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# SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000  
FACSIMILE: 1-212-558-3588  
WWW.SULLCROM.COM

*125 Broad Street  
New York, NY 10004-2498*

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.

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April 28, 2004

COMMENT

Via E-mail and Federal Express

Ms. Jean A. Webb,  
Secretary,  
Commodity Futures Trading Commission,  
Three Lafayette Centre,  
1155 21st Street, N.W.,  
Washington, D.C. 20581.

Re: CFTC Request for Public Comment on ECE Petition

Dear Ms. Webb:

On behalf of IntercontinentalExchange, Inc. ("Intercontinental"), we respectfully submit this letter to respond to certain comments made by the New York Mercantile Exchange ("NYMEX") in its comment letter dated April 7, 2004.

NYMEX has made a number of comments claiming that allowing International Petroleum Exchange ("IPE") locals and IPE brokers access to the Intercontinental platform for OTC business would allow "a relatively unschooled and unsophisticated" group of electronic traders to access Intercontinental's ECM. NYMEX also has commented on the allegedly short list of conditions required by the IPE for electronic membership of the IPE and noted that this would mean that Intercontinental would, in effect, be opened up to retail participation. Intercontinental would like to correct various factual inaccuracies in NYMEX's account.

The IPE is a Recognised Investment Exchange (RIE) in the UK, regulated by the Financial Services Authority. It is subject to the FSA's requirements which, inter alia, require that the IPE must ensure that access to the RIE's facilities is subject to criteria designed to protect the orderly functioning of the market and the interests of investors (paragraph 4(2)(a) of the Schedule to the Recognition Requirements). In the detail underpinning this requirement, which is contained in the RIE Sourcebook, the FSA makes it clear that the RIE should restrict access as a member to persons:

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- over whom it can with reasonable certainty enforce its rules contractually;
- who have sufficient technical competence to use its facilities;
- who it is appropriate to admit to membership having regard to the size and sophistication of users of its facilities and the nature of the business effected by means of, or cleared through, its facilities and;
- (if appropriate) who have adequate financial resources in relation to their exposure to the UK recognised body or its central counterparty.

A copy of the appropriate section of guidance is enclosed for the CFTC's information. The IPE membership rules are required to be read in conjunction with these recognition requirements imposed on the IPE.

As has been made clear in the submissions and discussions with CFTC staff, the IPE requires that any electronic local (called an Individual Participant) wishing to apply for membership of the IPE must adhere to the following requirements:

- be able to demonstrate to the satisfaction of the IPE that the applicant is fit and proper to be a Member and will comply with the regulations;
- meets any applicable minimum financial requirements set by the Exchange;
- must register with the Exchange as a Responsible Individual and must be adequately trained and;
- satisfy the IPE that it will become party to a clearing agreement with a clearing member.

As part of the membership due diligence process, the IPE will request details of the Individual Participant's experience and knowledge of derivatives trading in addition to basic due diligence information (for example, whether they have been registered by another regulatory body, disciplined by any other regulatory body, been made insolvent in addition to the standard anti-money laundering identification checks). All of this information will be checked with the appropriate agencies. There is a stringent due diligence process undertaken on any applicant for membership to the IPE. Similar requirements are imposed on floor-based locals.

The IPE has to date not imposed minimum financial requirements on either floor-based or electronic locals; believing that this is more appropriately set by the clearing member who will impose risk management requirements on the member and will be calling for margin. In addition, in respect of Exchange-traded contracts, training on the appropriate electronic system would be available to the individual before they can access the system. In the event that the individual uses an ISV solution provided by his clearing firm, then this ISV and/or clearing firm will provide appropriate training. In the event that the individual uses WebICE (the Exchange's own front-end), then we will require the individual to undergo certain training in the use of this front-end.

Consequently, and contrary to the implication of NYMEX's assertions, there is no question of permitting retail participants to become members of the IPE nor is there any question of permitting "unschooled and unsophisticated" traders to access the Exchange electronically. Only appropriately experienced individuals will be eligible to be members of the IPE and therefore also eligible to access Intercontinental's OTC contracts.

We are concerned at the nature of NYMEX's comments which constitute in our view an unwarranted slur both on the quality of IPE regulation and the experience and expertise of its local base and are unfounded. The IPE maintains stringent requirements in respect of the experience and knowledge of its members in compliance with its recognition requirements. NYMEX appears to be more concerned with an attempt to prevent competition rather than raise well-founded regulatory concerns.

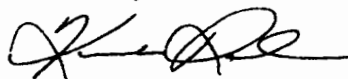
Intercontinental also wishes to comment on three other points in NYMEX's comment letter. Contrary to NYMEX's repeated assertions, Intercontinental does not object to allowing these qualified ECE participants to trade on any ECM and is not seeking to allow them to trade only on Intercontinental. Secondly, Intercontinental continues to recognize that its participants can only trade on a principal-to-principal basis and in advancing this petition does not seek to modify this requirement despite NYMEX's assertion to the contrary. Finally, NYMEX questions how Intercontinental intends to monitor the restriction that IPE local traders be based in the UK in order to qualify for the requested relief. Intercontinental determines the physical trading location of each Participant in two ways. Each Participant must specify its principal business address on its executed Participant Agreement. Additionally, as part of its Anti-Money Laundering checks for privately-owned companies, Intercontinental requires the presentation of the company's registered address. Also, the Participant User Administrator for each Participant must provide on the ICE new user enrollment form, address information and a telephone number for each user for whom an ICE user ID is requested.

Ms. Jean A. Webb

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Intercontinental appreciates the opportunity to clarify these points and to address the unsupported allegations in NYMEX's comment letter. We respectfully request that this letter be included in the public record of this petition.

Sincerely,



Kenneth M. Raisler

(Enclosure)

cc: Richard Spencer  
David Goone  
(IntercontinentalExchange)

Marc Leppard  
(International Petroleum Exchange)

Riva Adriance  
(Commodity Futures Trading Commission)

Recognised  
Investment Exchanges  
and Recognised  
Clearing Houses



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2.7 Access to facilities

2.7.1

01.12.01/001

Table Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(a)

**Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that – access to the [UK RIE's] facilities is subject to criteria designed to protect the orderly functioning of the market and the interests of investors;**

2.7.2

01.12.01/001

Table Schedule to the Recognition Requirements Regulations, Paragraph 19(2)(a)

**Without prejudice to the generality of sub-paragraph [19(1)], the [UK RCH] must ensure that – access to the [UK RCH's] facilities is subject to criteria designed to protect the orderly functioning of those facilities and the interests of investors;**

2.7.3

01.12.01/001

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In assessing whether access to a *UK recognised body's facilities* is subject to criteria designed to protect the orderly functioning of the market, or of those *facilities*, and the interests of investors, the *FSA* may have regard to whether:

- (1) the *UK recognised body* limits access as a *member to persons*:
  - (a) over whom it can with reasonable certainty enforce its rules contractually;
  - (b) who have sufficient technical competence to use its *facilities*;
  - (c) whom it is appropriate to admit to membership having regard to the size and sophistication of users of its *facilities* and the nature of the business effected by means of, or cleared through, its *facilities*; and
  - (d) (if appropriate) who have adequate financial resources in relation to their exposure to the *UK recognised body* or its central counterparty;
- (2) the *UK recognised body's* membership criteria are objective and are applied in an objective and non-discriminatory manner;
- (3) indirect access to the *UK recognised body's facilities* is subject to suitable criteria, remains the responsibility of a *member of the UK recognised body* and is subject to its rules; and
- (4) where access is granted to *members* outside the *United Kingdom*, there are adequate safeguards against *financial crime* (see also ■ REC 2.10).



Electronic access

2.7.4

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01.12.01/001

The FSA may have regard to the arrangements made to permit electronic access to the *UK recognised body's facilities* and to prevent and resolve problems likely to arise from the use of electronic systems to provide indirect access to its *facilities* by *persons* other than its *members*, including:

- (1) the rules and guidance governing *members'* procedures, controls and security arrangements for inputting instructions into the system;
- (2) the rules and guidance governing the facilities *members* provide to *clients* to input instructions into the system and the restrictions placed on the use of those systems;
- (3) the rules and practices to detect, identify, and halt or remove instructions breaching any relevant restrictions;
- (4) the quality and completeness of the audit trail of any transaction processed through an electronic connection system; and
- (5) procedures to determine whether to suspend trading by those systems or access to them by or through individual *members*.

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