U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5260
Facsimile: (202) 418-5527

Division of
Market Oversight

June 17, 2008

Ms. Dee Blake
Director of Regulation
ICE Futures Europe
International House
1 St. Katherine's Way
London E1W 1UY, UK

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

Dear Ms. Blake:

On November 12, 1999, the Division of Trading and Markets 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, 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),[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

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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] 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.

extended (the November 12, 1999 Letter, together with its amendments, being hereinafter referred to as the "Prior No-Action Letters").

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) on February 3, 2006 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 Policy[4] 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 on April 21, 2006, each of which is cash-settled on the price of physically-settled contracts traded on the NYMEX.

A foreign board of trade listing for trading a contract which settles on the price of a contract traded on a CFTC-regulated exchange raises very serious concerns for the Commission. Such linkages can create a single market for the subject contracts consisting of both the underlying contract at the CFTC-regulated exchange and the cash-settled "look-alike" contract traded on the foreign board of trade. In the absence of certain preventive measures at the foreign board of trade, this circumstance could compromise the Commission's ability to carry out its market surveillance responsibilities, as well as the integrity of prices established on CFTC-regulated exchanges. As you are also aware, and as stated in the IPE November 12, 1999 no-action letter, "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."

Accordingly, the Division is amending ICE Futures Europe's no-action relief as described in the Prior No Action Letters by adding certain conditions with respect to any ICE Futures Europe contract which 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, "IFE Linked Contracts"). The purpose of these conditions is to ensure that ICE Futures Europe applies to any IFE Linked Contract comparable principles or requirements regarding the daily publication of trading information and the imposition of position limits or accountability levels for speculators

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[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).

as apply to the DCM, DTEF or ECM contract against which the IFE Linked Contract settles. The conditions will also ensure that ICE Futures Europe provides the Commission with information regarding the extent of speculative and nonspeculative trading in IFE Linked Contracts that is comparable to the information provided to the Commission by DCMs, DTEFs or ECMs for publication of the Commitments of Traders Reports.

Those conditions are:

1. ICE Futures Europe will impose on IFE Linked Contracts, by rule or otherwise, position limits or position accountability levels (including related hedge exemption provisions) that are comparable to the existing position limits or position accountability levels (including related hedge exemption provisions) as adopted by: (i) the DCM, DTEF or ECM for the contract against which the IFE Linked Contract settles or (ii) the DCM, DTEF or ECM for a financially-settled equivalent of such contract;

2. ICE Futures Europe will inform the Commission in a quarterly report of any member that had positions in an IFE Linked Contract above the applicable ICE Futures Europe position limit, whether a hedge exemption was granted, and if not, whether a disciplinary action was taken;

3. ICE Futures Europe will publish daily trading information (e.g., settlement prices, volume, open interest, and opening and closing ranges) that is comparable to the daily trading information published by the DCM, DTEF or ECM for the contract against which the ICE Futures Europe contract settles; and

4. ICE Futures Europe will provide to the CFTC, through the FSA, a daily report of large trader positions in each IFE Linked Contract for all contract months in a form and manner that:
   - can be fully integrated into the CFTC's market surveillance systems, including full identification of each position's beneficial owner comparable to the reporting that is provided by the DCM, DTEF, or ECM;
   - can, subject to the Memorandum of Understanding between the CFTC and FSA, be fully integrated into the CFTC's *Commitments of Traders Report,* including appropriate categorization of traders and their positions.

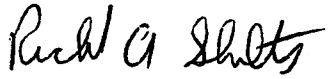
The Commission recognizes the need for ICE Futures Europe to adopt rules and implement system changes to implement the foregoing, and to take such actions in consultation with the FSA; in addition, the Commission understands that future rule and system changes are subject to approval by the FSA. Subject 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 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