



31 January 2005

Mr Fabrice Demarigny
Committee of European Securities Regulators
11-13 avenue de Friedland
75008 Paris
France

CESR
ARRIVE
ON : 03/02-05
N° : 05-098

Dear Mr Demarigny

Response to CESR's Consultation Paper - Market Abuse Directive: Level 3 – Preliminary CESR guidance and information on the common operation of the Directive (Ref: CESR/04-505)

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 the opportunity to comment on CESR's consultation paper which outlines preliminary guidance on the operation of Directive 2003/06/EC on insider

dealing and market manipulation (hereafter ‘MAD’) at Level 3. The IPE has actively contributed to the discussions of the MAD throughout the legislative process and welcomes the efforts of CESR in ensuring that the Directive is implemented in a consistent manner across the European Union thereby creating a single market in financial services. We therefore warmly welcome the preliminary remarks made in the paper by Mr Kurt Pribil, Chairman of CESR-Pol, in encouraging market participants to draw CESR’s attention to any issues in the way that the MAD regime is implemented which may cause significant obstacles to the achievement of a single market in financial services.

The IPE is also broadly supportive of the guidance and information put forward by CESR in the Level 3 paper and would add the following brief comments, which we believe are important considerations for the common operation of the Directive going forward.

Accepted market practices

We note that in paragraph 2.2 of the Level 3 paper CESR has commented that the accepted market practices (AMP) regime also applies to inside information on commodity derivative markets and that although this aspect of the Directive is not dealt with in the Level 3 paper, CESR is mindful of the need to ensure the smooth operation of AMPs in this field in due course. This issue is critical for the commodity markets and we believe that the issue warrants CESR’s immediate attention and consequently we would welcome a public statement from CESR as to when it plans to produce guidance on this area. We would hope that CESR prior to formulating guidance would take appropriate advice from the markets in question.

We were comforted by the statement in 2.12 that CESR members placed some reliance on the rules of regulated markets in determining whether practices were acceptable or not. However, we feel that it may be helpful for a clear statement to this effect from CESR to ensure that there is no confusion in this area. While this will not always be conclusive, CESR should regard compliance with the rules of a regulated market as a strong indicator that the practice in question is an AMP in that jurisdiction, given that Exchanges’ rulebooks are largely approved by national regulators. We remain concerned that as currently drafted, the role of the market operator in relation to AMPs is understated.

We are, however, concerned that there should be a uniform list of accepted **and** unaccepted market practices in order that there is a level-playing field for participants and markets which may be competing with each other. We are also concerned that this list should bear in mind experiences of countries outside the European regulated markets. For example, if a European market is competing with a US market and the US market has a practice which is accepted by an appropriate US regulator, then the European market should be able to demonstrate that this practice should be allowable within Europe to its national regulator. However, if the national regulator disagrees, what is the mediation or appeal process for the European market concerned?

Market manipulation

We felt that the description in section IV was particularly helpful although CESR may wish to consider how this list is kept updated – not just for activity within Europe but also to consider how to update the list from activity which occurs on markets outside the EEA. In relation to the types of practice which CESR members consider would amount to market manipulation, we would suggest that CESR should clarify in the disclaimer, that the practices outlined in the paper constitute a non-exhaustive list.

Possible signals of suspected market abuse

The IPE also welcomes a standard reporting format in this area and notes the efforts already underway in the UK to allow market participants to use a common form to report both suspected market abuse and anti-money laundering.

In terms of the identification and reporting of suspected market abuse, the IPE believes that to ensure the timeliness of any such notifications by market participants, a balance will need to be found between the amount of information required in any notification and the need to make that notification ‘without delay’. Therefore, while it is helpful to have a standard reporting format, competent authorities should be open to receiving timely reports where some of the information requested is absent.

Please do not hesitate to contact me on +44 (0)20 7265 3608 or my colleagues Mark Woodward (+44 (0)20 7265 5729) or Andrew Tait (+44 (0)20 7265 3677) should you have any questions on the comments raised in this letter or wish to discuss any issues further.

Yours sincerely,



Marc Leppard
Director – Regulation and Compliance

cc: Stephen Hanks, HMT
Ted Morris, FSA
Paul Arlman, FESE
Laurence Walton, JEC