12 June 2003

Mr Fabrice Demarigny
Secretary-General of the CESR Expert Group on Market Abuse
Committee of European Securities Regulators
11-13 avenue de Friedland
75008 PARIS

Dear Mr. Demarigny,

Response to CESR's consultation on additional Level 2 implementing measures for the proposed Directive on insider dealing and market abuse

About the International Petroleum Exchange of London Ltd.

The International Petroleum Exchange of London Ltd. (IPE) is Europe's leading energy futures and options exchange. It was established in 1980 and offers five main energy contracts: Brent Crude futures and options, Gas Oil futures and options, and Natural Gas futures. The IPE is regulated by the FSA as a recognised investment exchange ('RIE') under Part XVIII of the Financial Services and Markets Act 2000. The IPE has 97 Members which range from global investment banks, energy trading companies and proprietary floor traders, and daily trading volumes represent a notional value of over $2 billion. Our main contract, Brent Crude Futures, is used in the complex for determining the price for two-thirds of the world's crude oil.

General Comments

The IPE welcomes the opportunity to comment on CESR's proposed additional Level 2 implementing measures for the proposed Directive on insider dealing and market abuse and also the opportunity to participate in the meeting of Commodity Markets Experts held in Paris on 3rd March 2003. The IPE has prepared its response with input from its Member firms, the Futures and Options Association and its Members (see attached list of Members of the IPE and FOA at Appendix 1). The IPE is also a member of the Federation of European Securities Exchanges and supports the comments made in the Federation's response.

Broadly speaking, and subject to the comments below, the IPE welcomes CESR's proposed additional Level 2 implementing measures in the areas of accepted market practices, inside information in the commodity derivatives markets and the notification of suspicious transactions. The proposed advice, particularly in relation to inside information in commodity derivatives, closely reflects the views expressed at the meeting of Commodity Markets Experts and the Joint Response to CESR's call for evidence on these measures prepared by Euronext.liffe, the IPE and the London Metal Exchange. Crucially, the proposals ensure that there is sufficient flexibility to meet the distinctive characteristics of the commodities derivatives markets without imposing inappropriate regulatory burdens borrowed from other financial markets and this flexibility should accommodate the differences between the OTC and exchange-traded markets.

In general terms, we fully support the underlying principles that:

(i) market operators and market participants should be fully involved in determining whether market practices are acceptable;
(ii) acting in accordance with accepted market practices should be a defence against accusations of market manipulation irrespective of whether the trades are executed on- or off-exchange;
(iii) any indicative market practices deemed acceptable should be considered and itemised at Level 3.

However, one substantive concern relates to the apparent absence of any acknowledgement of the roles and responsibilities of the operator of a regulated market (and by implication the operator of a Multilateral Trading Facility (MTF)). Under the current Directive on Investment Services (Directive 93/22/EEC) and the FESCO Standards for Regulated Markets (December 1999), regulated markets must meet a series of rigorous obligations such as, *inter alia*, ensuring the fair and orderly conduct of business, monitoring behaviour which is likely to damage the market and consulting with both the Competent Authority and Members prior to making rules changes or, for example, amending contract specifications. For regulated markets, these are enhanced in the current draft of the Directive on Investment Services and Regulated Markets.

In the context of CESR's advice, the role and responsibilities of the market operator are manifested in two key areas, namely: (i) the interplay between the operator of the regulated market or MTF and the national Competent Authority when assessing whether market practices are accepted; and (ii) the role of the operator of the regulated market in the reporting of and dealing with suspicious transactions.

In relation to the assessment of market practices, it is imperative that the operator of the regulated market or MTF is involved in the assessment of accepted market practices in situations where that market practice relates to trading on its market. It is equally important that the views of market participants are sought, particularly in the context of OTC dealings. Further, in procedural terms, when developing new products or trading procedures, there should not be undue additional obligations on the market operator to consult with the Competent Authority. On one interpretation of the first bullet point of paragraph 36, the Competent Authority could be obliged to consult with Competent Authorities across Europe. Regulated markets are already required to consult widely with both market participants and Competent Authorities before introducing new products or trading procedures but, in order to allow the market operator freedom to develop their business in a highly competitive environment without stifling innovation, it is important such developments are not hampered by additional mandated consultation before a market practice is accepted.

With respect to the notification of suspicious transactions, provision should be made so that reporting may be made to the operator of the regulated market or MTF rather than the Competent Authority where that notification relates to trading on that regulated market or MTF. In view of the overall aim of the reporting requirements to increase market integrity, it is important that the proper processes are put in place to allow the appropriate authority to handle such notifications.

In making these comments we would note that, although the framework proposed by CESR is sound, there is considerable work needed at Level 3 and therefore we will be working with national regulators in order to ensure that the approach proposed by CESR is, in practice, cost-efficient, deliverable and effective.

Response to specific questions

(a) Accepted market practices

Question 1: Is the proposed approach appropriate, focussing both on the characteristics of particular market practices and the procedures that Competent Authorities should follow?

The approach proposed by CESR appears to allow sufficient flexibility to Competent Authorities to respond to emerging and existing market practices in a logical and appropriate manner. However, in order for this approach to be effective, adherence to the 'overriding principles' laid out in paragraph 34 is extremely important. Particular emphasis should be placed on "fostering innovation and the continued dynamic development of financial markets." Further, the fact whether or not a particular practice is accepted will often turn upon the circumstances of each individual case.

The creation of a series of guidelines to be taken into account when assessing particular practices is welcomed and, subject to the detailed comments made in the response to Question 2 below, should provide a flexible framework to allow Competent Authorities to take account of needs of individual markets. However, we would also note that the Mandate asks CESR to draw together a series of guidelines rather than a 'non-exhaustive list of factors' and therefore Paragraph 35 should be re-drafted to ensure consistency.

As discussed in our general comments, with respect to the procedures to be followed by the Competent Authority in assessing particular market practices outlined in paragraph 36, the IPE is concerned that insufficient emphasis is placed on the role of the regulated market in assessing acceptability of practices where they occur on those markets. It is therefore important that the Competent Authority works closely with market authorities - particularly where the market authority takes front-line responsibility for monitoring trading on its markets and enforcing market rules - and, where appropriate, market practitioners. We are concerned that the role of Exchanges in regulating their markets is down-played in this advice.

Markets, such as the IPE, consider that appropriately high standards of market regulation is part of their brand and helps to sustain market users' confidence in participating in these markets. This role should be supported at Level 2 and Level 3.

Further, in respect of the first bullet point of paragraph 36, we are also concerned by the obligation to consult Competent Authorities in 'other jurisdictions where comparable markets exist.' We recognise consultation with such Competent Authorities is important, the reference to 'other jurisdictions' rather than other 'Member States' could infer a move towards global standards which

is beyond the jurisdictional grasp of the Directive. The phrase 'other jurisdictions' should therefore be replaced by 'other Member States' for clarification.

In light of these comments, we would suggest that the first bullet point of paragraph 36 is re-drafted thus:

"Competent Authorities should put in place suitable procedures to consult as appropriate relevant market participants (intermediaries, SROs, ~~market authorities~~, professional associations, consumers associations, issuers), ***the operators of relevant regulated markets****, and other Competent Authorities, including,* ***where appropriate****, those in other ~~jurisdictions~~* ***Member States*** *where comparable markets exist."*

Question 2: Are the suggested principles, factors and procedures appropriate? Would you consider adding more factors such as the degree to which a practice has a significant effect on prices and in particular on reference prices?

In light of the general comments made above, the IPE is broadly content with CESR's proposed implementing measures. However, we have the following comments on the proposed non-exhaustive list of factors to be taken into account by Competent Authorities when assessing particular practices.

(i) *Second bullet point of paragraph 35*

The second part of this paragraph, which appears to be aimed at practices on regulated markets, could raise concern if it were applied to the OTC markets. These markets, by their very nature, involve transactions on a bilateral basis, so the structure of the market could be regarded as leading to trades which would automatically "inhibit the interaction of supply and demand by limiting the opportunities for other market participants to respond to transactions." Clearly there is nothing abusive about bilateral trading and the structure of the OTC markets in themselves, and therefore we suggest the language of the second bullet point is recast to clarify the intention and to highlight the distinctions between trades conducted on a regulated markets and OTC transactions. Therefore, we suggest this paragraph should be redrafted as follows:

"the extent to which the practice in question takes into account the trading mechanism of the market concerned and enables market participants to react properly to the said practice by responding to the new market conditions in a timely manner. Practices ***on regulated markets*** *which inhibit the interaction of supply and demand by limiting the opportunities for other market participants to respond to transactions are less likely to be acceptable."*

(ii) *Third bullet point of paragraph 35*

The current draft correctly suggests that the fact that a practice is widespread may be a factor which should be taken into account in assessing whether it may be accepted. We agree with this broad assertion, subject to an important proviso. The converse influence – i.e. that if a practice is not widespread it is less likely to be accepted - is not true as the mere fact that a practice is not widespread does not suggest that it is in any way abusive. New and innovative practices, which are to be encouraged under the principles set out in Recital 43 to the Directive, are by definition not widespread at the time when they are emerging. Clearly CESR's implementing advice should not (and do not need to) provide a tool for enabling Competent Authorities to discourage the development of new market practices. We therefore suggest amending the third bullet as follows:

"consideration of the prevalence of the practice amongst intermediaries - ~~The more~~ where a practice is widespread this may indicate that is likely to be accepted ~~a practice is, the more likely it is that it will be accepted~~; ***but the contrary inference may not be drawn where a practice is not widespread since this may lead to the stifling of innovation in the market."***

(iii) *Fifth bullet point of paragraph 35*

This paragraph asks the Competent Authority to consider "the extent to which a practice breaches any applicable codes of conduct" but then notes that 'this will be less persuasive given the lower regulatory status of codes of conduct compared to rules or regulations." However, the regulatory status of such codes may, in practice, not be 'lower' than rules or regulations. By way of example, in the UK, under Section 119 of the Financial Services and Market Act 2000, the FSA is empowered to draw up a code *"containing such provisions as the Authority considers will give appropriate guidance to those determining whether or not behaviour amounts to market abuse."* It is therefore arguable whether, *de facto,* this Code has a lower regulatory status and therefore we would recommend the deletion of this part of the provision. There may, of course, also be codes of conduct which are not endorsed by the Competent Authority which should not have this status. In order to reflect these comments, the fifth bullet point of paragraph 35 should read as follows:

"the result of any investigation of the practice by any regulatory body, including the extent to which a practice breaches existing rules or regulations designed to prevent market manipulation on the market in question or comparable markets in the EU – it seems unlikely that a practice which breaches such rules or regulations could be regarded as acceptable. Similarly, the extent to which a practice breaches any applicable codes of conduct ***which have previously been endorsed by the Competent Authority*** *should also be considered****, taking into account the regulatory status of the Code in question.*** *~~, though this will be less persuasive given the lower regulatory status of codes of conduct compared to rules or regulations~~."*

(iv) *Sixth bullet point of paragraph 35*

In the derivatives markets, the linkage to the underlying cash or physical markets is particularly important.[1] Further, in order to ensure appropriate levels of investor protection, it is important that the size and sophistication of market participants – particularly the level of retail investors – is taken into account. These factors should also be considered by the Competent Authority in assessing particular practices. In light of these comments, we would recommend the sixth bullet point of paragraph 35 is amended as follows:

*"the structural characteristics of the market****(s)*** *in question,* ***or, where relevant, any related underlying market****, including the type(s) of financial instrument traded on the market, and the type* ***and sophistication*** *of market participants,* ***including the extent to which ~~of~~ retail investors are active ~~participation~~ in the market****."*

[1] As outlined in the Tokyo Communiqué on Supervision of Commodity Markets, Annex A: Guidance on Standards of Best Practice for the Design and/or Review of Commodity Contracts, page 17. A copy of this paper was attached to the Joint Response to CESR's call for evidence on these measures prepared by Euronext.liffe, the IPE and the London Metal Exchange or alternatively at http://www.cftc.gov/files/oia/oiatokyorpt.pdf

(vi) *Seventh bullet point of paragraph 35*

In line with the comments made in relation to the third bullet point of paragraph 35, the mere fact that a practice does not enhance liquidity or efficiency should not mean that it is unacceptable per se. Therefore, the seventh bullet point of paragraph 35 should be amended thus:

*"the degree to which the practice in question has an impact on market liquidity and efficiency. **In most, but not all circumstances**, practices which enhance liquidity and efficiency are more likely to be acceptable than those that reduce liquidity and efficiency."*

(v) *First bullet point of paragraph 36*

Please also note the specific drafting comments relating to the first bullet point of paragraph 36 outlined in the response to Question 1 above.

(vi) *Second bullet point of paragraph 36*

While there are considerable benefits for Competent Authorities, market operators and market participants in publishing the conclusions of the deliberations relating to the acceptability of market practices, it is important that the confidentiality of particular trading strategies and possible competitive issues arising from such disclosures are recognised. It is also worth noting that at Level 3, Competent Authorities may have to approach the issuing of generic conclusions about such deliberations within the confines of national legislation. It is therefore suggested that the second bullet point of paragraph 35 is amended thus:

"***generic** conclusions regarding the acceptability of market practices should be published to aid transparency for all market users."*

(vii) *Third bullet point of paragraph 36*

Market practices change for a number of reasons including the benefit of all market users. As currently drafted, the third bullet point of paragraph 36 refers solely to market practices changing to meet the needs of investors rather than the wider 'set' of market users (such as intermediaries and market operators). The third bullet point of paragraph 36 should therefore be amended as follows:

*"**Competent Authorities and market authorities** should ensure they are aware of emerging market practices. Market practices change rapidly to meet **the** ~~investors'~~ needs of **market users** and therefore **Competent Authorities and market authorities** should be alert to new market practices."*

Question 3: The Directive focuses on accepted market practices "on the regulated market concerned", but the prohibitions of the Directive also apply to OTC trading. Is it necessary to make any distinction between standards of acceptable market practices on regulated markets and OTC practices? Is it also necessary to make distinctions between standards of acceptable market practices in different kind of regulated markets or MTFs (e.g. order driven or price driven)?

Please see our comments on the second and sixth bullet points of paragraph 35 given in response to Question 2.

Question 4: Do you agree that a practice need not be identifiable as already having been explicitly accepted by a Competent Authority before it can be undertaken?

Yes. It is important that Competent Authorities resist the temptation to engage in any unnecessary or formulaic 'pre-vetting' of new market practices as this could stifle innovation. Particular emphasis should be placed on the points in the first bullet point of paragraph 34 that "new or emerging market practices should not be assumed to be unacceptable simply because they have not been previously described as acceptable by the Competent Authority" and the third bullet point of paragraph 36 that "regulators should ensure that they are aware of emerging market practices." Subject to the caveat of our general comments relating to the roles and responsibilities of the regulated market and MTFs, the current CESR draft achieves this aim.

Question 5: CESR is committed to the future discussion of specific market practices as part of the Level 3 work necessary to increase the harmonisation of accepted practices where appropriate. Please specify any examples of particular practices which you consider could be classified as accepted market practices for the purposes of the Directive.

When considering market practices which should be accepted for the purposes of the Directive, CESR should take note of the panoply of work which has already been conducted by the International Organisation of Securities Commissions and the Federation of European Securities Commissions in this area. Further, the Tokyo Communiqué on the Supervision of Commodity Market is an important statement of policy from the representatives of sixteen regulatory authorities responsible for supervising commodity futures markets and this should be reflected in CESR's deliberations.[2] These publications have already been the subject of lengthy consultation and should not be ignored.

For example, during the development of the UK's Code of Market Conduct and also the existing Guidance note on "Proper Trades in Relation to On-Exchange Derivatives" issued by the Securities and Investments Board[3] (the predecessor organisation to the FSA), there was lengthy discussion and detailed consultation as to which market practices were acceptable in the UK. This has subsequently been enshrined in section 2.6.5G – 2.6.7G of the FSA Sourcebook on Recognised Investment Exchanges (RIE) and Recognised Clearing Houses. These require that in determining whether a RIE is ensuring that business conducted by means of its facilities is conducted in an orderly manner thereby affording proper protection to investors, the FSA may have regard to the extent to which the RIE's rules and procedures:

(1) "are consistent with the Code of Market Conduct;
(2) prohibit abusive trading practices or the deliberate reporting or publication of false information about trades; and
(3) prohibit or prevent:
    (a) trades in which a party is improperly indemnified against losses;
    (b) trades intended to create a false appearance of trading activity ("wash trades");
    (c) cross trades executed for improper purposes;
    (d) improperly prearranged or pre-negotiated trades;
    (e) trades intended to assist or conceal any potentially identifiable trading abuse ("accommodation trades") ; and
    (f) trades which one party does not intend to close out or settle. (REC 2.6.5G)"

[2] See reference in Footnote 1.
[3] Guidance Note 1/93 on Proper Trades in Relation to On-Exchange Derivatives issued by the Securities and Investment Board

REC 2.6.6G outlines the factors which the FSA will take into account when assessing the arrangements and practices put in place by the RIE in order to ensure business is conducted in an orderly manner. However, it is important to note REC 2.6.7G which states that "The FSA accepts that block trading, upstairs trading and other types of specialist transactions (such as the "exchange of futures for physicals" in certain commodity markets) can have a legitimate commercial rationale consistent with the orderly conduct of business and proper protection for investors. They may therefore be permitted under the rules of a UK RIE, subject to any necessary safeguards, where appropriate." It is also worth noting that, in accordance with the UK's Code of Market Conduct, the presence or absence of a dominant position is not evidence, per se, of market manipulation. It is important that these practices are classified as accepted market practices for the purposes of the Directive.

In order to ensure harmonisation at Level 3, it is important that as much transparency as possible is given by CESR and national Competent Authorities to its considerations of accepted market practices and the outcome of those discussions. This will help to foster integrity of the markets, ensure certainty for market participants and encourage user participation and input.

(b) Inside information on the commodity derivatives markets

Question 6: Has CESR correctly identified all the relevant and material market, product and information factors relevant to the definition of "inside information" for commodity derivatives?

As noted in the general comments above, we feel that the proposed implementing advice identifies most of the factors relevant to the definition of "inside information" for commodity derivatives. However, we have the following comments on the advice in paragraph 46 relating to the information which users of commodity derivatives markets expect to receive:

- The information which users expect to receive should be linked to the efforts made by the user of the market to receive that information. So, for example, if a market participant pays to receive information over a Reuters or Bloomberg screen, they should expect to, and will, receive more pricing and news information than a user who relies on information from a national newspaper;
- Information is generally available to the users of those markets **and** (rather than 'or') required as a result of legal or regulatory provisions, market rules, contracts or customs in the relevant commodity derivatives or underlying commodity market;
- A measure of materiality should be introduced in line with Article 1.1(2) of the Directive which states that *'in relation to derivatives on commodities, 'inside information' shall mean information of a precise nature which has not been made public, relating, directly or indirectly, to one or more such derivatives and which users of markets on which such derivatives are traded would expect to receive in accordance with accepted market practices in those markets*;"
- The FOA has already raised concerns with CESR over the omission of price sensitivity as a qualifying condition of the definition of inside information in commodity derivatives (See Appendix 2);

- The Competent Authority should not take on responsibility for pre-vetting or approving methods or mechanisms of publication of information which would fall under the definition of 'inside information for commodity derivatives markets' (for example, as currently drafted this would include all information published in newspapers or magazines).

In light of these comments, it is suggested that paragraph 46 should be redrafted as follows:

"Users of commodity derivatives markets expect to receive information which is of a ***precise nature, generally available to the users of those markets, and:***

(i) *required as a result of legal or regulatory provisions, market rules,* ***contract terms and specifications*** *or customs on the relevant commodity derivatives market; or*
(ii) *required as a result of legal or regulatory provisions, market rules,* ***contract terms and specifications*** *or customs in accordance with practices on the relevant underlying commodity market.*

The above information must however be ***made available*** *in accordance with such practices on those commodity derivatives markets acceptable to the Competent Authority having regard to the method of publication. In accepting practices, the Competent Authority will act in accordance with the procedures set out in paragraph 36 above as appropriate.* ***When considering the nature and quantity of the information which users expect to receive, the Competent Authority should take into account the responsibility of users to act positively in order to receive such information.****"*

Question 7: Is there further information which is material, relevant and disclosable in relation to commodity derivatives markets?

In our view the categories of information cited will catch most of the information which is material, relevant and disclosable. However, in order to ensure clarity, it is important that the phrase "contracts" in paragraphs 46 and 47 should be expanded to "contract terms and specifications."

In addition, the presentation of the categories of disclosable information in paragraph 41 appears to be slightly misleading as the information 'may' rather than 'will generally' fall within one of the four stated categories.

Question 8: Does the draft advice accurately reflect the information relating to underlying commodities which commodity derivatives markets users expect to receive?

As outlined in our general comments, we believe that CESR's proposed advice captures all of the information suggested in the Joint Response to CESR's call for evidence on these measures prepared by Euronext.liffe, the IPE and the London Metal Exchange.

Question 9: Is there any additional guidance that CESR should consider giving in relation to the definition of "inside information" for commodity derivatives?

No. However, we would repeat our concerns relating to the omission of price sensitivity as a qualifying condition of the definition of inside information in the commodity derivatives markets.

(c) Notification of suspicious transactions

Question 21: Do you agree with the proposed approach?

The IPE fully supports the intention of the Directive in acting to increase market integrity through the reporting of suspicious transactions. While acknowledging that there may be a number of deficiencies in the original text of the Directive, there appear to be a number of difficulties with the advice as currently framed. Most importantly, and in light of the general comments made about the role of the regulated market, if a suspicious transaction was reported to a regulated market the market operator would be under separate obligations to investigate that suspected abuse. Further, where operating arrangements exist between the Competent Authority and the regulated market (as in the UK) the Competent Authority would delegate the referral to the regulated market for investigation. This power of delegation should be factored in to the approach taken by CESR in its implementing advice.

The question of immunity for "good faith" reporting of suspicious transactions should also be considered since this should prevent the risk of personal liability from deterring individuals reporting their suspicions. However, such immunity should not apply in the case of frivolous or malicious reporting otherwise the 'accused' firm would be denied legal redress from defamation. It is vital that this issue is addressed by CESR.

There is also considerable concern about the levels of disclosure required by CESR's proposals. It is not practical to expect firms to investigate all suspicions but the obligation should be to report all reasonable suspicions to the Competent Authority for investigation where appropriate. In this regard, the obligation in Article 6(9) is reactive ("*Member States shall require that any person professionally arranging transactions in financial instruments who reasonably suspects that a transactions might constitute insider dealing*") while paragraph 94 imposes a proactive obligation ("*persons subject to the obligation to notify the Competent Authority shall decide on a case-by-case basis whether a transaction is suspicious*"). In order to develop a practical and effective approach to the reporting of suspicious transactions, CESR should therefore clarify the obligations under paragraph 94 with a view to including a reasonability or evidential test.

Question 22: Do you think that other possibilities should be taken in to account?

Article 6(9) of the Directive states that "*Member States shall require that any person professionally arranging transactions in financial instruments who reasonably suspects that a transaction might constitute insider dealing or market manipulation shall notify the competent authority without delay.*" It is important that the advice put forward by CESR clarifies that a person should not be obliged to report a transaction before a reasonable suspicion has been formed.

To reflect this comment we suggest that paragraph 96 is amended thus:

"As regards the timing of notification, CESR proposes the following: In relation to a transaction or a group of transactions, notification shall take place as soon as practicable after the person becomes aware of any fact or facts which results in that person reasonably suspecting that the transaction might constitute insider dealing or market manipulations, whether or not the transaction is undertaken and if so whether or not it is completed."

Questions 23: Do you think that other elements should be mentioned?

It is important that whatever procedures put in place do not overcomplicate the notification and therefore act as a deterrent to reporting. In our view, this level of detail is more appropriate for Level 3. Therefore, while appreciating the importance of providing as much detail as possible, we would suggest that paragraph 99 should be re-drafted as follows:

"(99) ***Where possible, as much of the following information*** ~~*The following details*~~ *shall be included in the notification to the competent authority"*

Question 24: Do you think that the proposed advice is appropriate?

In order to facilitate the reporting of transactions the widest variety of reporting methods should be available and the current advice appears to fulfil this role. However, provision should also be made for reporting of transactions on a strictly confidential (including no-names) basis.

It is also important that in drafting Level 3 guidance, the Competent Authorities should consult with European and National legislators to ensure that persons are not caught by competing obligations under other related legislation, such as legislation relating to data protection or public interest disclosure.

Please do not hesitate to contact me on +44 (0)20 7265 3608 or my colleague, Mark Woodward on +44 (0)20 7265 5729, should you have any questions on the comments raised in this letter or wish to discuss any issues further. I have copied this letter to interested participants.

Yours sincerely,

Marc Leppard
Director – Regulation and Compliance

cc. Stavros Thomadakis, Chairman of the CESR Experts Group
Andy Murfin, Financial Services Authority
Clive Maxwell, HM Treasury
Alan Whiting, LME
Nick Weinreb, Euronext.liffe
Anthony Belchambers, FOA
Paul Arlman, FESE
International Petroleum Exchange Board

Appendix 1

Members of the International Petroleum Exchange

FLOOR MEMBERS

ADM Investor Services International Ltd
ABN AMRO Futures Ltd
AIC Ltd
Amerex Futures Ltd
Arcadia Petroleum Ltd
Banc of America Futures Inc.
Bank of Nova Scotia
Barclays Capital
Bear Stearns International Ltd
BNP Paribas Commodity Futures Ltd
BP Oil International Ltd
Cargill Investor Services Ltd
Carr Futures Inc
Citigroup Global Markets Ltd.
Credit Lyonnais Rouse Ltd
Deutsche Bank AG
Enron Europe Finance & Trading
Fimat International Banque SA (UK Branch)
Fortis Clearing London Ltd
Glencore Commodities Ltd
GNI Ltd
Goldman Sachs International
J.P. Morgan Securities Ltd
Lehman Brothers International (Europe)
Man Financial Ltd
Merrill Lynch International
Morgan Stanley & Co International Ltd
Phibro Futures & Metals Ltd
Prudential Bache International Ltd
PVM Oil Futures Ltd
Refco Overseas Ltd
Saratoga
Shell International Trading & Shipping Co Ltd
SEB Futures (a division of Skandinaviska Enskilda Banken)
Spectron Futures Ltd
Sucden (U.K.) Ltd
Trafalgar Commodities Ltd
UBS Ltd.

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Aquila Energy Ltd
BG International
BP Gas Marketing
Cinergy Global Trading Ltd.
Conoco Ltd
Duke Energy Int'l Finance (UK) Ltd
Dynegy UK Ltd
Entergy Koch Trading Ltd
Fortum Gas Limited
Hess Energy Power & Gas Co (UK) Ltd
Innogy Plc
Louis Dreyfus Energy Ltd
Mitsubishi Corporation (UK) Ltd
Mobil Gas Marketing (UK) Ltd
NV Nederlandse Gasunie
Powergen PLC
Scottish Power Energy Trading Ltd
Sempra Energy Europe Ltd
SmartestEnergy Ltd
Statoil Gas Trading Ltd
TotalFinaElf Gas & Power Ltd
TXU Europe Energy Trading Ltd
Williams Energy Marketing & Trading Europe Ltd

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Greenwich Europe Ltd
Gulf International Bank (UK) Ltd
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HBOS Treasury Services Plc
HSBC Bank Plc
IFX Markets Ltd
IG Index Plc
Investec Bank (UK) Ltd
JLT Risk Solutions Ltd
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Lehman Brothers International (Europe)
Macquarie Bank Ltd
Man Financial
Merrill Lynch Pierce Fenner & Smith
(B&D) Ltd
Monument Securities Ltd
Morgan Stanley & Co International Ltd
Mizuho Securities USA, Inc.
Nomura International Plc
Prudential-Bache International Ltd
Rabobank International
RBS Greenwich Futures
Refco Overseas Ltd
S E B Futures
SG London
Standard Bank London Ltd
The Bank of Nova Scotia
Tokyo-Mitsubishi International Plc
Tullett Liberty (Securities) Ltd
UBS Warburg LLC
Wachovia Securities International Ltd
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EXCHANGE/CLEARING HOUSES

APX Amsterdam Power Exchange (UK) Ltd
Chicago Board of Trade
Chicago Mercantile Exchange
Eurex Frankfurt AG
Euronext
FINEX Europe
International Petroleum Exchange Ltd
ITG Europe
London Clearing House Ltd
New York Mercantile Exchange
OM London Exchange Ltd
Singapore Exchange Ltd
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Metdist Trading Ltd
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Natexis Metals Ltd
Phibro GMBH
Sempra Metals Ltd
Sucden (UK) Ltd
Toyota Tsusho Metals Ltd
Triland Metals Ltd
TRX Futures Ltd

ENERGY COMPANIES
Accord Energy Ltd
AEP Energy Services Ltd
BNFL Magnox Generation
BP Oil International Ltd
British Energy Power and Energy Trading Ltd
Cinergy Global Trading Ltd
ConocoPhillips Company
Deeside Power Development Company Limited
Duke Energy International (Europe) Ltd
Entergy-Koch Trading Ltd
First Hydro Company
Innogy Plc
London Electricity Group
National Grid Company Plc
Powergen UK Plc
RWE Trading GMBH
Scottish Power Energy Trading Ltd
Shell International Trading & Shipping Co Ltd
SmartestEnergy Limited

FUND MANAGERS
Close Fund Management
Deutsche Asset Management Ltd
M & G Investment Management Ltd

PROFESSIONAL SERVICE COMPANIES
Baker & McKenzie
Barlow Lyde & Gilbert
BDO Stoy Hayward
BPP Professional Education
Burr & Company
Cap Gemini Ernst Young UK Plc
Clifford Chance
CMS Cameron McKenna
Complinet
Deloitte & Touche
Denton Wilde Sapte
DLA
Dewey Ballantine
EDS
Exchange Consulting Group Ltd
Exchange Systems Technology Ltd
FfastFill
Field Fisher Waterhouse
FOW Ltd
Freshfields Bruckhaus Deringer
Future Dynamics Ltd
Henry Davis York
International Securities Market Association
Katten Muchin Zavis Rosenman
KPMG
Landwell
Linklaters
Lovells
Norton Rose
Options Industry Council
Penna Consulting Plc
Reech Capital Plc
Richards Butler
Rolfe & Nolan Plc
Rostron Parry Ltd
Simmons & Simmons
SJ Berwin & Company
SunGard Futures Systems
Taylor Wessing
Thomson Financial
Travers Smith Braithwaite
Wilmer Cutler & Pickering
Wragge & Co

Appendix 2

27 September 2002

Mr Fabrice Demarigny
Secretary General
CESR
17 Place de la Bourse
75082 Paris
Cedez 02
France

Dear Mr Demarigny

Market Abuse Directive

While we are still compiling our response to CESR's consultation paper on its proposed advice to the European Commission, there is one particular matter that I would like to draw to your attention which, I believe, stems from what appears to be an oversight in the definition of "inside information" in the proposed Market Abuse Directive (Article 1(1)).

Briefly, the principal definition has a number of qualifying elements, one of which is that the information "would be likely to have a significant effect on the price of those financial instruments or on the price of related derivative financial instruments". This definition is largely repeated in the context of derivatives on commodities i.e. it recycles each of those qualifying elements, but adding that it is information the user "would expect to receive in conformity with acceptable practices".

However, in recycling those elements, it ambiguously and unhelpfully omits the words "would be likely to have a significant effect on the price of those derivatives". This creates a significant degree of uncertainty between the two definitions and suggests that information relevant to commodity derivatives may qualify as "inside information" even though it has no effect on price - self-evidently an unintended result.

In order to address the ambiguity and consequential uncertainty, we sought - but were too late - to introduce a very simple amendment whereby the qualification of effect on price mirrored in the first definition would be reflected in exactly the same terms as the second definition namely:

> "In respect of derivatives on commodities, "inside information" shall mean information which has not been made public of a precise nature relating directly or indirectly to one or more such derivatives *and which, if it were made public, would be likely to have a significant effect on the price of those derivatives, but* which users of markets on which such derivatives are traded would expect to receive in conformity with acceptable practices."

Despite the fact that we were too late to secure amendment in the Parliament, I hope that CESR would be willing, in its advice to the Commission, to commend an interpretation of the definition which would ensure that the criterion of "significant effect on price" be read into the "second" definition covering commodity derivatives - possibly by importing that criterion by implication into the words "acceptable practices" so imposing a "significant effect on price" condition as regards all financial instruments, including commodity derivatives.

We believe that this would be a non-contentious interpretation which could be accepted on a pan-EU basis and which would correct what is clearly an oversight, but in terms that are already accepted and agreed in the context of the “main” definition.

Regards

AM Belchambers
Chief Executive

Enclosure

P.S. I should be grateful if you would note that the KPMG report is embargoed until its formal release on Monday 15th July.

cc. Nigel Phipps, CESR Secretariat