

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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February 9, 2004

By Facsimile and Federal Express

Ms. Jean Webb,
Secretary,
Commodity Futures Trading Commission,
1155 21st Street, NW,
Washington, D.C. 20581.

Re: IntercontinentalExchange ECE Petition

Dear Ms. Webb:

Attached is a letter submitted on behalf of IntercontinentalExchange, Inc. requesting a further expansion of the definition of eligible commercial entity. This letter supersedes our letter of November 25, 2003 on the same subject. Please consider our earlier letter withdrawn and replaced by the attached letter.

Sincerely,



Kenneth M. Raisler

(Enclosure)

cc: Gay Huey Evans
(Financial Services Authority)

Richard Spencer
David Goone
(IntercontinentalExchange)

Marc Leppard
(International Petroleum Exchange)

Ms. Jean Webb

-2-

**Riva Adriance
(Commodity Futures Trading Commission)**

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

Re: IntercontinentalExchange ECE Petition

Dear Ms. Webb,

On behalf of IntercontinentalExchange, Inc. (“Intercontinental”), we respectfully request a further expansion of the definition of eligible commercial entity (“ECE”) under Section 1a(11)(C) of the Commodity Exchange Act (the “CEA”). The proposals set forth below are submitted on behalf of Intercontinental, a Delaware corporation that operates an electronic platform (the “Platform”) for the trading of physical commodities and derivative products on such commodities among ECEs. The Platform is operated as an exempt commercial market (“ECM”) pursuant to section 2(h)(3) of the CEA. Intercontinental also owns the International Petroleum Exchange (the “IPE”), a U.K. recognized investment exchange (“RIE”) regulated by the Financial Services Authority (the “FSA”) under Part XVIII of the Financial Services and Markets Act 2000 (the “FSMA”) for the trading of energy futures and options products.

Our proposals cover two distinct groups of persons whom, when trading for their own account, we believe should be included in the definition of ECE:

- (i) Floor and electronic brokers (“Brokers”) who are firms located in the U.K. which are authorized and regulated by the FSA and are Members of the IPE. This would include IPE Floor Members and General Participants¹; and

¹ These terms are defined in Annex C.

- (ii) “Local Traders” located in the U.K. who are outside the scope of FSMA and therefore not regulated by the FSA but who are Members of or registered to the IPE. This would include IPE Local Members and Individual Participants.

The Commission has previously expanded the definition of an ECE to include persons registered under the CEA as floor brokers and floor traders.² In our view, the relief requested herein is a logical and appropriate extension of those orders. Like the persons encompassed within the Commission’s prior orders, the individuals at issue here are professionals who are regulated by the FSA and/or the IPE, who regularly trade on the IPE as part of their business and will utilize ECMs in connection with their trading activities.

Intercontinental consequently respectfully requests that the Commission expands the definition of ECE to include the following additional criteria for Brokers and Local Traders:

- (i) the Broker must be located in the U.K., be authorized and regulated by the FSA, and be a Member of the IPE;
- (ii) the Local Trader must be located in the U.K., be outside the scope of the FSMA and a Member of, or registered to, the IPE;
- (iii) the Broker or Local Trader must have as a part of its business the business of acting as a Broker or Local Trader but need not have any connection or experience in the underlying physical commodity; and
- (iv) the Broker or Local Trader must be an eligible contract participant (“ECP”) or, if the Broker or Local Trader is not an ECP, its trades on the ECM are guaranteed by a clearing member of a U.K. recognized clearing organization that is itself an ECP.

I. Background information to the proposal and the U.K. regulatory regime.

On January 16, 2003, the Commission issued orders that expanded the ECE definition to include floor brokers and floor traders who are registered with the Commission when acting in a proprietary trading capacity, subject to a series of conditions. Those orders recognized the fact that floor brokers and floor traders are sophisticated market participants who are subject to a comprehensive regulatory scheme. In order to recognize their value as both liquidity providers and market makers, we believe that it is appropriate for Brokers and Local Traders, who satisfy similar criteria, including having their trades guaranteed by a clearing member of a RIE, to be eligible for the same type of relief.

² See *In the Matter of the New York Mercantile Exchange, Inc. and the IntercontinentalExchange, Inc.*, 68 Fed. Reg. 2319 (2003).

We note initially that the Commission has previously recognized the general comparability of the FSA's regulatory scheme. In particular, pursuant to the exemption afforded by Part 30 of the Commission's rules, FSA authorized firms are permitted to market foreign futures and options products to U.S. persons without being separately registered with the Commission. This exemption is based on the comparability of the U.S. and U.K. regulatory schemes. The U.K. regulatory regime also establishes extensive authorization standards for floor and electronic brokers, and imposes a regulatory scheme that is comparable to the U.S. regulatory scheme in this respect as well. Therefore, allowing floor and electronic brokers who are authorized by the FSA to trade on the Platform as ECEs would be consistent with the approach taken by the Commission in granting Part 30 relief to firms located in the U.K. which are authorised and regulated by the FSA.

Further, the Commission has previously given no-action relief to the IPE regarding the provision of electronic trading access to persons located in the U.S., based in large part on the comparability of the regulatory schemes and the nature of the information-sharing arrangements between the CFTC and the FSA.³ The Commission is also familiar with the self-regulatory structure of the IPE, pursuant to submissions made by the IPE in connection with the no-action relief cited above.⁴ Moreover, the ECE definition should include Brokers and Local Traders because the IPE offers both electronic and floor trading and, from a policy perspective, it is no longer meaningful to differentiate between electronic and floor trading. For your convenience, we have described below the principal elements of the FSA regulatory framework for Brokers, the IPE regime imposed on Local Traders together with a description of the requirements which must be fulfilled before membership of the IPE is granted.

II. Background information on the FSA's authorization regime.

Under FSMA, in order to carry on a regulated activity within the U.K., a person must be authorized and regulated by the FSA or be exempt from the FSMA. The FSMA empowers the FSA to make rules governing the conditions which must be met in order to gain and maintain authorization, the conduct of business (including prudential requirements), the FSA's supervisory approach and the enforcement of its rules. These rules are underpinned by a series of high-level Statements of Principles for Businesses which require, among other things, that:

- a firm must conduct its business with integrity and with due skill, care and diligence;

³ No-Action Letter No. 03-17, from Michael Gorham, Director, Division of Market Oversight, CFTC to Marc Leppard, Director Regulation, Risk and Control, IPE, dated April 14, 2003.

⁴ As discussed in the letter from Marc Leppard, Director, Regulation, Risk and Control, IPE to John C. Lawton, Acting Director, Division of Market Oversight, CFTC, dated June 25, 2002 and as updated in the letter from Marc Leppard to Michael Gorham, Director, Division of Market Oversight, CFTC, dated February 6, 2003.

- a firm must take reasonable care to organize and control its affairs responsibly and effectively, with adequate risk management systems;
- a firm must maintain adequate financial resources; and
- a firm must observe proper standards of market conduct.

Although the main focus of the U.K.'s regulatory regime is on the investment firm itself, under FSMA the FSA is responsible for operating a single regime for approving persons who perform certain "controlled functions" for authorized firms. ("Approved Persons"). Approved Persons are required to comply with a set of principles, underpinned by a Code of Practice and enforced by disciplinary sanctions. All electronic and floor traders employed by an FSA authorized firm will be Approved Persons. Further details of this regime, the approval process, the requirements relating to fitness and propriety and the Principles is given in [REDACTED].

The conduct of business on a RIE is governed by both the rules of the RIE as well as the relevant FSA conduct of business rules. The key provisions of the FSA's Sourcebook which will apply are driven by the nature and experience of the client. In general terms, as trading on the IPE is conducted on a principal-to-principal basis, the FSA's guidance relating to Inter-Professional Conduct (the "IPC") will be applicable. This guidance acknowledges the relative experience and professionalism of market counterparties (such as other FSA-authorized firms) and provides exceptions from a number of the FSA's conduct of business rules. The IPC requires that, among other things, communications should not be misleading and transactions should not be carried out at non-market prices, and also provides general information on good market practices. Where business is being carried out on behalf of a customer, the investment firm must also comply with the relevant provisions of the Conduct of Business Sourcebook. The conduct of business rules provide a higher level of protection to customers, and require among other things, that communications should be clear, fair and not misleading, and that products should be suitable for the customer who should also be made aware of the risk of financial products and a number of rules relating to the execution of client orders.

The Commission will already be familiar with the FSA's regulatory approach for authorized firms. We would be pleased, however, to provide further information as required.

III . Background to the IPE membership process.

As previously stated, the IPE is a RIE under Part XVIII of FSMA. Further to the submissions made by the IPE on June 25, 2002 and February 6, 2003,⁵ the Commission will be generally aware of many of the obligations imposed on a U.K. RIE under FSMA. However, a U.K. RIE is required, among other things, to ensure that

⁵ See *supra* notes 3 and 4.

access to its facilities is subject to criteria designed to protect the orderly functioning of the market and the interests of investors. Among other things, this provision requires that access is limited to persons:

- over whom the RIE can with reasonable certainty enforce its rules contractually;
- who have sufficient technical competence to use the RIE's facilities;
- whom it is appropriate to admit to membership having regard to the size and sophistication of users of the RIE's 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 U.K. RIE or its central counterparty.

More details on the FSA's guidance on access to facilities is set out in [REDACTED].

As part of the move towards fully electronic trading on the IPE, the IPE has introduced a new 'electronic' membership structure. This structure was introduced on July 17, 2003 and, for the period when IPE products are traded on both the IPE trading floor and the Platform in parallel, will run alongside the existing 'floor' trading structure (i.e., on the open outcry market in the U.K.). Both the existing 'floor' and new 'electronic' membership structures are described in [REDACTED]. However, it is worth noting that the categories of membership under the existing 'floor' membership structure, namely Floor Member, Trade Associate Member and Local Member are replicated under the new 'electronic' membership structure by a similar threefold structure of General Participant, Trade Participant and Individual Participant. Therefore, a Local Member is the 'floor-trading' equivalent of an Individual Participant who will trade IPE products over the Platform. The relief requested herein, therefore, is a logical extension both of the relief previously granted by the Commission and of the development of trading on the IPE.

IV. UK regulatory regime for Brokers (i.e. IPE Floor Members and General Participants).

Brokers are firms which are able to transact business on their own behalf or on behalf of clients. When carrying out business on behalf of clients, these activities fall within the scope of the FSMA and therefore, where such a firm is located within the U.K., it will be authorised and regulated by the FSA for the conduct of investment business. A Broker is represented on the trading floor of the IPE by a number of individual traders. On the Platform, such traders will either be registered with the IPE as a Responsible Individual ("RI") on an individual basis, or operate under the Individual Trader Mnemonic provided to another RI within that firm. Such traders will be registered with the FSA as Approved Persons linked to that Broker. Individuals trading for those firms will be approved as either Controlled Function 21 (Investment Adviser) or Controlled Function 26 (Customer trading function).

In order to be a Floor Member of the IPE, an applicant must:

- be a firm or company;
- control its internal affairs in a responsible manner, maintain adequate internal records, put in place adequate arrangements in order to ensure that staff and directors are fit, proper, adequately trained and properly supervised, and implement well-designed procedures to ensure compliance with the Regulations;
- meet the minimum net worth requirement as stipulated by the IPE, supporting its claim to do so by a copy of its latest audited accounts or such other evidence as the IPE may require;
- maintain a properly established office (in a location which is acceptable to the IPE as they may determine in their absolute discretion) for the conduct of its business on the IPE;
- have a continuing interest in trading and, to the extent, if any, required by the IPE, undertake to maintain trading staff on the trading floor;
- be a clearing member of LCH.Clearnet or be accepted for such membership, or be a party to or satisfy the IPE that it will become a party to a Clearing Agreement with a company which is themselves a Member of LCH.Clearnet;
- if the applicant wishes to execute Contracts itself on the trading floor hold at least one seat upon his admission to Floor Membership; and
- satisfy such other requirements of the IPE as they may stipulate, supplying such documents in support thereof as they may require.

Under the rules of the IPE, an applicant for General Participant membership of the IPE must:

- be able to demonstrate, to the satisfaction of the IPE, that the applicant is fit and proper to be a Member;
- be able to demonstrate to the satisfaction of the IPE that it has sufficient systems and controls in place to ensure that all employees, agents and representatives who may act on its behalf or in its name in the conduct of business on the IPE are fit and proper with suitable qualifications and experience and adequately trained and properly supervised to perform such functions;

- maintain a properly established office (in a location which is acceptable to the IPE as it may determine in its absolute discretion) for the conduct of its business on the IPE;
- satisfy the minimum financial standing requirements for the time being stipulated by the IPE in relation to the relevant category of membership, supporting its claim to do so by copies of its last three years of audited accounts and by a copy of its latest audited accounts from time to time as they become available, or such other evidence as the IPE may require;
- be party to a Platform User Agreement, which is in full force and effect, in the form prescribed by the IPE from time to time for use by the Member of IPE ETS at the address notified to the Exchange;
- be able to access the Trading Server via a front end application which meets the IPE's conformance criteria;
- be a clearing member of LCH.Clearnet or be accepted for such membership, or be a party to, or satisfy the IPE that it will become a party to a clearing agreement with a clearing member;
- hold all necessary licenses, authorizations and consents or benefits from available exclusions, so as to allow such person to carry on business as a Participant on the Platform in accordance with all applicable laws and regulation; and
- provide details of the location of RIs and ensure that such details (and any related information including order routing) are advised to the IPE upon request throughout the period of membership.

The IPE undertakes a lengthy due diligence process in order to ensure that an applicant fulfils these requirements. Any application for membership must be approved by the IPE Board, although in practice this function has been delegated to the Authorisation, Rules and Conduct Committee. Further to the submissions made by the IPE on June 25, 2002 and February 6, 2003,⁶ the Commission will be generally aware of IPE's approach to regulatory oversight of its Members.

V. UK regulatory regime for Local Traders (i.e. IPE Local Members and Individual Participants).

IPE Local Members and Individual Participants are outside the scope of the FSMA 2000 (Regulated Activities) Order 2001 and therefore do not need to be authorized by the FSA when trading on the IPE on their own account or on behalf of other Members, although they must be Members of, or registered to the IPE. IPE Local

⁶ See supra notes 3 and 4

Members and Individual Participants can be individuals or corporations (where 90% of the share capital or voting rights are held by that individual). The IPE actively monitors the activities of Local Members and Individual Participants in relation to their IPE business and has the authority to sanction them in the event of their improper conduct. In order to trade on the Platform, an applicant for Individual Participant status must be registered with the IPE as an RI.

In order to become an IPE Local Member and therefore trade on the floor of the Exchange, an applicant must satisfy the Directors:

- that the applicant is fit, proper, adequately trained, and will comply with the Regulations;
- that the applicant meets the minimum financial requirements currently in force (supplying to the Directors such accounts and financial statements as they may require);
- that the applicant is party to a Clearing Agreement with a Floor Member who is a member of LCH.Clearnet;
- that the applicant is entitled, upon admission to Local Membership, to acquire or lease a Local Seat;
- that the applicant is either a sole trader or a company where 90% of the issued share capital is owned by the sole trader or 90% of votes of a company without share capital is held by the sole trader;
- each trader must be registered with the IPE and have passed the Registered Floor Trader (RFT) examination; and
- as to such other matters as may be stipulated by the IPE (supplying such documents as the IPE may require).

It is also worth noting that a subset of Local Traders, known as Local Tenants, lease their trading seats from a Local Member. In this situation, the Local Tenant will still need to meet the other criteria for Membership as described above, but are technically only registered with the IPE rather than being Members of the Exchange.

In order to trade on the Platform, an applicant for Individual Participant membership of the IPE must:

- be able to demonstrate, to the satisfaction of the IPE, that the applicant is fit and proper to be a Member;
- be party to a Platform User Agreement, which is in full force and effect, in the form prescribed by the IPE from time to time for use by the Member of IPE ETS at the address notified to the Exchange;

- be able to access the Trading Server via a front end application which meets the IPE's conformance criteria;
- satisfy the IPE that it will become a party to a clearing agreement with a clearing member; and
- provide on-going details of the applicant's place of business.

The IPE's standards ensure that like U.S. floor brokers and floor traders, Local Traders understand trading markets and are sophisticated and capable counterparties to trades. We believe that because the IPE provides such extensive authorization standards for Local Members and Individual Participants, there should be little concern about permitting these parties to trade on the Platform.

VI. Conclusion.

Intercontinental respectfully requests that the Commission expand the definition of ECE to include two distinct groups of persons trading for their own account subject to the criteria (i)-(iv) set forth on page 2 above:

- (i) Floor and electronic brokers ("Brokers") who are firms located in the U.K. which are authorized and regulated by the FSA and are Members of the IPE. This would include IPE Floor Members and General Participants; and
- (ii) "Local Traders" located in the U.K. who are outside the scope of FSMA and therefore not regulated by the FSA but who are Members of or registered to the IPE. This would include IPE Local Members and Individual Participants.

Including Brokers and Local Traders trading for their own account within the ECE definition recognizes that the commodity trading markets are now global in scope, encompassing corporations and individuals that operate within various states and regulatory systems. The global nature of the commodity trading markets is especially apparent on electronic, Internet-based exchanges such as the Platform. The FSA is a legitimate, non-U.S. regulatory body whose extensive regulatory regime and controls should be recognized and relied upon by the Commission to allow authorized floor and electronic brokers to be included as ECEs. Further, the IPE is a RIE regulated by the FSA for the trading of energy futures and options products and the supervisory regime in place should allow the Commission to permit Local Traders registered with the IPE to qualify as ECEs.

For the reasons set forth above, we believe that the relief requested is appropriate and warranted under the CEA and the Commission's prior orders, and that it is in the public interest.

We appreciate the opportunity to submit this Proposal. Please feel free to contact the undersigned at any time if you wish to discuss this Proposal further.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Raisler', written in a cursive style.

Kenneth M. Raisler

cc: Gay Huey Evans
(Financial Services Authority)

Richard Spencer
David Goone
(IntercontinentalExchange)

Marc Leppard
(International Petroleum Exchange)

ANNEX A

Background information on the UK's Approved Persons Regime

General introduction to the regime

Although the main focus of the U.K.'s regulatory regime is on the investment firms themselves, under the FSMA, the FSA is responsible for operating a single regime for approving persons who perform certain "controlled functions" for authorized firms. Approved Persons are required to comply with a set of high-level principles, underpinned by a Code of Practice and enforced by disciplinary sanctions. The FSA has also introduced a series of requirements relating to Training and Competence in order to encourage firms to take responsibility for ensuring the on-going competence of key staff.

Part V of the FSMA outlines the process for obtaining approval, the standards of conduct expected of approved persons and the FSA's disciplinary powers in relation to approved persons. Section 59(1) provides that persons carrying on the following activities will need to be approved by the FSA:

- (a) carrying on particular functions (i.e. "controlled functions") for an authorized person;
- (b) pursuant to an arrangement entered into by the authorized person (or a contractor of the authorized person, such as an appointed representative); and
- (c) in connection with the performance by the authorized person of a regulated activity;

The FSA also is required to maintain a record of all persons approved by it.

Controlled functions

The FSA has specified 27 controlled functions. These fall into two distinct groups:

- (1) Significant influence functions – i.e. those persons in positions which have a significant influence over the conduct of the firm's affairs – such as governing functions (a Board Director or Chief Executive Officer) or required functions (e.g. Compliance Officer or Money-laundering Reporting Officer); and
- (2) Customer functions – those persons performing advisory functions (such as giving advice to clients) or customer trading and investment management functions. Those Local Traders who elect to be authorized by the FSA will be approved under CF 21 "Investment adviser" or CF 26 "Customer Trading" function.

Approval process

In order to apply for Approved Person status, an individual must submit detailed information relating to, among other things:

- Personal details (such as name, address and qualifications);
- Information about the investment firm;
- Information about the nature of the arrangement between the applicant and the investment firm (the investment firm must confirm that the applicant has sufficient/required levels of Training and Competence);
- 10-year employment history;
- Responses to a number of questions “designed to establish whether the candidate is fit and proper” (such as convictions for dishonesty or outstanding debts relating to county court judgments);
- List of directorships currently held or held in the past 10 years; and
- Declarations from both the applicant and the firm.

The rationale behind the application process is to ensure that the individual is fit and proper to conduct trading activities. On the basis of the information provided on the application form, the FSA will consider the individual’s (i) honesty, integrity and reputation; (ii) competence and capability; and (iii) financial soundness. The FSA will not grant an individual Approved Person status or withdraw that status if the individual is not deemed fit and proper. A concurrent obligation is also placed on the authorized firm to take reasonable care in order to ensure that no person performs a controlled function without first being approved by the FSA. The authorized firm is also obliged to notify the FSA when an Approved Person ceases to carry out a controlled function.

Statements of Principle and Code of Practice for Approved Persons

The FSA’s Approved Persons regime creates a new system of standards of conduct, backed by statutory disciplinary powers and operating separately from the disciplinary regime applicable to authorized persons. At the core of this system are the Statements of Principle issued by the FSA which set out the conduct expected of an individual once approval has been granted. The Principles are supported by a Code of Practice which is issued by the FSA to help determine whether the conduct of an approved person complies with the Principles.

The Principles are high-level standards which apply to all approved persons in the day-to-day performance of their controlled function. There are seven principles, of which four apply to all Approved Persons and another three apply only to persons who carry out significant influence functions (i.e., senior managers). The four generic Principles require that an Approved Person:

- Principle 1 – Acts with integrity;
- Principle 2 – Acts with skill, care and attention;
- Principle 3 – Observes proper standards of market conduct; and
- Principle 4 – Deals with the FSA and other regulators in an open and cooperative way.

The Code of Practice gives examples of generic conduct which, in the FSA's opinion, would indicate compliance or non-compliance with the Principles.

Sanctions

The FSA is able to take disciplinary action if an Approved Person (a) fails to comply with one of the Principles or (b) has been knowingly implicated in a contravention by the firm of a requirement imposed on it by the FSMA. If an individual is found guilty of misconduct, the FSA has a wide range of sanctions available to it, including issuing a private or public warning, imposing a fine or withdrawal of Approved Person status.

Training and Competence

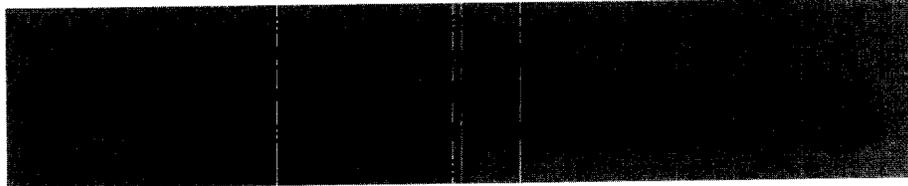
In connection with the Approved Persons regime, the FSA has imposed a series of requirements relating to training and competence of employees. These are set out in the FSA's Training and Competence Sourcebook and include a series of high-level commitments which authorized firms are expected to meet, as well as detailed examination requirements.

ANNEX B

FSA's guidance relating to restriction of access to recognized investment exchanges

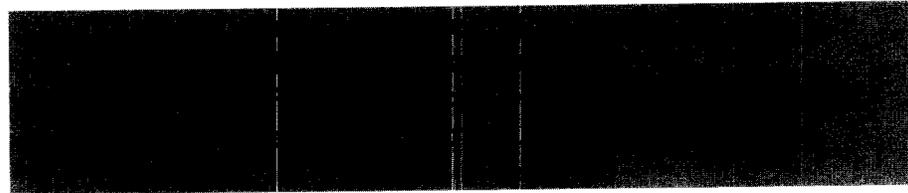
REC
2.7.1

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

A large black rectangular redaction box covering the content of the table referenced in REC 2.7.1.

REC
2.7.2

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

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REC
2.7.3

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).

**REC
2.7.4**

Electronic access

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.

ANNEX C

Information on the IPE's Membership Structure

A company may not trade directly on the IPE through the electronic Platform provided by Intercontinental unless they become a member of the IPE. As part of the move towards fully electronic trading on the IPE, the IPE has introduced a new "electronic" membership structure. This structure was introduced on July 17, 2003 and, for the period when IPE products are traded on both the IPE trading floor and the Platform in parallel, will run alongside the existing "floor" trading structure (i.e., on the open outcry market in the U.K.). Both the existing "floor" and new "electronic" membership structures are discussed below. Existing members were grandfathered to the new "electronic" structure as appropriate on July 17, 2003.

The existing "floor" membership

The IPE's existing "floor" membership structure comprises the following categories:

- **Floor Members:** Floor Members may transact business on the floor of the IPE for their clients, for their own account or on behalf of other members. A Floor Member must be a member of the London Clearing House (LCH) themselves or have a clearing arrangement with another Floor Member of the IPE who is a member of the LCH.
- **Local Members:** Local Members are individuals who trade on the market floor either for their own account or on behalf of other members (they are prohibited from trading directly on behalf of clients). Each Local Member must own or lease a minimum of one seat. Each Local Member must be registered with and subject to regulation by the IPE but are exempt from the need to be authorized by the FSA under the FSMA. Each Local Member applicant must have a valid IPE recognized clearing agreement in place. There are currently 82 Locals Members on the IPE Floor.

The new "electronic" membership

The IPE's new "electronic" membership structure went into effect on July 17, 2003. As noted above, this membership structure will run alongside the current structure until the IPE's transition to fully electronic trading is complete and the IPE's trading floor closes. Under this structure there will be three categories of members: General Participant, Trade Participant and Individual Participant:

- **General Participants:** General Participants may trade for their own account and on behalf of clients. A General Participant will be permitted to clear their own business, client business and business for non-clearing members upon payment to the IPE of a non-refundable clearing fee of £100,000 or by holding a minimum of 136,270 shares of Intercontinental Common Stock. In both situations the clearing

member must also be a member of the London Clearing House (LCH). General Participants must have a net worth requirement of £5 million (or £0.5 million if they do not intend to offer clearing services). There are currently 33 General Participants.

- **Individual Participants:** Individual Participants are effectively the existing “Local” Members - i.e. individuals or sole traders trading on their own account only. There are no net worth requirements imposed by the IPE, although they will need to prove their creditworthiness to their clearing firm.
- **Trade Participants:** Trade Participants are limited to trading for their own accounts. Trade Participants may have clearing or non-clearing status, depending on whether they are members of the LCH, although they are restricted to clearing proprietary business only. There are currently 26 Trade Participants.

Full details of IPE member categories can be found at www.theipe.com/trading/membership.asp?sp=membership_list

IPE Members are also required to sign an agreement prescribed by IPE’s Directors in which they agree to be bound by the IPE’s Regulations.

IPE Members may only engage in trading through the Platform to the extent that they are either authorized to do so pursuant to U.K. law, or are exempt from the authorization requirement. At present, with the exception of Banc One Capital Markets Inc. which was granted membership on November 12, 2003, all of the IPE’s active Members are based in the U.K., but the relief requested will in any event apply only to IPE Members based in the U.K. To the extent that IPE approves non-U.K. Members, they will not be able to operate under this relief.

In order to trade in IPE products on the Platform, a Member must register at least one “Responsible Individual”. A Member may, at the IPE’s discretion, register as many Responsible Individuals as the Member feels necessary according to the nature and scale of its business. The Responsible Individual may, at the IPE’s discretion, be assigned more than one Individual Trader Mnemonic (ITM) in order to conduct separate lines of business. A Responsible Individual is responsible for all business conducted under his ITM(s) and must ensure to the best of his ability that the business is conducted in compliance with the IPE regulations and other appropriate regulatory requirements. However, ultimate responsibility will still lie with the Member. A Responsible Individual must be contactable by the IPE while his ITM(s) is in use. Certain requirements have to be met when registering a Responsible Individual (including completion of the Responsible Individual Tutorial – an online tutorial and examination – to the Member’s satisfaction) and a declaration from the Member’s Compliance Officer or other senior management that they are satisfied that the applicant has met the requirements.