

CFTC letter No.03-17
April 14, 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.^[1] Specifically, the Division of Trading and Markets 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 that amendment.^[2] 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.^[3] 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. On March 10, 2003, the Division

granted an amendment to the no-action relief 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).^[4]

By letter dated April 9, 2003, you requested further no-action relief to enable the IPE to make all of its contracts, including Brent Crude futures and option contracts, Gas Oil futures and option contracts, and UK Natural Gas futures contracts, available in the U.S. on the ICE Platform during the course of the entire trading day. As steps in the transition to making these products available throughout the trading day, you propose, effective April 16, 2003, to extend the trading hours of the Brent Crude futures contract to between 8:00pm and 10:00pm (UK time), the Gas Oil futures contract to between 6:00pm and 10:00pm (UK time), and the UK Natural Gas (NBP) futures contract to between 8:00am and 8:30am (UK time). You also propose, effective May 9, 2003, to make available for trading on the ICE Platform the Brent Crude option contracts from 2:00am to 9:45am (UK time) and 8:00pm to 10:00pm (UK time) and the Gas Oil option contracts from 2:00am to 9:00am (UK time) and 6:00pm to 10:00pm (UK time). You represent that there have been no material systems developments which impact on the no-action letter and that IPE's corporate governance, market supervision, and regulatory functions will remain the same as described in your February 6, 2003 letter. Finally, with respect to the future expansion of trading hours on the ICE Platform, you represent that IPE will notify the Commission whenever the trading hours of a particular contract on the ICE Platform change.

With respect to the ability to differentiate between IPE contracts and over-the-counter (OTC) products available for trading on the ICE Platform, accessed via the WebICE Global User Interface (WebICE) provided by ICE, you represent the following: (1) only Responsible Individuals (RIs) registered by IPE Members with the IPE will have access to the IPE contracts listed on the ICE Platform; (2) all IPE contracts are clearly identified as such on the ICE Platform, e.g., "IPE Brent Futures" or "IPE Gas Oil Futures"; (3) all IPE contracts are colored yellow on the ICE Platform whereas OTC products are colored white/red depending on available counterparty credit lines; and (4) the order entry, deal pre-confirm and deal confirmation 'pop-up boxes' for IPE contracts clearly state the trade is "Traded on and subject to the rules of the IPE."

With respect to clarifying to users that all trading in IPE contracts falls within the regulatory ambit of the UK's Financial Services Authority (FSA), you represent that access to the IPE contracts on the ICE Platform is restricted to RIs linked to IPE Member firms and that, in order to access the WebICE platform, each IPE Member must sign a Platform User Agreement that makes it clear that the FSA is the governing regulatory authority of the IPE. Further each RI must sign a Responsible Individual Registration form that includes an equivalent clause. Both documents clarify that all trading in IPE contracts is conducted in accordance with the IPE Regulations that are governed by the rules of the FSA. This is further reinforced on the deal pre-confirm and deal confirmation tickets described above. On the ICE Platform, the regulatory status of the IPE is clearly noted on the homepage and there is a link to the IPE's own website. Finally, you represent that, at the request of the Commission, if it is technically feasible, IPE would endeavor to include either on the trading screen, in appropriate 'pop-up boxes,' or elsewhere on the ICE Platform, a statement to the effect that the IPE is a UK recognized investment exchange subject to supervision by the FSA.

The Division has reviewed the requested amendment and its earlier no-action letter, as amended, and has determined that granting the further no-action relief 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^[5] if the IPE makes all of its current contracts, including Brent Crude futures and option contracts, Gas Oil futures and option contracts, and UK Natural Gas futures contracts, available in the U.S. on the ICE Platform during the course of the entire trading day.^[6]

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 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 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

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

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

[4] Letter from Michael Gorham, Director, Division of Market Oversight, to Marc Leppard, Director – Regulation, Risk & Control, IPE, dated March 10, 2003.

[5] 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.

[6] If additional futures and option contracts become available for trading on the ICE Platform, IPE may make such contracts available for trading through the ICE Platform in the United States without obtaining written, supplemental no-action relief from Commission staff in accordance with the terms, conditions, and exceptions of 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. 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).