

**CFTC letter No. 03-12**  
**March 10, 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 Further 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 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. 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>[2]</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. On February 24, 2003, the Division granted an amendment to the no-action relief to permit the Brent futures and Gas Oil futures contracts to be traded on the ICE Platform during the periods of 8:00am to 9:45am (UK time) and 8:00am to 9:00am (UK time), respectively.<sup>[3]</sup>

By letter dated February 27, 2003, you requested a further amendment to the no-action relief to extend the early morning trading hours in the Brent futures and Gas Oil futures contracts on the ICE Platform. Specifically, you propose to extend the trading hours of the Brent futures contract to 2:00am to 9:45am (UK time) and the Gas Oil futures contract to 2:00am to 9:00 am (UK time). You indicate that because of the time zone difference, you do not envision any significant trading volume from the U.S. You represent that there have been no further systems developments and that IPE's corporate governance, market supervision, and regulatory functions will remain the same as described in your February 6, 2003 letter. Finally, you indicate that IPE is scheduled to make the two products available during these hours on the ICE Platform beginning March 13, 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 further 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 extends the trading hours of its early morning trading sessions in the Brent futures and Gas Oil futures contracts on the ICE Platform to the times requested in your February 27, 2003 letter.<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 extension of 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 extends the early morning trading sessions in these two contracts 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, 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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<sup>[1]</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.

<sup>[2]</sup> Letter from Michael Gorham, Director, Division of Market Oversight, to Marc Leppard, Director – Regulation, Risk & Control, IPE, dated July 26, 2002.

<sup>[3]</sup> Letter from Michael Gorham, Director, Division of Market Oversight, to Marc Leppard, Director – Regulation, Risk & Control, IPE, dated February 24, 2003.

<sup>[4]</sup> 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.

<sup>[5]</sup> 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).