



Atlanta Calgary Chicago Houston London New York Singapore

June 23, 2008

Mr. Donald S. Clark  
Secretary  
Federal Trade Commission  
Market Manipulation Rulemaking, P082900  
Room H-135 (Annex G)  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580

RE: Market Manipulation Rulemaking, P082900 Prohibitions on Market Manipulation and False Information in Subtitle B of the Energy Independence and Security Act of 2007

Dear Mr. Clark:

The Intercontinental Exchange, Inc. (ICE) is pleased to provide comments on the Federal Trade Commission's (FTC or Commission) advanced notice of proposed rulemaking concerning how the FTC should carry out its rulemaking responsibilities under Section 811 of the Energy Independence and Security Act of 2007 ("EISA").

ICE owns and hosts four separate markets on its electronic trading platform – three regulated futures exchange subsidiaries which were individually acquired over the last seven years and one over the counter energy market, which operates under the Commodity Exchange Act (CEA) as an "exempt commercial market," or ECM. ICE's regulated futures exchanges include ICE Futures Europe, formerly known as the "International Petroleum Exchange", which is a Recognized Investment Exchange, or RIE, headquartered in London and under the supervision of the UK Financial Services Authority (FSA); ICE Futures US, formerly known as "The Board of Trade of the City of New York (NYBOT)," which is a CFTC-regulated Designated Contract Market (DCM) headquartered in New York; and ICE Futures Canada, formerly known as the "Winnipeg Commodity Exchange", which is regulated by the Manitoba Securities Commission and headquartered in Winnipeg, Manitoba. ICE has always been and continues to be a strong proponent of open and competitive markets in energy commodities and related derivatives, and of appropriate regulatory oversight of those markets.

ICE appreciates the thought and attention that the Commission has put into the advanced notice of proposed rulemaking (ANPR). Although the ANPR raises many issues, ICE's comment will focus on the need for regulatory and legal certainty for crude oil, gasoline and petroleum distillate trading. Section 811 of EISA makes it unlawful "for any person, directly, or indirectly, to use or employ, in connection with the purchase or



sale of crude oil, gasoline or petroleum distillates at wholesale, any manipulative or deceptive device or contrivance in contravention of such rule and regulations as the Federal Trade Commission may prescribe as necessary or appropriate in the public interest or for the protection of United States citizens.”

The Commission has asked whether the authority granted by Section 811 of EISA could cause jurisdictional overlap between federal agencies. Currently, participants in the wholesale crude oil, gasoline, and petroleum distillate markets are subject to the oversight of the Commodity Futures Trading Commission (CFTC) and the Federal Energy Regulatory Commission (FERC). Each agency currently has a different standard of proof for market manipulation, as evidenced in the cases filed against Amaranth Advisors, LLC, in which both agencies sued a hedge fund for the same alleged manipulative conduct that occurred on the futures markets.<sup>1</sup> In the case of FERC and the CFTC, the agencies have a memorandum of understanding outlining their cooperation in regulating the energy markets, which was mandated by the Energy Policy Act of 2005.<sup>2</sup>

ICE welcomes the FTC's new authority, but asks that FTC create a well defined jurisdictional boundary. The Commission should coordinate with FERC and the CFTC to define their respective roles in the energy markets. Duplicative enforcement and regulation is unduly burdensome and could possibly deprive market participants of due process. Further, it could possibly subject market participants to legal uncertainty as the Commission notes in the ANPR. The crude oil markets could be subject to three varying standards of proof and scienter. This uncertainty would chill legitimate business behavior, as described in the ANPR.

The FTC should also work with FERC and the CFTC to share information. The FTC notes that it has the power to institute its own disclosure regime. ICE would note that many futures market participants have disclosure obligations to both the CFTC and FERC. ICE asks that the FTC not enact rules that would require market participants to file duplicative reports as such overly burdensome regulation would have a chilling effect on the energy markets.

Again, ICE appreciates the opportunity to comment on the Commission's advanced notice of proposed rulemaking and looks forward to working the FTC on these matters in the future.

Sincerely,

R. Trabue Bland

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<sup>1</sup>*Amaranth Advisors, LLC*, 120 FERC ¶ 61,085 (July 26, 2007); *CFTC v. Amaranth LLC, et al.* No. 07-CIV-6682 (S.D.N.Y. July 25, 2007).

<sup>2</sup>15 U.S.C. § 15801 (2006).



Director of Regulatory Affairs