



Atlanta Chicago Houston London New York Singapore

January 30, 2006

The Honorable Reuben Jeffery III
Chairman
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

Dear Chairman Jeffery:

We are writing on behalf of ICE Futures (formerly known as the International Petroleum Exchange of London Limited, or "IPE"), in response to the letter to you dated January 26, 2006 from Senator Charles E. Schumer. As you are aware, on February 3, 2006, ICE Futures intends to list and commence electronic trading of a cash-settled futures contract linked to the price of West Texas Intermediate ("WTI") crude oil, in competition with the WTI contract traded on the New York Mercantile Exchange ("NYMEX"). In his letter, Senator Schumer requests that the Commodity Futures Trading Commission (the "Commission") rescind the no-action relief previously granted to ICE Futures, pursuant to which ICE Futures is permitted to provide U.S. persons with electronic access to its listed futures and option products, which would include the WTI contract. As explained below, Senator Schumer's request is based on a series of factual and legal misconceptions. His request, if granted, will also undermine years of Commission pro-competitive and pro-globalization policies and initiatives.

Background

IntercontinentalExchange, Inc. ("ICE") was organized in 2000 by a diverse group of global energy market participants for the purpose of establishing an electronic market for the trading of over-the-counter transactions in physical energy commodities and related derivatives. This market is operated as an "exempt commercial market," under Section 2(h)(3) of the Commodity Exchange Act ("CEA") and not, as Senator Schumer contends, pursuant to a no-action letter. Section 2(h)(3) was enacted by Congress as part of the widely praised, pro-market and pro-competitive Commodity Futures Modernization Act of 2000, which was passed by Congress in 2000.

ICE also owns a regulated futures exchange, ICE Futures, which was acquired by ICE in 2001 and was known as the "International Petroleum Exchange," or "IPE," until a corporate name change in November, 2005. Since its inception in 1980, ICE Futures has operated as a "Recognised Investment Exchange ("RIE")" under United Kingdom financial services legislation (most recently the Financial Services and Markets Act 2000, or "FSMA"). ICE Futures has always been operated and governed as a

separate legal entity from ICE. In this regard, ICE Futures has its own executive and a majority independent Board of Directors, chaired by Sir Bob Reid, one of the undersigned. ICE Futures is required under FSMA to meet various regulatory requirements, including a requirement to maintain sufficient financial resources, adequate systems and controls and effective arrangements for monitoring and disciplining its members, and preventing and detecting market abuse. Contrary to Senator Schumer's letter, ICE Futures (rather than ICE) is directly responsible for all of the regulatory compliance and surveillance involved in overseeing the WTI futures contracts, as well as all other contracts traded on ICE Futures. As an RIE, ICE Futures has been and remains fully subject to the regulatory jurisdiction of the United Kingdom Financial Services Authority ("FSA"), which administers a comprehensive regulatory scheme that the Commission has found on numerous occasions to be comparable to the regulatory scheme imposed under the CEA.

ICE Futures has offered electronic trading in certain of its contracts since 1997 and has made its electronic trading system available to U.S. participants since the original no-action relief granted by the Commission in 1999. ICE Futures offers electronic trading pursuant to an FSA approved technology services agreement with ICE. In April, 2005 (and partly in response to NYMEX's announced intention to establish open outcry trading in London to trade a competing Brent crude oil futures contract), ICE Futures closed its open outcry trading floor and now conducts all trading activities in its contracts electronically. Since the transition to fully electronic trading, both the Commission and the FSA have confirmed to ICE Futures that its regulatory status remains unchanged.

ICE Futures remains the leading energy futures market in Europe. Its Brent Crude oil futures contract and Gas Oil contract are the benchmark contracts on these commodities. Trading in all of these products is regulated and overseen by the FSA. In a letter dated January 26, 2006, a copy of which is attached, the FSA confirmed that it has no objection to ICE Futures proceeding with the listing of its WTI futures contract, which will be subject to the same regulation and supervision.

Given the global nature of the energy and commodity markets, and the increasing trend toward electronic trading, it is important, and even necessary, for ICE Futures to include a WTI contract in the range of products it offers to market participants. This is particularly necessary to afford the opportunity for those customers whose principal business is in Brent trading to trade WTI on the same platform, with the benefits of common clearing. ICE Futures faces a highly competitive environment in which customers have a range of alternatives for trading oil products on an OTC basis, and in which most leading global exchanges are known to be planning to introduce competing energy contracts. Indeed, all major futures and OTC contracts are traded globally and in all time zones, and the ability to provide electronic access to market participants worldwide, including access to the WTI contract by U.S. persons, is critical to the ability of ICE Futures to meet market demand. Moreover, it is important that ICE Futures offer its contract on an electronic platform as an alternative to the WTI futures contract offered by NYMEX in its open-outcry environment.

Response to Senator Schumer's Contentions

Senator Schumer's request that ICE Futures' no-action relief be rescinded is based on two incorrect premises, to which we respond in more detail below. First, he asserts that ICE Futures will not be listing and trading its WTI contract with "proper protection" risking "harm to U.S. consumers and indeed to the U.S. economy." Nothing could be further from the truth. As noted above, ICE Futures and its WTI contract are subject to comprehensive regulatory oversight by the FSA and ICE Futures and the FSA have agreed to provide the Commission with any information that it requests or requires. Second, Senator Schumer asserts that the ICE Futures contract is a "U.S. contract" and not a foreign futures contract and that it therefore is not covered by the Commission's no-action relief. This assertion is incorrect as a matter of law, consistent Commission interpretation and Commission and CEA policy.

The FSA Comprehensively Oversees ICE Futures and the Commission will have Full Access to Information

Through a series of no-action letters between 1999 and 2004, the Commission granted ICE Futures the authority to provide electronic access to its futures products to U.S. persons. The relief provided under those letters, it should be noted, is virtually identical to the relief afforded to a large number of other non-U.S. exchanges, including NYMEX in connection with NYMEX Europe, Limited ("NYMEX Europe"), its European affiliate. Indeed, it is interesting to note that, on the date of Senator Schumer's letter, NYMEX issued a press release announcing that it had obtained from the Commission the same no-action relief obtained by ICE Futures, allowing NYMEX Europe, to provide U.S. persons with electronic access to its futures products. Senator Schumer, however, fails to note this fact in his letter and similarly fails to point out that NYMEX Europe has announced that, on February 6, 2006, it will, pursuant to this relief, be offering electronic access in the U.S. to its European-based and regulated Brent futures contract to compete directly with ICE Futures' Brent contract.

The relief granted to NYMEX Europe and ICE Futures, as well as other exchanges, has been premised on the Commission's finding that relevant foreign regulators – and, in particular, the FSA – administer a regulatory scheme comparable to that imposed under the CEA. In this regard, the letter issued by the Commission to NYMEX expressly refers to and relies upon the "comprehensive regulatory scheme" administered by the FSA.

The Commission has also reflected the no-action relief granted to foreign exchanges in a Statement of Policy issued in 2000, which allows those exchanges that have been granted the authority to provide electronic access in the U.S. to add contracts to their electronic systems without further Commission approval. This point was set forth explicitly in the relief recently granted to NYMEX:

“If additional futures and option contracts become available for trading through the ETSs, [NYMEX Europe] may make such futures and option contracts available for trading through the ETSs in the United States without obtaining written, supplemental no-action relief from Commission staff in accordance with the terms, conditions, and exceptions of the Commission's Statement of Policy regarding the listing of new futures and option contracts by foreign exchanges that are operating electronic trading devices in the United States pursuant to Commission staff no-action relief.”

In addition, the relief granted to ICE Futures and other exchanges has been based in part on its agreement to be subject to U.S. jurisdiction in connection with this no-action relief and the CFTC and the FSA have entered into extensive information sharing agreements, which authorize the Commission to obtain access to any information necessary to ensure compliance with the CEA and Commission regulations. In fact, as you know, the Commission and ICE Futures have had extensive discussions regarding the WTI contract and ICE Futures has been fully responsive to the Commission's inquiries. In addition, we understand that the FSA and CFTC have engaged in a dialog, and that these discussions relate to specific information sharing arrangements that would apply to the overall WTI Futures market. We also note that ICE Futures requires clearing members to submit daily client position reports for positions in the front month or front two months, depending on the contract. For example, the reporting requirement for the Brent futures contract applies to positions of 500 contracts or more. With respect to the WTI contract, the reporting requirement will initially apply to positions of 100 contracts or more. From these reports, total client positions are easily calculated. Copies of these reports are sent to the FSA on a weekly basis. In addition, ICE Futures actively monitors large traders and may, where appropriate, require liquidation of positions. Further, as an all-electronic trading market, ICE Futures is able to generate, and to offer to the regulatory authorities, real-time monitoring and reporting and highly accurate records of all trades.

The trading of WTI futures contracts on ICE Futures, therefore, will be subject to a comprehensive regulatory scheme administered by the FSA, information sharing with the Commission and a system of position reporting. ICE Futures also stands ready to provide any further information or cooperation that may be helpful to either of the agencies. Consequently, the implication that the trading of WTI futures on ICE Futures' electronic system will be unregulated is incorrect.

ICE Futures' WTI Contract Is a Foreign Futures Contract, Not a U.S. Futures Contract

Senator Schumer also asserts that the ICE Futures WTI contract will be a “U.S. contract” and not a foreign futures contract, and that it will therefore not be covered by the no-action relief. This assertion is incorrect. The relief provided to ICE Futures, NYMEX Europe and other exchanges applies to any “foreign futures contracts” listed by such exchanges. “Foreign futures contracts” is a term defined under Commission regulations to mean futures contracts traded on or subject to the rules of a foreign board of trade. Commission Regulations, §30.1(a). The term “foreign board of trade” is in turn

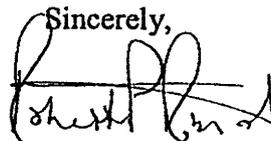
referred to under the CEA as an exchange located outside the United States. CEA, §4(b). ICE Futures is unquestionably a foreign board of trade, with its offices located in London and its markets subject to the jurisdiction of, and regulation by, the FSA. Nothing in the Commission's rules or in the no-action letters or orders granting U.S. persons access to foreign markets defines the term "foreign futures contract" as one based on a non-U.S. commodity. Conversely, to our knowledge, the Commission has never stated that a non-U.S. exchange providing electronic access to its markets to U.S. persons cannot include, among the contracts that are available electronically, those based on physical commodities delivered in the United States. To the contrary, the regulatory structure applicable to electronic access is focused solely on the location of the foreign market and its regulatory status.

This approach is grounded on sound policy and practical considerations. In this regard, we note that the WTI contract, like the Brent oil contract and other oil futures contracts, is based on a globally-traded commodity and must permit a wide range of deliverable grades and delivery locations. In fact, contrary to the implications in Senator Schumer's letter, the NYMEX WTI futures contract, by its terms, permits delivery of a number of foreign crude oils, including Brent, Forties, Nigerian Bonny Light and Colombian Cusiana. Indeed, given the fact that approximately 65% of the crude oil consumed in the United States is imported, a WTI contract must permit delivery of non-U.S. crude oil in order to be viable and acceptable to the trading market. These considerations serve to underscore the reason for the Commission's approach in defining a "foreign" contract based on the location of the exchange and its principal regulator.

Finally, it is significant to note that the Commission's position with respect to non-U.S. exchanges providing U.S. persons with electronic access is a significant part of the Commission's general regulatory approach on the globalization of the world's futures markets. As you noted in your speech to the Futures Industry Association, Japan Chapter, on January 17, 2006, "the CFTC permits direct screen access from the United States to bona fide foreign markets, in reliance on the foreign market's home regulatory regime. Today, 16 markets from 10 non-U.S. jurisdictions have received such permission, subject to access to books and records, submission to U.S. jurisdiction, and effective information-sharing and cooperative surveillance arrangements." Indeed, the value of a global, competitive marketplace has been clearly underscored by the increased liquidity and access experienced by global exchanges, which should not be unnecessarily hindered by regulation. As you also pointed out in your speech, "[c]ross-border competition and innovation are unnecessarily stifled and the global market cannot grow if jurisdictions impose redundant or inconsistent regulatory burdens. A sensible approach to global expansion calls for the recognition of comparable foreign regulatory frameworks. In this the CFTC is one of the pioneers."

For these reasons, there is no basis for the Commission to take the actions sought by Senator Schumer. We appreciate the opportunity to respond to Senator Schumer's letter and we of course stand ready to provide any further assistance in this matter than might be helpful to you.

Sincerely,



Sir Bob Reid
Chairman
ICE Futures



Jeffrey C. Sprecher
Chairman & Chief Executive Officer
IntercontinentalExchange, Inc.

cc: Senator Charles E. Schumer
Hon. Sharon Brown-Hruska
Hon. Michael V. Dunn
Hon. Fred Hatfield
Hon. Walter L. Lukken
Sally Dewar
Callum McCarthy
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