

31st December 2004

Mr. Fabrice Demarigny
Secretary General
Committee of European Securities Regulators
11-13 avenue de Friedland
75008 Paris
FRANCE

Dear Mr. Demarigny

Response to CESR's Second Consultation Paper on the First Set of Mandates for Draft Technical Advice on Possible Implementing Measures on the Directive on Markets in Financial Instruments (Directive 2004/39/EC)

About the International Petroleum Exchange of London Limited

The International Petroleum Exchange of London Limited ('IPE' or 'Exchange') is Europe's leading energy futures and options exchange. It was established in 1980 and provides highly regulated open outcry and electronic marketplaces where industry participants can manage their price risk exposure in the physical energy market. The Exchange offers six main energy contracts - namely Brent Crude futures and options, Gas Oil futures and options, Natural Gas futures, UK Power futures – and aims to launch European emissions allowance derivative contracts shortly. The IPE became a wholly-owned subsidiary of IntercontinentalExchange Inc. ('ICE Inc.') on 10 August 2001.

The IPE has 140 Members based mainly in the UK, continental Europe and the United States, which range from global investment banks and energy trading companies to proprietary floor traders and daily volumes represent a notional value of over €5 billion. Our main contract, Brent Crude futures, is used in the complex for determining the price of two-thirds of the world's crude oil. The IPE is regulated in the UK by the Financial Services Authority ('FSA') as a recognised investment exchange ('RIE') under the Financial Services and Markets Act 2000 and the Exchange also has secured regulatory permissions to place its electronic trading screens across the European Union, in the USA and South-east Asia.

General comments

The IPE welcomes CESR's initiative in presenting a second round of consultation on issues where CESR's thinking has developed during and been informed by consultation with industry.

In the light of the increasing pace of regulatory reform, any mechanism to increase transparency of decision-making in Level II regulatory developments is vital.

The Exchange has been actively involved in the on-going debate around the scope and content of the Directive on Markets in Financial Instruments ('MiFID') and welcomes the opportunity to respond to CESR's Consultation Paper. The IPE is also a member of the Federation of European Securities Exchanges (FESE) and, having contributed to that response, supports the comments made therein. I would draw your attention in particular to the comments made by FESE in relation to transaction reporting by and on behalf of remote Members.

In responding to this Consultation Paper, we have limited our comments to the following key areas of specific concern:

- Tape recording requirements (Issue 4);
- Criteria for assessing liquidity in order to determine the most relevant market in terms of liquidity for financial instruments (Issue 9); and
- The minimum content and the common standard or format of the reports to facilitate its exchange between competent authorities (Issue 10).

Tape recording requirements (Issue 4)

We would recommend that CESR reconsiders its proposed approach of imposing a mandatory one-year record-keeping requirement for tape recordings of client orders originating from telephone conversations. As has been suggested in a number of industry responses, the main use of tape recordings is to resolve client disputes and this is normally done within days of the order's execution. Even in the case of regulatory investigation during which, from time-to-time, the Exchange requires firms to provide recordings of telephone conversations, any such investigations will normally be concluded within a few weeks and at most a few months after the execution of those orders. Given the required balance between regulatory benefit and burden to firms, we would therefore recommend that CESR reduce its proposed record-keeping requirements to a maximum of 3 months which is currently in line with the IPE's own regulatory requirements.

In doing so, CESR should also consider calibrating the record-keeping requirements depending on the type and nature of the 'client'. The IPE, in common with many derivatives markets, operates on a principal-to-principal (i.e. Member-to-Member) basis and therefore Members may be clients of another Member. Clearly the regulatory obligations owed to Members (ostensibly professional commodity traders, investment firms and banks) are very different from those which are quite properly owed to retail investors. Further, in many circumstances companies which operate in commodities – such as large producers or refiners – have set up dedicated trading subsidiaries which conduct all trading activities on behalf of the group company. For these entities, which are generally unregulated and may be exempt from the scope of MiFID (by virtue of the exemption in Article 2(b)), clients will be other group or affiliated companies. In our view the record-keeping requirements should also be reduced or waived in these situations.

CESR's attention is also drawn to the detailed cost analysis included in the joint response by, amongst others, the International Swaps and Derivatives Association and the Futures and Options Association.

Criteria for assessing liquidity in order to determine the most relevant market in terms of liquidity for financial instruments (Issue 9)

We welcome CESR's recognition in paragraph 14 on page 15 of the Consultation Paper that commodity derivatives are "unique contracts being designed and limited by a specific regulated market and only traded there" and therefore, in turn, fully support CESR's subsequent draft Level 2 advice.

The minimum content and the common standard or format of the reports to facilitate its exchange between competent authorities (Issue 10)

CESR's efforts to harmonise the minimum requirements for transaction reports are welcomed particularly since they allow the competent authority in each Member State to tailor the reporting requirements for different financial instruments. With regard to client identification codes, as noted above, the IPE operates on a principal-to-principal basis and therefore client identification codes are particularly important both for Members and the Exchange's Compliance Department (for reasons such as large position monitoring, etc.). However, under the IPE's rules, the reporting of client identification codes is not currently mandatory and therefore any move from the discretionary approach suggested by CESR would, in our view, require careful cost benefit analysis.

Should you have any questions on the comments made in this submission, or wish to discuss these matters further, please do not hesitate to contact me on +44 (0)20 7265 3608 or marc.leppard@theipe.com, or my colleague, Mark Woodward on +44 (0)20 7265 5729 or mark.woodward@theipe.com.

Yours sincerely,

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Director – Regulation and Compliance

cc. Ted Morris, FSA
Marc Cornelius, FSA
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Anthony Belchambers, FOA
Paul Arlman, FESE
Lawrence Walton, Joint Exchanges Committee