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May 27, 2004

VIA FACSIMILE AND EXPRESS MAIL

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

COMMENT

Re: CFTC Request for Public Comment on ECE Petition

Dear Ms. Webb:

It is not the usual practice of the New York Mercantile Exchange, Inc. ("NYMEX" or the "Exchange") to submit supplemental responses in reaction to comment letters submitted by others, but we believe it would be useful for all concerned if we do so in this matter. In its April 28, 2004 letter, the Intercontinental Exchange, Inc. ("Intercontinental") asserted its view that our comments regarding the International Petroleum Exchange ("IPE") somehow constituted an "unwarranted slur" on the quality of the IPE's regulation. However, in our April 7, 2004 comment letter, we went out of our way to note that the IPE's procedures were both adequate and appropriate for the IPE's own intended purposes. Accordingly, we find Intercontinental's views to be unfounded and to constitute a serious misreading of our comment letter.

Among the various possible approaches to obtaining CFTC regulatory relief, it was Intercontinental's own choice to elect to request an interpretation from the CFTC pursuant to the Commission's authority under Section 1(a)(11)(C) of the Commodity Exchange Act ("Act"), and our comment letter was intended to consider Intercontinental's request on its own terms. By selecting this particular approach for relief, Intercontinental essentially is contending that the CFTC may reasonably determine as a matter of statutory interpretation that the proposed expansion in the eligible commercial entity ("ECE") category is consistent with the present structure, design and legislative intent of this statutory category.

The statutory language does not expressly include any natural persons, and the CFTC's prior order expanded the ECE category only to include floor brokers and floor traders who are registered with the CFTC, who are members of or have trading privileges on a designated contract market regulated by the CFTC and who additionally either qualify as an eligible contract participant ("ECP") or are financially guaranteed by a clearing member (of a derivatives clearing organization that is thus regulated by the CFTC) and that is itself an ECP.

In submitting this supplemental letter, we are endeavoring to assist the CFTC by clarifying the issue that is before the Commission, which in our view can be fairly summarized as follows.

Issue. With respect to the proposed expansion of the ECE category to include a class of natural persons who are:

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The New York Mercantile Exchange, Inc., is composed of two divisions. The NYMEX Division offers trading in crude oil, heating oil, unleaded gasoline, natural gas, electricity, propane, platinum and palladium. The COMEX Division offers trading in gold, silver, copper, aluminum, and the FTSE Eurotop 100[®] index, and the FTSE Eurotop 300[®] index.

- neither registered with the CFTC nor registered with any non-U.S. governmental regulatory agency nor directly subject to regulation by any governmental agency;
- not subject to any express financial requirements;
- not subject to any mandatory system training;
- not subject to any requirements respecting minimum trading volume on the exempt commercial market and not subject to any other express market-making obligations;
- eligible to trade on the exempt commercial market solely on the basis of obtaining floor or electronic trading privileges from a non-U.S. market that is not itself regulated by the CFTC and where such non-U.S. market explicitly disclaims any regulatory responsibility for the trading of such persons on the exempt commercial market; and
- not subject to any self-regulatory oversight by the exempt commercial market;

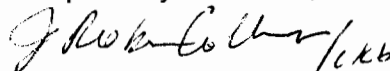
is such a proposed expansion of the ECE category consistent with Section 1(a)(11) and also "appropriate" within the meaning of Section 1(a)(11)(C)?

We do not believe that it slights the IPE in any way to simply note for the record that if the CFTC were to grant the relief sought by Intercontinental, in essence the Commission would be delegating the admissibility requirements for an exempt commercial market to a financial market that is neither registered with nor otherwise regulated by the CFTC. We also believe it is fair to note that the grant of Intercontinental's proposed relief would establish a precedent, and, in the absence of any specific restrictive conditions in the relief to Intercontinental, this relief thus might create "unintended consequences" and thereafter might thus be sought by any number of other markets in the U.S. or markets abroad that might seek equivalent relief for persons who have been granted floor or electronic trading privileges on their markets.

Does Intercontinental's proposed relief fit neatly within the contours of the statutory language and the CFTC's prior relief? The CFTC must exercise its own judgment in resolving this question. For the reasons included in this letter and in our original comment letter, we would respectfully urge the Commission to consider carefully all of the serious regulatory issues raised by Intercontinental's proposal.

NYMEX thanks the Commission for the opportunity to submit supplemental comments concerning the Intercontinental's ECE petition and would be pleased to furnish additional information in this regard. If you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,



J. Robert Collins, Jr.
President

cc: Chairman James E. Newsome
Commissioner Sharon Brown-Hruska
Commissioner Walter Lukken