

**CFTC Letter No. 02-96**

**July 26, 2002**

**No-Action**

**Division of Market Oversight**

Mr. Marc Leppard  
Director - Regulation, Risk & Control  
International Petroleum Exchange  
International House  
1 St. Katherine's Way  
London E1W 1UY, England

Re: Request for Amendment of No-Action Letter in Respect of the International Petroleum Exchange of London

Dear Mr. Leppard:

On November 12, 1999, the Division of Trading and Markets of the Commodity Futures Trading Commission ("Commission")<sup>[1]</sup> granted to the International Petroleum Exchange ("IPE") permission to make its electronic trading and order matching system, known as Energy Trading System II ("ETS"), available to IPE members in the United States.<sup>[2]</sup> Specifically, the Division stated that it will not recommend that the Commission institute enforcement action against IPE or its members solely based upon IPE's failure to obtain contract market designation under Sections 5 and 5a of the Commodity Exchange Act ("Act"), if: (i) IPE members trade for their proprietary accounts through ETS in the United States; (ii) IPE members who are registered with the Commission as futures commission merchants ("FCM") or who are exempt from such registration pursuant to Rule 30.10 ("Rule 30.10 Firms") submit orders from United States customers for submission to ETS; and/or (iii) IPE members who are registered with the Commission as FCMs or who are Rule 30.10 Firms accept orders through United States automated order routing systems ("AORS") from United States customers for submission to ETS.

By letter dated June 25, 2002, you requested an amendment to the above no-action relief to permit IPE to make its UK Natural Gas (NBP) futures contract available in the United States on an electronic trading system ("ICE Platform") operated by IntercontinentalExchange, Inc. ("Intercontinental").<sup>[3]</sup> You indicate that the IPE intends to launch this new platform in July 2002 and is currently in the process of securing regulatory clearance from the Financial Services Authority ("FSA"), which will look to ensure that the IPE is able to meet all of the appropriate regulatory requirements with respect to the platform, that there is an appropriate arm's-length Technical Services Agreement between IPE and Intercontinental, and that there are adequate controls and processes governing the use of the platform.

With respect to the relationship between IPE and Intercontinental, you state that while Intercontinental is

the shareholder of the IPE and has the power to appoint the IPE Board, the IPE Board maintains prime responsibility for ensuring that the IPE meets the standards required by laws and regulations applicable to an UK RIE and that the regulatory function within the IPE is required to be independent from Intercontinental. Further, despite the migration of IPE's products onto the ICE Platform, the IPE's compliance and regulatory functions, as well as its market surveillance function, will continue to be performed from the IPE's principal offices in London. The IPE's disciplinary arrangements will remain unchanged by the transition of IPE's contracts to the ICE Platform.

With respect to the ICE Platform, you represent that in utilizing Intercontinental's technology and developing this technology in conjunction with Intercontinental for the use of IPE's futures and options contracts, both IPE and Intercontinental have adhered and will continue to adhere to the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of the International Organization of Securities Commission and in particular the ten principles agreed to by Working Party 7 of the Technical Committee in 1990. You state that the ICE Platform will utilize the same trade-matching algorithm for all IPE contracts traded on the ICE Platform. The trading server will match orders on the basis of a price and time priority algorithm.

With respect to the UK Natural Gas Contract, you indicate that the contract has not changed significantly since the no-action relief was granted in November 1999. Trading in the contract is conducted predominantly by UK and European counterparts. You indicate that, to the extent that trading is conducted from the United States or by entities based in the United States, IPE will report such volume to the Commission.

The Division has reviewed the requested amendment and its earlier no-action letter and has determined that granting the amendment, subject to two conditions, should not have a significant impact on the no-action relief as granted. Accordingly, the Division confirms that it will not recommend that the Commission institute enforcement action against IPE or its members solely based upon IPE's failure to seek contract market designation or registration as a derivatives transaction execution facility under Sections 5 and 5a of the Act, if the IPE makes its UK Natural Gas (NBP) futures contract available in the United States on the ICE Platform.<sup>[4]</sup> This no-action position is subject to compliance with the following conditions:

1. The relief is effective only with respect to the UK Natural Gas (NBP) futures contract, which you have indicated has limited U.S. participation. Notwithstanding 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,<sup>[5]</sup> if additional contracts or products become available for trading through the ICE Platform and IPE wishes to make such contracts or products available in the United States through the ICE Platform, IPE must request in writing and receive supplementary no-action relief prior to offering such contracts or products.

2. The relief is effective at such time as the Financial Services Authority determines that the IPE will

continue to meet recognition requirements as an UK RIE if it launches trading on the ICE Platform.

The Division notes that its no-action position does not relieve the IPE from compliance with the terms and conditions set forth in the November 12 Letter. As with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

The no-action position taken herein is taken by the Division only and does not necessarily reflect the views of the Commission or any other unit or member of the Commission's staff. It is based upon the information and representations contained in the IPE's request for no-action relief and the amendment thereto. Any materially different, changed, or omitted facts or circumstances may render this letter void.

If you have any questions regarding this correspondence, please contact Duane C. Andresen, an attorney on my staff, at (202) 418-5492.

Very truly yours,

Michael Gorham  
Director

cc: Ken Raisler, Sullivan & Cromwell  
Gregory C. Prusik, Vice-President, Registration, NFA  
Frank Zimmerle, Audit and Financial Review Unit, Division of Clearing and Intermediary Oversight,  
Chicago Regional Office

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<sup>[1]</sup> On July 1, 2002, the Commission was reorganized. Requests for no-action relief from the contract market designation requirement or derivatives transaction execution facility registration requirement are now reviewed by the Division of Market Oversight ("Division").

<sup>[2]</sup> Letter from John C. Lawton, Acting Director, Division of Trading and Markets, to Arthur W. Hahn, Esq., Katten Muchin & Zavis, dated November 12, 1999 ("November 12 Letter").

<sup>[3]</sup> In June 2001, Intercontinental successfully acquired the shareholding of IPE Holdings plc, the principal subsidiary of which is IPE, a UK Recognised Investment Exchange ("RIE"). Intercontinental is a corporation organized under the laws of the State of Delaware and is headquartered in Atlanta, Georgia. It owns and operates the ICE Platform and, by letter dated December 27, 2001, notified the Commission of its operation of the ICE Platform as an exempt commercial market in reliance upon the exemption set forth in section 2(h) (3) of the Act.

[4] The November 12 Letter referred only to contract market designation because at that time there was no provision in the Act or rules thereunder governing a derivatives transaction execution facility. Because of the creation of that category of board of trade under the Commodity Futures Modernization Act, the Division is amending its relief accordingly.

[5] Notice of Statement of Commission Policy Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade that Have Received Staff No-Action Relief to Place Electronic Trading Devices in the United States, 65 Fed. Reg. 41641 (July 6, 2000).