

8 April 2011

ICE Futures Europe (“the Exchange”)

Determination of the Delivery Appeals Panel (“the Panel”)

regarding the decision of the Delivery Panel in respect of a dispute (details of which are referenced below) (“the Fatima Dispute”) in relation to the delivery of gasoil under the ICE Futures Europe Gasoil Futures Contract (“the Contract”) arising during the February 2010 delivery (“the Delivery Panel Decision”) (attached as Exhibit 1).

Delivery Month:	February 2010
ICE Clear Europe Selling Clearing Member:	Newedge Group (UK Branch)
Client:	Vitol SA
ICE Clear Europe Buying Clearing Member:	JP Morgan Securities Limited
Client:	Noble Clean Fuels Limited
Location:	Amsterdam
Installation:	Eurotank
Delivery Range:	24-28 February 2010
Vessel(s):	Fatima
No. of lots:	33
Nature of dispute:	Quality of product

An appeal in writing dated 7 October 2010 in respect of the decision of the Delivery Panel regarding the Fatima Dispute was received by the Secretary (attached as Exhibit 2) (“the Appeal”).

The Appeal was received in accordance with a timetable set down by the Delivery Appeals Panel, subsequent to a Notice of Appeal in respect of the Fatima Dispute provided to ICE Clear Europe by the Buyer on 21 July 2010. The Seller’s Defence to Buyer’s Appeal Submissions dated 19 October 2010 was subsequently received by the Secretary, again in accordance with the timetable set down by the Delivery Appeals Panel.

The Appeal confirmed that it was lodged in accordance with Exchange Rule I.19(a) regarding one aspect of the decision of the Delivery Panel in relation to the Fatima Dispute, being finding (b) of the Delivery Panel relating to 155.072cbm of Product that had been discharged from the barge Fatima in the context of the Fatima Dispute. Finding (b) can be found on the second page of the Delivery Panel Decision attached as Exhibit 1.

The grounds for the Appeal is that the Delivery Panel finding that the Buyer failed to take delivery of all the lots of Product was based on an error of law or misinterpretation of the Regulations in accordance with Exchange Rule I.19(b)(ii)(bb).

In accordance with Exchange Rule I.19.(d), the Delivery Appeals Panel has considered the relevant findings of the Delivery Panel, relevant evidence before the Delivery Panel (being an agreed redacted bundle of the submissions provided to the Delivery Panel) and submissions received from the Buyer and Seller referenced above.

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The Delivery Appeals Panel determines as follows, that:

1. the delivery of 33 lots of gas oil was completed at 12.40 on 28 February 2010;
2. Seller was advised that the delivered gas oil was off-spec by Inspectors Saybolt at 13.43 on 28 February 2010;
3. on discovery that the gas oil was off-spec both the Buyer and the Seller had an obligation to mitigate any loss;
4. a reasonable mitigation of the loss would have been to discharge the off-spec gas oil, and replace it with gas oil of the appropriate specification;
5. in the absence of prior confirmation to the contrary from the Buyer, it was reasonable for the Seller to assume that the barge master, directing the barge, and agreeing to the Seller's request, was acting as agent of the Buyer;
6. by beginning to discharge the off-spec gas oil with a view to it being replaced by on-spec gas oil, the Buyer, through the actions of the barge master acting as the Buyer's agent, had demonstrated its ability to mitigate its loss soon after the discovery of the fact that the gas oil was off-spec;
7. the obligations under the Exchange contract, are in accordance with Rule I.8, to be construed in accordance with English law, and therefore the obligation on a party that has suffered as a result of a breach of contract, to mitigate its loss is an implicit term of the Exchange Contract, and an obligation of the Buyer in these circumstances;
8. the decision of the Buyer to cease the discharge of the off-spec gas oil amounts to an act of non-performance on the part of the Buyer.

Therefore, in accordance with its rights under Rule I.19(e)(i), the Delivery Appeals Panel dismisses the Appeal that the Delivery Panel's finding that "the Buyer failed to perform its obligations to take delivery of all the lots of Product" was based on an error of law or misinterpretation of the Regulations in accordance with Exchange Rule I.19(b)(ii)(bb).

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EXHIBIT 1

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EXHIBIT 2