

**CFTC letter No. 03-08**  
**February 24, 2003**  
**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 July 26, 2002 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) 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>[1]</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.<sup>[2]</sup> On July 26, 2002, the Division of Market Oversight (Division) granted an amendment to the no-action relief to permit IPE to make its UK Natural Gas (NBP) futures contract available in the United States on the ICE Platform.<sup>[3]</sup>

By letter dated February 6, 2003, you requested an amendment to the no-action relief to permit IPE to move its early morning trading sessions in the Brent futures and Gas Oil futures contracts from the ETS platform onto the ICE Platform. You indicate that the Brent contract currently trades from 8:00am to 9:45am (UK time) on the ETS platform and the Gas Oil contract currently trades from 8:00am to 9:00am (UK time) and that, because of the time zone difference, you do not envision any significant trading

volume from the U.S. You represent that IPE's corporate governance, market supervision, and regulatory functions will remain substantially the same as described in your June 25, 2002 letter. Finally, you indicate that IPE is scheduled to make the two products available on the ICE Platform for the early morning trading sessions beginning February 27, 2003, subject to clearance from the Financial Services Authority (FSA) and confirmation that the Commission has no objections.

The Division has reviewed the requested amendment and its earlier no-action letter, as amended, 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 moves its early morning trading sessions in the Brent futures and Gas Oil futures contracts from the ETS platform onto 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 early morning trading sessions in the Brent futures and Gas Oil futures contracts, in which you have indicated that you do not envision any significant trading volume from the U.S. 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 U.S. through the ICE Platform, IPE must request in writing and receive supplementary no-action relief prior to offering such contracts or products. Similarly, if IPE wishes to make the Brent futures and/or Gas Oil futures contracts available in the U.S. through the ICE Platform at times other than the above-described early morning trading sessions, IPE must request in writing and receive supplementary no-action relief prior to doing so. These procedures will better enable Commission staff to monitor the listing of IPE products on the ICE Platform.

2. The relief is effective at such time as the FSA determines that the IPE will continue to meet recognition requirements as an UK Recognized Investment Exchange if it moves the early morning trading sessions in these two contracts from the ETS platform to 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, 1999 and July 26, 2002 letters. 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 amendments 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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[1] Letter from John C. Lawton, Acting Director, Division of Trading and Markets, to Arthur W. Hahn, Esq., Katten Muchin & Zavis, dated November 12, 1999.

[2] Letter from Marc Leppard, Director – Regulation, Risk & Control, IPE, to John C. Lawton, Acting Director, Division of Trading and Markets, dated June 25, 2002.

[3] Letter from Michael Gorham, Director, Division of Market Oversight, to Marc Leppard, Director – Regulation, Risk & Control, IPE, dated July 26, 2002.

[4] The November 12, 1999 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).