



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

CFTC Letter No. 09-37
No-Action
August 20, 2009
Division of Market Oversight

Ms. Dee Blake
Director of Regulation
ICE Futures Europe
5th Floor, Milton Gate
60 Chiswell Street
London EC1Y 4SA
United Kingdom

Re: Amendment to No-Action Letter Issued to the International Petroleum Exchange
of London (now ICE Futures Europe)

Dear Ms. Blake:

The Commodity Futures Trading Commission's Division of Market Oversight has determined to add additional conditions, as set out herein, to the above-entitled no-action relief with respect to ICE Futures Europe contracts that settle against the daily or settlement price of any contract listed for trading on a U.S. market. These additional conditions, as described below, require ICE Futures Europe to provide Commission staff with trading and audit trail data, information with respect to its rules and its compliance and disciplinary action systems, oversight of ICE Futures Europe's ongoing compliance with its no-action relief, as well as a coordinated response in the event of emergency action. The five new conditions will build upon the enhancements adopted last year. They are designed to promote consistent regulatory treatment and enhanced oversight with respect to such linked contracts, facilitate greater market transparency, assure more effective surveillance, help to maintain market integrity and improve international coordination and cooperation.

On November 12, 1999, the Division of Trading and Markets (T&M) of the Commodity Futures Trading Commission (Commission or CFTC) granted to the International Petroleum Exchange of London (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, T&M 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

¹ Letter from John C. Lawton, Acting Director, T&M, to Arthur W. Hahn, Esq., Katten Muchin & Zavis, dated November 12, 1999.

designation under Sections 5 and 5a of the Commodity Exchange Act (Act),² if: (1) IPE members trade for their proprietary accounts through ETS in the United States; (2) 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 (3) 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.³ The November 12, 1999 IPE no-action letter was amended by the Division four times between July 26, 2002 and April 14, 2003 as trading of the contracts was transitioned from the ETS to the ICE Platform operated by IntercontinentalExchange, Inc., in Atlanta, Georgia and trading hours were extended.

On January 17, 2006, ICE Futures Europe notified the Division of its intent to launch a West Texas Intermediate Light Sweet Crude Oil Futures Contract (WTI Contract) that cash-settled on the price of a physically-settled Light Sweet Crude Oil Futures contract traded on the New York Mercantile Exchange (NYMEX), a U.S. designated contract market (DCM). The notification was provided pursuant to the Commission's Statement of Policy⁴ regarding the listing of new futures and option contracts by foreign exchanges that are operating electronic trading devices in the U.S. pursuant to a foreign terminal no-action letter. Subsequent to that notification, the Commission and the UK Financial Services Authority (FSA), ICE Futures Europe's regulatory authority, entered into a memorandum of understanding to share information with the goal of providing information to help to detect and deter any attempts to manipulate the market. On April 12, 2006, ICE Futures Europe notified the Division of its intent to launch the ICE Futures New York Harbour Heating Oil Futures Contract and the ICE Futures New York Harbour Unleaded Gasoline Blendstock (RBOB) Futures Contract each of which is cash-settled on the price of physically-settled contracts traded on the NYMEX.

Commission staff was concerned by the implications of ICE Futures Europe's listing for trading by direct access from the U.S. contracts which settle on the prices of contracts traded on a CFTC-regulated exchange. Such linkages create a single market for the subject contracts and, in the absence of certain preventive measures at ICE Futures Europe, could compromise the Commission's ability to carry out its market surveillance responsibilities. Because of the linkage, the trading of financially-settled contracts on ICE Futures Europe affects the pricing of physically-settled contracts traded on NYMEX. In order to address these concerns, Commission staff, on June 17, 2008, amended ICE Futures Europe's no action relief letter by adding

² 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.

³ The Division of Market Oversight (Division) assumed responsibility for foreign terminal no-action letters in a reorganization of Commission functions following enactment of the Commodity Futures Modernization Act of 2000.

⁴ 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). That Statement of Policy was rescinded and replaced by the Commission's Notice of Revision 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 Provide Direct Access to their Automated Trading Systems from Locations in the United States. 71 Fed. Reg. 19877 (April 18, 2006); corrected at 71 Fed. Reg. 21003 (April 24, 2006).

additional conditions, including requirements relating to the reporting of large trader positions, the publication of daily trading information in the linked contracts, and the establishment of position limits or accountability levels that are comparable to the position limits or accountability levels for the counterpart linked contracts at NYMEX.⁵ Commission staff believes that ICE Futures Europe is in compliance with these additional conditions.

Commission staff has recently reexamined the issues inherent in the linked contracts and concluded that there are additional measures that should be taken to further allay its concerns with respect to effective market surveillance and maintaining the integrity of the market. Accordingly, the Division is amending ICE Futures Europe's no-action relief, as described in the Prior No-Action Letters, by adding certain additional conditions with respect to any ICE Futures Europe contract that settles against any price, including the daily or final settlement price, of (1) a contract listed for trading on a DCM or derivatives transaction execution facility (DTEF), or (2) a contract listed for trading on an exempt commercial market (ECM) that has been determined to be a significant price discovery contract (collectively, "ICE Linked Contracts"). The purpose of these conditions is to ensure that ICE Futures Europe applies to any ICE Linked Contract principles or requirements that are generally comparable to the core principles applicable to the DCM, DTEF or ECM contract against which the ICE Linked Contract settles. The conditions include that ICE Futures Europe provide Commission staff with trading and audit trail data that will enable Commission staff to analyze trading in the linked contracts on both exchanges and detect potentially harmful trade practice activity, as well as additional information with respect to its rules and its compliance and disciplinary action systems. The conditions also call for a coordinated response in the event that the Commission institutes an emergency action with respect to one of the linked contracts at NYMEX.

Those conditions are:

1. ICE Futures Europe will provide CFTC staff, either directly or through its agent, with trade execution and audit trail data for the CFTC's Trade Surveillance System (TSS) on a trade-date plus one basis and in a form, content and manner acceptable to the CFTC for all ICE linked contracts;
2. ICE Futures Europe will provide for CFTC on-site visits for the purpose of overseeing ICE Futures Europe's ongoing compliance with its no-action relief; FSA staff may accompany CFTC staff on such oversight visits at ICE Futures Europe;
3. ICE Futures Europe will provide to CFTC staff, at least one day prior to the effective date thereof, copies of, or hyperlinks to, all rules, rule amendments, circulars and other notices published by the exchange with respect to all ICE linked contracts;

⁵ The November 12, 1999 Letter, together with its amendments, is hereinafter referred to as the "Prior No-Action Letters."

4. ICE Futures Europe will provide to CFTC staff copies of all Disciplinary Notices involving ICE linked contracts upon closure of the action. Such Notices should include the reason the action was undertaken, the results of the investigation that led to the disciplinary action, and any sanctions imposed; and
5. In the event that the CFTC, pursuant to its Commodity Exchange Act Section 8a(9) emergency powers authority, directs that NYMEX take emergency action with respect to a linked contract (*e.g.*, to cease trading in the contract), ICE Futures Europe, subject to information-sharing arrangements between the CFTC and FSA, agrees to promptly take similar action with respect to the ICE linked contract.

The Division recognizes that, to implement the foregoing, ICE Futures Europe needs to adopt rules, to implement system changes consistent with timelines established by Commission staff, and to take such actions in consultation with the FSA; in addition, the Commission understands that future rule and system changes are subject to approval by the FSA. Subject to ICE Futures Europe's satisfaction of these conditions within 120 days of the date of this letter, and continuing to satisfy the other terms and conditions included in the Prior No-Action Letters, the Division hereby confirms that it will not recommend that the Commission institute enforcement action against ICE Futures Europe or its members solely based upon ICE Futures Europe's failure to seek contract market designation or registration as a DTEF under Sections 5 and 5a of the Act. The Division's no-action position does not extend to any other provision of the Act, any other Commission regulations or orders, or to any registered futures association rules and does not excuse ICE Futures Europe or its members from compliance with any applicable requirements thereunder.

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. Finally, 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.

If you have any questions regarding this correspondence, please contact David P. Van Wagner, Chief Counsel, at (202) 418-5481, or Duane C. Andresen, Senior Special Counsel, at (202) 418-5492.

Very truly yours,

Richard A. Shilts,
Director