Testimony of Intercontinental Exchange Chairman and CEO Jeffrey Sprecher before the U.S. Senate Banking, Housing & Urban Affairs Committee on Equities Market Structure

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Chairman Johnson, Ranking Member Crapo and members of the Committee, my name is Jeff Sprecher and I am the founder, Chairman and Chief Executive Officer of Intercontinental Exchange, or ICE. We very much appreciate the opportunity to appear before you today to share with you our views on the U.S. equity markets.

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. In the past 14 years, we have grown our business substantially from a startup company in Atlanta to a global company with 11 exchanges and five central clearing houses in the US, Europe and Asia.

Much of our growth can be attributed to solving complicated problems by investing in existing businesses and making them more efficient and transparent to the benefit of our clients and the broader marketplace. We have inevitably faced headwinds as a result of challenging the status quo but believe strongly that our vision, together with our ability to work with regulators and customers, is what has allowed us to be here today.

In November of last year, ICE completed its acquisition of NYSE Euronext. I quickly learned that operating an equities exchange comes with a much higher profile given the public price discovery function it performs. Combined with the New York Stock Exchange's role in the global capital markets, we understand the strong public interest and economic importance of well-functioning markets. Meeting with participants from every corner of the securities market, it is clear that the business has changed in less than 10 years. While some of this change has been beneficial, the equities market has become far more complex and fragmented than participants want it to be, and that we believe it needs to be. We believe competition among trading venues is important to markets, but also that there are other equally important factors, such as the ability of buyers and sellers in a marketplace to meet and compete with each other.

Although we may not all agree on the details of an equities market structure, I think there are a few points of agreement among the panelists today worth highlighting. First, the capital markets are a critical tool that businesses need to permit investment in new companies and to expand existing ones. Second, one of the most important factors in maintaining a strong capital market is the trust and confidence of issuers and investors that the market will be fair. And third, in our current markets, investors – particularly individual retail investors – enjoy greatly improved, cost-efficient access to the stock market.

ICE, however, believes that because markets are not stagnant, there are improvements that can be made in response to the market's evolution that will benefit investors and market intermediaries if we simplify the structure and realign incentives to improve the fairness of markets to investors.

There are several issues we have raised and continue to question. For example, we do not believe it is fair that some investors are permitted to trade in dark markets without either first interacting with lit markets or providing some tangible benefit to the investor such as meaningful price improvement or size improvement. We question whether the maker-taker pricing model used by trading venues to compensate liquidity providers adds to the complexity problem and increases the appearance of conflicts of interest that brokers face in executing trades on behalf of clients. We also have concerns about the rising level of fragmentation and believe that the increased technology cost and risks that are born from maintaining connections to as many as 60 trading centers is unnecessary and ultimately increases costs to investors.

While Regulation NMS sought to increase competition among markets and consequently increased fragmentation, the costs associated with maintaining access to each venue, retaining technologists and regulatory staff, and developing increasingly sophisticated risk controls are passed on to investors and result in unnecessary systemic risk. The fragmentation also decreases competition among orders. Orders routed to and executed in dark trading centers do not interact or compete with other orders, which detracts from the price discovery function that participants in lit markets provide. The lack of order competition in a fragmented market negatively impacts markets in the form of less liquidity, information leakage and wider spreads.[1]

Excessive complexity also hurts market confidence and I believe deters some investors and entrepreneurs from accessing the public markets. Although there has been an uptick in IPOs recently, entrepreneurs don't seem as positive about taking their company public as they used to be, which limits job creation and economic growth. And investing in the market is the best available option that millions of Americans have to grow their savings. We need a resilient, long-term investor base that believes the markets are fair, operate on a sufficiently robust infrastructure and have minimal intraday volatility. And maintaining minimal intraday volatility is often a result of sufficient order competition.

As we highlight below, there are several items that we believe, if addressed, would help fix many of the cracks that have been brought to our attention since entering the equities business. However, the goal of our recommendations is largely grounded in the same goals as Regulation NMS: To increase competition among individual markets and competition among individual orders; and to minimize the transaction costs of long-term investors and thereby reduce the cost of capital for listed companies.[2] While NMS achieved its goal of increasing competition among markets,[3] the pendulum has swung too far at the cost of less competition among orders.

To correct these trends and rebalance the trade-offs of yesterday, we believe now is the time to take action to build the confidence of individual investors and companies seeking to access the public markets and to bring back the balance set out in the Securities Exchange Act of 1934.

While we should move forward expeditiously with pilot programs, where data gathering and analysis is necessary, my firm has outlined the following recommendations for the industry that we believe should be quickly adopted:

1. We should enhance order competition by giving deference to regulated, transparent trading centers where orders compete and contribute to public price discovery information. Limited exceptions could apply for those with unique circumstances.

2. We should eliminate and ban maker-taker pricing schemes at trading venues. Rebates that were used to encourage participants to quote on regulated, transparent markets add to complexity and the appearance of conflicts of interest.

3. We should lower the statutory maximum cap on exchange fees. Regulation NMS set a cap of what regulated transparent markets can charge to access a quote. In combination with giving deference to regulated, transparent markets and eliminating maker-taker rebates, we believe that the SEC should require lowered exchange access fees.

4. We should revamp the current market data delivery system. We support the SEC taking a closer look at the current Securities Information Processors and proprietary data feeds to adopt policies that promote fairness.

[1] Securities Exchange Act Release No. 51808, 70 FR 37,533, 37,608 n.990 (June 29, 2005) (Reg. NMS Adopting Release); Request for Comments on Measures to Improve Disclosure of Mutual Fund Transaction Costs, Investment Company Act Release No. 26,313, 68 FR 74,820, 74,822 (Dec. 24, 2003); Daniel G. Weaver Study available at: http://www.sec.gov/comments/s7-02-10/s70210-127.pdf. John McCrank, "Dark Markets May Be More Harmful than High-Frequency Trading", *Reuters*, April 6, 2014 (http://www.reuters.com/article/2014/04/06/us-dark-markets-analysis-idUSBREA3508V20140406)

[2] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37498, 37501 (June 29, 2005) (Reg. NMS Adopting Release)

[3] There are currently 13 equities exchanges, none of which maintains more than 20% of consolidated average daily volume.

5. We should require increased transparency in the way that markets operate. The SEC should demand that all trading centers report trade executions in real time, and all routing practices should be disclosed by those trading centers and brokers who touch customer orders.

In summary, we believe that adopting these proposals will help to inspire confidence in the investing public in the US capital markets. Thank you again for inviting me to testify today and I look forward to your questions.