COMMENT

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July 12, 2006

Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581
Attn: Office of the Secretariat

Received CFTC Records Section
07/14/06

Re: What Constitutes a Board of Trade Located Outside of the United States

To the Commodity Futures Trading Commission:

On behalf of ICE Futures, I am pleased to comment on the Commission's release (the "Release") regarding what constitutes a Board of Trade located outside the United States, 71 Fed. Reg. 34070 (June 13, 2006). We very much appreciate the opportunity to comment on the Release and to share with you our views on how to properly regulate exchanges in today's increasingly global and electronic environment. This issue is one of great importance not only for the Commission and futures market participants, but also for the broader financial community that today operates through markets that are increasingly unbounded by physical or geographic limitations. We therefore strongly support the Commission's effort to develop specific criteria for determining what constitutes a foreign board of trade ("FBOT") and to provide more definitive guidance to foreign exchanges. This process will enhance the ability of exchanges around the world to conduct their operations with clear knowledge of the regulatory regimes to which they are subject. We also believe, however, that it is critically important to ensure that the Commission's approach takes into account the circumstances and needs of global exchanges and markets, and builds into any regulation the requisite flexibility to allow exchanges to operate seamlessly both in the United States and in other jurisdictions.

We note initially that those parties who testified before the Commission's public hearing on this issue on June 27, 2006 uniformly expressed strong support for the no-action process that is currently in place in connection with the provision of electronic access by FBOTs to U.S. persons. These statements, and the comments that have been filed to date in response to the Release, have evidenced a consensus view that FBOTs should be subject to the primary jurisdiction of their home country regulators and, provided that the conditions established by the Commission through the no-action process have been satisfied, should not be required to register as DCMs. Indeed, Dr. James Newsome, Chief Executive Officer of the New York Mercantile Exchange ("NYMEX"), which has in the past publicly expressed support for the position that ICE Futures should be required to become registered as a DCM in connection with certain of its contract offerings, testified that NYMEX no longer believes that FBOTs must be registered as DCMs in order to provide electronic access in the U.S. In addition, the

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witnesses and commentators suggested that a number of the Release's proposed criteria for determining whether an FBOT was no longer "located outside the United States" – most notably the source of trading volume – are unworkable and are not likely to accomplish the Commission's objectives. We believe that the approach that we outline below, which reflects the current no-action regime and the statements of other interested parties – including registered DCMs – should form the basis of the Commission's oversight of the activities of FBOTs.

The concept that each exchange should be subject to the jurisdiction of one primary regulator has avoided duplication and conflicting regulation that would have made it unduly burdensome and expensive for participants to conduct their trading activities and for the financial markets to have grown and evolved in the manner that they have to date. Other regulators with an interest in the activities of the exchange can exercise secondary oversight and jurisdiction through consents to jurisdiction, and information sharing, with the primary regulator. This is the system that has been in place for many years and that has worked very well. Indeed, we are not aware of a single instance in which problems have arisen with respect to Commission jurisdiction over FBOTs under the current regime, or of circumstances in which the Commission has been unable to obtain information or documents or take action to enforce U.S. laws.

To fully appreciate the wisdom of this approach, one need only consider that ICE Futures products are accessible through trading screens in over 40 jurisdictions around the world. It is important for the Commission to consider not only the potential impact of the Commission asserting jurisdiction but the potential impact of additional regulators asserting jurisdiction around the world. Suddenly, our "interconnected markets" and "networked economy" would become unduly complex and burdensome, and the efficient operation of our markets would be adversely impacted. This would not be an outcome that would be beneficial to exchanges or the markets as a whole.

In our view, an FBOT should be defined as one that (i) has its principal offices, management and Board of Directors or other governing body in a non-U.S. jurisdiction, (ii) is subject to a comprehensive regulatory regime under the laws of that jurisdiction which the Commission has found to be comparable to the regime administered by the Commission, and (iii) is subject to appropriate information sharing arrangements between regulators. The clarity of responsibility in this system underpins effective supervision and avoids duplication which can be both costly and confusing. Global exchanges and the access to global liquidity offered by them are important factors in achieving the effective management of economic growth. For the reasons set forth below, we believe that many of the criteria identified in the Release as possible bases for determining that an exchange is subject to registration as a contract market are unworkable, and will serve only to create a system of duplicative and redundant regulation that will restrict global exchange competition and growth, each to the detriment of U.S. interests and the markets. Indeed, we note that if the ICE Futures WTI contract was trading on an exchange floor in London -- which would be equally accessible by U.S. persons, but without the efficiency and monitoring capabilities afforded by electronic trading -- none of these issues or proposed criteria would even arise.

Background

ICE Futures, which formerly operated under the name "International Petroleum Exchange," has been in existence since 1980 and is the largest futures exchange for the trading of energy products outside the United States. Its Brent Crude Oil Futures Contract and Gas Oil Futures Contract are the principal benchmarks for these commodities throughout the world. During 2005, over 42 million futures and options contracts were traded in ICE Futures' global marketplace. ICE Futures has operated as a regulated exchange since its inception, presently operating as a "Recognised Investment Exchange," or "RIE," under the United Kingdom Financial Services and Markets Act 2000 (the "FSMA"). This statutory scheme is administered by the United Kingdom Financial Services Authority ("FSA"), which serves as ICE Futures' primary regulator.

ICE Futures maintains its principal offices, its senior management, and its approximately 70 employees in London. ICE Futures has no U.S. based employees. Since 2001, ICE Futures has been owned by IntercontinentalExchange, Inc., a Delaware corporation with its principal offices in Atlanta, Georgia. Under its recognition principles, the FSA has mandated a degree of separateness between IntercontinentalExchange and ICE Futures in order for ICE Futures to maintain its regulatory status. The Board of ICE Futures consists of a majority of independent Directors, all of whom are approved by the FSA, and similarly conducts its meetings and other activities outside the United States. ICE Futures has a separate executive and a separate market oversight staff from the parent, and all significant decisions with respect to the operation of ICE Futures are made in the United Kingdom subject to the FSMA and the jurisdiction of the FSA.

ICE Futures is subject to a comprehensive regulatory scheme under the FSMA, which the Commission has already found in other contexts to be comparable to the scheme in place under the Commodity Exchange Act. See 68 Fed. Reg. 58583 (Oct. 10, 2003) (granting relief to FSA-regulated brokers, based on comparability of the regulatory regime and information sharing). The regulatory structure under the FSMA includes, among other things, financial and other fitness criteria for industry participants, reporting and recordkeeping requirements, procedures governing the treatment of customer funds and property, sales practices and other conduct of business standards, provisions designed to protect the integrity of the markets and prohibitions on fraud, abuse and market manipulation. As an RIE, ICE Futures is required under the FSMA to retain specified financial resources, operate its markets with due regard for the protection of investors, ensure that trading is conducted in an orderly and fair manner, monitor positions and movement of positions, maintain suitable arrangements for trade reporting, maintain suitable arrangements for the clearing of contracts, monitor compliance with its rules, investigate complaints with respect to its business, maintain rules to deal with the default of members, cooperate with other regulators through the sharing of information or otherwise, maintain high standards of integrity and fair dealing, and prevent abuse. The

FSA is required to monitor the activities of ICE Futures and is authorized to eliminate its recognition status if it fails to meet the statutory standards of the FSMA.

All persons trading on ICE Futures, or executing transactions on ICE Futures on behalf of customers, in or from the U.K., are also regulated by the FSA and are subject to fitness standards, financial requirements and recordkeeping and reporting obligations, as well as antifraud and market abuse prohibitions. Persons trading on ICE Futures from other jurisdictions, either for their own accounts or for customers, are subject to the jurisdiction of their home country authorities. ICE Futures continuously monitors all trading on its markets on a real-time basis and, where necessary or appropriate, conducts investigations into trading activity and initiates disciplinary action against market participants. Members of ICE Futures are subject to a comprehensive set of rules related to financial condition, business conduct, close out of positions in the event of a default and other matters.

Discussion

The factors cited above – ICE Futures' operations in the United Kingdom, the comprehensive regulatory scheme administered by the FSA to which ICE Futures is subject and the information sharing arrangements in place between the Commission and the FSA – have formed the basis of the no-action relief afforded by the Commission to ICE Futures and other non-U.S. exchanges, with respect to the provision of electronic access by U.S. persons to exchange products. The Commission established this position in the original no-action letter to ICE Futures in 1999 and has reaffirmed this position on several subsequent occasions, most recently following the announcement by ICE Futures, in April, 2005, that it would be closing its physical trading floor and that it would thereafter conduct trading exclusively on an electronic basis.

The Commission and its staff, therefore, have repeatedly reviewed the regulatory and self-regulatory regime that governs ICE Futures and have concluded that it provides a level of regulation and protection comparable to those afforded by the CEA and Commission regulations. Moreover, the Commission has information sharing agreements in place with the FSA that have recently been expanded after the launch of ICE Futures' West Texas Intermediate ("WTI") Crude Oil Futures Contract in January, 2006, and ICE Futures has agreed to provide the Commission with any information, and any access to books and records, that it requires in order perform its obligations under the CEA and Commission regulations. In our view, these are the principal factors that should be considered in determining whether it is necessary for the CFTC to assert jurisdiction with respect to a foreign board of trade offering screen access to customers within the United States. Indeed, in the current global environment, we do not believe that this determination can be made on any other basis.

With respect to information sharing in particular, we note the positive comments of Chairman Jeffery and Richard Shilts, the Commission's Director of Market Oversight, at the Commission's recent public hearing. These statements described a strong working relationship between the Commission and the FSA, and described the robust nature of the information sharing arrangements that are currently in place which allow the Commission to fulfill its regulatory responsibilities and market surveillance functions. As the Commission is aware, the information sharing arrangement presently in place with respect to ICE Futures' contract offerings includes agreements by each of the FSA and ICE Futures to provide regular reports to the Commission on trading activity on ICE Futures in the WTI, Heating Oil and Gasoline Futures Contracts, as well as access to books and records of ICE Futures or its members by the Commission upon its request. We believe that the Commission's assessment of the adequacy of the information sharing arrangements, together with the other factors we have identified above, make it clear that no purpose would be served, and no further regulatory benefits obtained, by requiring ICE Futures to register as a DCM.

Moreover, other parties who either testified at the Commission's hearing or submitted written materials in response to the Release have stated that DCM registration of FBOTs is neither necessary nor warranted. As noted previously, the Chief Executive Officer of NYMEX testified that NYMEX no longer believes that DCM registration by FBOTs providing electronic access in the U.S. is warranted. Similarly, the New York Board of Trade ("NYBOT") has filed a comment letter with the Commission stating that "the goal of the CFTC should be to foster cross-jurisdictional regulatory cooperation, comparability and coordination. Thus far, the no-action review process for FBOTs that wish to place terminals in the United States has served these purposes well. It is based on an evaluation of whether the FBOT is subject to a comparable, comprehensive regulatory regime and whether the CFTC has adequate information-sharing agreements with the foreign regulator of the FBOT." These of course are the views of U.S. DCMs, not FBOTs, and their statements have been supported and amplified, at the public hearing and in the comments on the Release, by all types of market participants and others.

To restate our position, the determination as to whether an exchange is a foreign board of trade should be made on the basis of: (1) the jurisdiction in which it is organized and in which its principal offices and executive management are located, and where Board meetings are held and decision-making is based; (2) whether it is subject to the jurisdiction of and regulation by a foreign regulatory authority under a regime that the Commission has found to be comparable to that administered under the CEA, and (3) the existence of appropriate information sharing arrangements between regulators. Moreover, with respect to the "comparabililty" of the regulatory structure, the Commission should, as it has in the past, rely on the ***general*** comparability of the regulatory scheme (and such factors as the objectives of the regulatory regime, the resources of the regulator, its history of effective oversight, protection of investors and maintenance of orderly markets, including detection and prevention of manipulation and other market abuses), rather than specific rules and regulations. No two regulatory schemes can realistically be expected to be identical, and market fundamentals such as better execution, deeper liquidity, and ease of transaction processing will continue as the primary drivers of customer choice rather than minor regulatory differences between markets.

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In this regard, we also note that the Commission has repeatedly found the U.K. regulatory scheme administered by the FSA to be comparable to the CEA and the Commission's oversight for purposes of the exemptions granted by the Commission pursuant to Rule 30.10. That rule permits the Commission to exempt brokers executing or clearing transactions on foreign boards of trade for U.S. persons as futures commission merchants or introducing brokers, based primarily on the Commission's determination of the comparability of the regulatory regime under which such brokers are regulated. The Commission has consistently found the FSA's regulatory scheme to satisfy the comparability standard. See, Foreign Futures and Options Transactions, 68 Fed. Reg. 58583 (October 10, 2003) (consolidating and updating Rule 30.10 relief afforded to persons located in the U.K. and noting that Rule 30.10 relief is "based upon the person's substituted compliance with a foreign regulatory structure found comparable to that administered by the Commission under the Act."). Based on the foregoing, we believe that the determination as to whether an FBOT is "located outside the United States" should be made on the basis of the criteria and factors identified above.

Conversely, and for many of these same reasons, we do not believe that the criteria identified in the Release as possible bases for determining that an FBOT is no longer "located outside the United States" are feasible or appropriate. First, the proposition that the location of systems or servers could determine the regulatory locus of an exchange is misplaced and fails to reflect the realities of the operation of electronic exchanges. Systems and servers are administrative back office functions that may be -- and often are -- outsourced to third parties for a variety of reasons (such as cost, convenience or systems quality). Outsourcing of technology functions to third parties that are better positioned to perform them is a major trend in today's "flattened" world, but is hardly a basis for asserting regulatory jurisdiction over a market. If ICE Futures chose to outsource its technology to Mumbai, should its markets suddenly become subject to primary regulation by an Indian regulatory authority? These decisions should have no bearing on the FBOT determination. Indeed, we note that the Chicago Board of Trade maintained servers in London and Paris for over a year, but was neither subjected to English nor French jurisdiction nor exempted from CFTC jurisdiction. Moreover, it would likely be impossible to make the determination based on the locations of servers or other systems in any event, because servers and systems are often dispersed throughout the world and may be moved from time to time.

Second, the source of trading volume is likewise a problematic basis upon which an FBOT could become subject to U.S. jurisdiction. For ICE Futures, as with many exchanges, trading volumes are sourced from a wide range of countries, including the United Kingdom, other countries in Europe and Asia, and the United States. Depending on a wide variety of factors, the source of trading volumes can ebb and flow across countries, and across arbitrary thresholds. It would seem imprudent to base regulation on a standard that can vary across time. For example, would an exchange become subject to regulation in the United States if it crossed a trading volume threshold one month, but fall outside U.S. jurisdiction in the following month if trading volumes subsided? What if primary trading volume in Brent crude futures (with a delivery point at Sullum Voe in the North Sea) shifted to the United States due to a significant disruption in U.S. domestic supply? These are only a few examples of why the source of trading volume is an unworkable basis upon which to assert jurisdiction.

A volume based approach (even if based on U.S. volume being the highest proportion of trading volume) is an invitation to other regulators to assert jurisdiction based on some lower trading volume threshold given the primacy of U.S. based market participants in many global capital markets. This will result in overlapping regulation and place undue burden on the markets. Regulators in all jurisdictions from which ICE Futures sources trading volume may protect their participants by regulating those who are offering and selling the traded product within their jurisdiction and by requiring their activities to comply with the regulations of the local regulator. This home country regulatory approach has often involved the implementation of information sharing agreements or other cooperative undertakings between local regulators and regulators with authority over the relevant exchanges. These arrangements have been effective and durable. To have the primary regulatory function be diffused across the individual markets is impracticable and serves no purpose.

It is significant that the parties who participated in the Commission's public hearing or who have submitted comments on the Release appear to be unanimous in their opposition to the use of this criterion. All parties that have addressed this issue, including industry representatives, exchanges, government officials and academics, have portrayed the reliance on volume as a criterion as problematic at best and more likely unworkable and counterproductive. As was pointed out at the hearing, it is often not easy or even possible to determine the true source of trading volume. In an era of global, electronic trading, traders in one location can pass their trades to a different location and have them entered into the exchange from that second location. For example, non-US market participants often trade on US and non-US exchanges through US-based brokers. In these situations, the exchange cannot know the actual source of the trading volume.

Third, the location of the delivery point for a product is a poor basis upon which to make the FBOT determination. Derivatives markets often exist outside the jurisdiction where a cash market for the commodity exists, and as one might expect in a global marketplace, many of the principal commodities on which contracts are traded are themselves fungible and interchangeable. Crude oil is a fungible commodity. For example, delivery obligations under a NYMEX WTI contract may be satisfied by delivery of WTI, U.K. Brent and Forties, Norwegian Oseberg, Nigerian Bonny Light and Qua Ilboe, and Colombian Cusiana. Moreover, a majority of the crude oil delivered into the United States and refined into end products does not come from Cushing, Oklahoma, the delivery point for the WTI crude oil contract, but is imported from approximately 100 countries in all parts of the world, and may be delivered in various locations within the United States. In addition, the overwhelming majority of futures contracts are not settled by delivery of the physical commodity, but instead are traded out of prior to contract expiry, and many, like ICE Futures' WTI contract, are cash settled.

The argument that a particular commodity (such as energy) is "significant" to the U.S. economy should not change this analysis. Many products that are traded on

U.S. markets, such as foreign interest rates, currency rates or securities prices, arguably have a far greater impact on foreign economies than the U. S. economy, yet these products are not subjected to duplicative regulation by foreign regulators. Basing a jurisdictional determination on this factor will lead only to duplicative and unnecessary regulation. As NYBOT noted in its comment letter:

> [W]hile the Commission must review such contract characteristics as the underlying cash market and delivery points to assure that a contract is not susceptible to manipulation, we do not believe that ascribing 'locations' on that basis is possible or that doing so would advance the public interest. For example, the commodity underlying NYBOT's sugar 11 contract is grown in, and delivered from, many foreign countries (to the exclusion of the U.S.) and significant trading in the contract is conducted by persons from many locations outside of the U.S. However, NYBOT is the premier market for this commodity and it is unlikely that any market integrity or customer protection benefits would accrue by subjecting this contract to regulation in multiple jurisdictions."

If the Commission were to rely on criteria such as trading volume or delivery point in determining whether an exchange is a FBOT, this could result in fragmentation in the regulation and operation of exchanges. An exchange might be subject to the Commission's jurisdiction with respect to some products, and to the jurisdiction of other regulators for other products. This would prove to be unworkable in many instances, as traders often seek to trade the differential between related products (for example, the spread between WTI crude oil and Brent crude oil) and would face legal uncertainty if certain products were one subject to one set of rules and other, related products were subject to another set of rules. Furthermore, if a foreign board of trade were to become subject to DCM registration by virtue of its U.S. trading volume in certain contracts, it would be required under the CEA to clear those contracts through a U.S. Derivatives Clearing Organization ("DCO"). This in turn would make it difficult to achieve cross-margining of products (which is a significant consideration for trading parties from the standpoint of capital efficiency), or would force the exchange to clear all of its products through the DCO to achieve this goal, which might be prohibited by its home country regulator. We, and others who testified at the public hearing or who have commented on the Release, are very concerned with the fragmentation and duplicative regulation that would result from contract-by-contract regulation of an FBOT, and believe that this would severely stifle competition between exchanges. If this were to occur, the users of the markets would ultimately suffer from the lack of competition. As Ben Stiehl of the Council of Foreign Relations noted in his testimony at the Commission's public hearing, the markets have benefited from increased competition between exchanges, such as the innovations generated by the entry of Eurex into the U.S. markets. This competitive environment would only be stifled by the type of duplicative regulation that would result from reliance on criteria such as trading volume or delivery points.

Fourth, and finally, the fact that a contract traded on an FBOT is priced against futures contracts traded on a U.S. DCM also irrelevant. The prices of contracts on global commodities are intertwined regardless of their price basis. Prices of contracts traded on U.S. DCMs are used worldwide for many purposes; indeed, that is the reason prices are required to be made public and U.S. courts have held that use of such prices is permissible. There is no reason to single out the use of DCM prices for trading of contracts listed on foreign boards of trade and to base jurisdiction on this factor alone. Certain U.S. DCMs today base their key contracts on settlement prices that are determined in foreign markets – perhaps most notably the Eurodollar contract traded on the Chicago Mercantile Exchange, which is settled against London inter-bank offered rate as determined by the British Bankers Association -- and there appears to be very little need for regulation by the foreign regulator given the CFTC's primary role in regulating DCMs. We also note that NYMEX recently announced a Brent Crude Oil Futures Contract for trading on its U.S. DCM that cash settles against the settlement price of ICE Futures' benchmark Brent Crude Oil Futures Contract. (See NYMEX July 7, 2006 Member Circular attached) Notwithstanding that ICE Futures is a U.K. RIE and the importance of the Brent Crude Oil Futures Contract as a pricing benchmark for U.K. delivered crude , we are unaware of either the Commission, the FSA or any market participant suggesting that NYMEX or its contract should be subject to direct FSA regulation. Products settled against contracts traded on a U.S. DCM should be treated no differently.

We understand that one of the principal issues being considered by the Commission is the potential need for increased market surveillance and the role of speculative position limits. In this regard, however, we note that the contracts traded on ICE Futures that are based on WTI or other commodities deliverable in the U.S. are all cash-settled, and the Commission itself has acknowledged that there is less of a need for market surveillance in connection with cash settled contracts. For this reason, the Commission has stated that "[t]he size of a trader's position at the expiration of a cash-settled futures contract cannot affect the price of that contract because the trader cannot demand or make delivery of the underlying commodity. The surveillance emphasis in cash-settled contracts, therefore, focuses on the integrity of the cash price series used to settle the futures contract." (CFTC Website, www.cftc.gov, June 21, 2006) Therefore, the cash-settled contracts offered by ICE Futures, which are settled against settlement prices on a U.S. DCM, do not raise the surveillance concerns that exist in connection with physically delivered markets. In his testimony at the Commission's public hearing, Ben Stiehl of the Council on Foreign Relations, as well as other witnesses, including representatives of DCMs, similarly stated that cash settled contracts should be treated differently for purposes of position limits. Moreover, ICE Futures provides the FSA with reports of large positions in its cash-settled futures contracts, which are available to the Commission pursuant to the information sharing agreements that are currently in place.

Conclusion

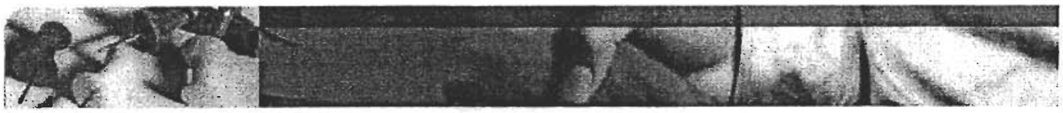
For the reasons stated above, we believe that the current regime is the most workable, and that burdening the markets with additional layers of unnecessary regulation will ultimately lead to a result (less efficient markets) with consequences that are the opposite of those hoped for by the public. We therefore urge the Commission, if it deems any action in this area to be warranted, to ensure that the approach it adopts is based on the three criteria we have outlined above: Specifically, an FBOT should be defined as one that (i) has its principal offices, management and Board of Directors or other governing body in a non-U.S. jurisdiction, (ii) is subject to a comprehensive regulatory regime under the laws of that jurisdiction which the Commission has found to be comparable to the regime administered by the Commission, and (iii) is subject to appropriate information sharing arrangements between regulators.

ICE Futures very much appreciates the opportunity to comment on the Release and we of course stand ready to provide any assistance in this process that might be helpful to the Commission's consideration of these important issues.

Sincerely,

Bob Reid

Sir Bob Reid
Chairman, ICE Futures (RIE)



Notice to Members

Notice No. 360
07/07/2006

Brent Financial Contract (BB) to Be Launched on the CME GLOBEX® Electronic Trading Platform

The NYMEX Board of Directors approved the launch of the Brent Financial Contract (BB) on GLOBEX® beginning on Sunday evening, July 23rd for trade date July 24th. The BB contract will continue to be listed on the NYMEX ClearPort® Clearing platform. All fees for trading the BB contract on GLOBEX® will be waived through December 31, 2006.

The GLOBEX® system will also list the WTI:Brent spread (WS:BB) which will be listed for up to 72 consecutive months. The WTI leg (WS) will be subject to normal fees, but the fees for the BB leg will be waived.

Please note the Brent Financial Contract (BB) is referenced in NYMEX Rule Book Chapter 692. The pertinent Large Trader Reporting Requirements (Rule 9.34), Expiration Position Limits (Rule 9.27), and All Month/Any One Month Position Accountability Levels (Rule 9.26) will remain the same for GLOBEX® traded Brent Financial Contract (BB) contracts.

The new contract will be available for trading on the CME GLOBEX® trading platform from 6:00 PM Sundays through 5:15 PM on Fridays.

This Brent Financial Contract fee waiver triggers the provisions of the New York Mercantile Exchange, Inc. (the "Exchange") Bylaws that were recently amended in connection with the closing of the General Atlantic transaction in March 2006, which contain new rights for owners of Class A Memberships as well as procedures to be followed for any proposed Bylaw or other changes affecting such rights. (These procedures are similar to the procedures that have been in place for nearly twelve years with regard to certain rule or product changes on the COMEX Division in relation to the NYMEX-COMEX merger agreement.)

Section 311 of the Exchange Bylaws contains rights pertaining to NYMEX "Core Products", which are defined to include various listed NYMEX futures and option contracts and also to include "similar or "look-alike" contracts or successor or similar contracts or products." In particular, Section 311 provides that any change in fees of any kind for Core Products is a "Special Matter," subject to approval by the owners of Class A Memberships. This Fee Schedule therefore constitutes a Special Matter. Accordingly, owners of Class A Memberships have fifteen (15) days from the date of this Notice to submit a petition by the owners of 82 Class A Memberships (representing at least 10% of the 816 outstanding Class A Memberships) requesting a Special Meeting of the owners of Class A Memberships to vote on the Fee Schedule. If such petition is not received within this time period, or if the Fee Schedule is approved at such a Special Meeting, the Fee Schedule will be deemed approved and will subsequently be submitted to the Commodity Futures Trading Commission (CFTC). A special meeting request form is attached to the end of this Notice in satisfaction of Exchange Bylaw Section 202 (B).

Inquiries regarding the aforementioned may be directed to Donna Talamo, Vice President – Office of the Corporate Secretary, at dtalamo@nymex.com or by fax to 212-301-4645.

RESPONSE FORM - REQUEST FOR SPECIAL MEETING

My name is ______________________ and I am the owner, either directly or by ABC, of __________ Class A Membership(s) in the New York Mercantile Exchange, Inc., and I hereby request a special meeting in response to the Fee Schedule contained in this Notice.

Signed By:

____

Print Name:

Should you have any questions or require any further information, please contact exchangeinfo@nymex.com