proposed rulemaking addressing restrictions on proprietary trading, commonly referred to as the "Volcker Rule". As background, ICE operates four regulated futures exchanges: ICE Futures Europe; ICE Futures Canada, the Chicago Climate Exchange and ICE Futures US. ICE also owns and operates five derivatives clearinghouses: ICE Clear US, a Derivatives Clearing Organization under the Commodity Exchange Act, located in New York and serving the markets of ICE Futures US; ICE Clear Europe, a Recognized Clearing House and Derivatives Clearing Organization located in London that serves ICE Futures Europe, ICE's OTC energy markets and operates as ICE's European CDS clearinghouse; ICE Clear Canada, a recognized clearing house located in Winnipeg, Manitoba that serves the markets of ICE Futures Canada; The Clearing Corporation, a U.S. Derivatives Clearing Organization and ICE Clear Credit**,** a U.S.-based CDS clearing house.   As a the operator a diverse set of exchanges and clearinghouses based in three countries, ICE has a unique perspective on the Volcker Rule.

ICE recognizes the effort of the Commission to implement Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Section 619 prohibits "covered banking entities" from engaging in "proprietary trading" with certain statutory exemptions. The proposed regulations implement the Volcker rule by clarifying the definitions and establishing some additional exceptions. Pursuant to Section 619, the Commission are required to implement the "Volcker Rule;" however, ICE believes that the Commission should refine its rules which unnecessarily extend the exterritorial reach of the Dodd-Frank Act and could impact liquidity on U.S. markets.

Extraterritorial Reach of the Volcker Rule

The policy underpinning the Volcker Rule is that banks operating in the United States have access to Federal Reserve discount loans and deposit insurance coverage;

therefore, proprietary trading by these banks is effectively subsidized by the U.S. taxpayer. Further, these entities help maintain the stability of the financial system and thus, proprietary trading may undermine a key pillar of the U.S. financial system if it is too risky. These principles present a valid argument for applying the Volcker Rule to a U.S. bank, but they present an equally valid argument for *not applying the rule* to foreign bank entities.

In January 2011, the Financial Stability Oversight Council ("FSOC") published a study on the impact of the Volcker Rule and its impact on foreign banks.[1] The study states:

> The Volcker Rule applies to domestic banking operations of foreign institutions. However, because of U.S. extra-territorial regulatory constraints, the statute does not restrict proprietary trading conducted by non-U.S. entities outside the United States. These entities are not eligible for discount window loans or federal deposit insurance.[2]

The proposed rule's definition of "banking entity" is much broader than anticipated by the FSOC study. Any foreign bank with even a minimal U.S. presence would be subject to the Volcker Rule. This leads to absurd results where multinational banks with one U.S. branch will be forced to change their business in order to comply with U.S. law even though the foreign bank itself is not eligible to access the Federal Reserve discount window or the insurance coverage. This will likely lead to foreign banks exiting U.S. markets, to the detriment of the U.S. economy. ICE suggests that the Commission amend the definition of banking entity to only apply the Volcker Rule to U.S. branches of foreign banks while excluding foreign banks.

In addition to modifying the definition of banking entity, the Commission should expand the exemptions for non-U.S. Trading. The statutory language of the Volcker Rule exempts transactions that take place "solely outside of the United States." Under the proposed rules, two additional factors are added to the test as to whether activity occurs "solely outside of the U.S":

- o The transaction must be executed "wholly outside of the U.S."; and
- o No party to the transaction may be a resident of the U.S

Given these requirements, foreign banking entities entering into trades in reliance on the "solely outside the U.S." exemption could not execute those trades on U.S.

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[1] Financial Stability Oversight Council, *Study & Recommendations on Prohibitions on Proprietary Trading & Certain Relationships with Hedge Funds and Private Equity Funds* (January 2011).
[2] *Id.* at pg 46.

exchanges or trading platforms.   Currently, U.S. exchanges serve as the international marketplace for many derivatives contracts, including such global contracts as LIBOR, Eurodollars, and agricultural products such as sugar and coffee. The Commission's interpretation of the Volcker Rule will serve as a material disadvantage to U.S. exchanges, precluding foreign banks from participating in U.S. markets. ICE suggests that the Commission define the scope of transactions solely outside of the U.S. to exclude transactions if the transaction is entered into by a foreign banking entity that is not organized under U.S. law and not recorded as an asset by a U.S. branch of the foreign banking entity.

Conclusion

   Again, ICE supports the Commission's efforts to implement the Volcker Rule, but ask that the Commission tailor their rulemaking to make sure that foreign banking entities are not precluded from trading on U.S. markets. We appreciate the opportunity to comment on this rulemaking.

Sincerely,

Trabue Bland
Vice President, Regulatory Affairs and
Assistant General Counsel
IntercontinentalExchange, Inc.