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ICE Futures Europe (“the Exchange”)

Decision of the Delivery Panel (“the Panel”)

regarding a number of disputes in relation to the delivery of gasoil under the ICE Futures Europe Gasoil Futures Contract (“the Contract”) arising during the February 2010 delivery.

February Delivery Dispute 1 (“Dispute 1”)		
Delivery Month:	ICE	February 2010
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

The Panel has received written submissions from the parties to Dispute 1. On the basis of those submissions there appears to be agreement on the basic facts. The Barge Fatima was nominated by the Buyer to take delivery of 33 lots of gasoil (“Product”) under the Contract within the delivery range 24 – 28 February 2010, as agreed between the parties in accordance with the ICE Futures Europe Regulations (“the Regulations”). The nominated delivery day, was confirmed in accordance with the Regulations, as being 28 February 2010. The Buyer and Seller confirm that the barge completed loading 33 lots on 28 February 2010 at 12.40. Inspectors Saybolt confirmed to Sellers at 13.43 on 28 February 2010 that the Product was off spec due to water content. Later during the afternoon of 28 February 2010 the Fatima’s barge master regrettably died suddenly on board the barge. The Seller confirmed to the Buyer that the Product was off-spec on inspection due to water content by email at 10.48 on 1 March 2010, on the basis of the submissions this appears to be the first time that the Buyer was notified of the fact that the Product was off-spec due to water content. Subsequent to the Seller’s discovery of the Product being off-spec, on the basis of the submissions it appears that the Seller requested the barge Fatima to discharge its off-spec Product so that it might be replaced by on-spec Product, the Seller has stated that this discharge commenced at 10.55 on 1 March 2010. The circumstances of the request for discharge are not entirely clear on the basis of the submissions: paragraph 144 of the Buyer’s submissions suggests that the Sellers had “called the barge back in to discharge”; paragraph 145 of the Buyer’s submission received on 15 April suggests that the barge “had been ordered back”; Seller’s submission of 15 April 2010 suggests that the barge remained “at jetty awaiting line availability”; and, in paragraph 97 of the Seller’s submission of 23 April 2010 the Sellers accept that they “requested the master to discharge off-spec cargo”. It is not clear, on the basis of the submissions, how the Buyer first learnt of the discharge arrangements, however, both Buyer and Seller in their submissions confirm that the Buyer did instruct the barge Fatima to leave the berth and cease the discharge. The Seller has stated that the barge Fatima left the berth at 11.10 on 1 March 2010. Barge Fatima therefore left loaded with 3,749.277cbm of off-spec Product, which Buyers have confirmed that they were able to sell on – in their submissions both Buyer and Seller confirm that 155.072 cbm of off-spec Product had been discharged.

In the light of the relevant non-performance in relation to Dispute 1 amicable settlement papers were sent to the Buyer and Seller by the Clearing House in accordance with Rule 1.17(a) on 3 March 2010. Negotiations took place between the Buyer and the Seller during the amicable settlement period, however no amicable settlement of Dispute 1 was achieved by the parties by 8 March 2010 as required under the documentation.

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Dispute 1 was referred to the Exchange by the Clearing House in accordance with Rule I.17. The Exchange then referred the matter to the Delivery Committee in accordance with Rule I.17. A Delivery Panel was convened in accordance with its powers under I.18(c) since the dispute was deemed by the Exchange to require urgent resolution.

In their submissions Buyers had sought delivery of the 155.072cbm which remains undelivered from the lots which are the subject of Dispute 1 at the original Exchange Delivery Price or alternatively a reconversion, by the Delivery Panel, of the undelivered lots back to the front month price prevailing at the time of the Delivery Panel's decision less the appropriate discount at the time that the futures expired under the February contract.

The Buyers, in their submissions, assert that the Sellers have delivered off-spec Product – which the Sellers have separately acknowledged, and further that the Sellers interfered in an unjustified way with the Buyer's charterparty and cargo in the context of the discharge arrangements.

The Sellers, in their submissions, accept that off-spec Product was provided but state that the Buyer failed to mitigate its loss by stopping the discharge of the off-spec Product and taking replacement with on-spec product as offered by the seller. Further, the Seller made two alternative amicable settlement offers, the first being an ADP at the February settlement price with an option to discharge the off-spec material and re-load on-spec material, the second being a discount to the February settlement price of USD\$2.00 to reflect the water content.

The Delivery Panel has determined that, in respect of Dispute 1, there are two aspects of non performance to consider:

- (a) the Seller has failed to perform its obligations to deliver Product in accordance with its obligations under Rule J.11(a)(v) of a quality required by the Contract Rules, and the relevant procedures in Section K of the Regulations; and,
- (b) the Buyer failed to perform its obligations to take delivery of all the lots of the Product which comprised the parcel which is referenced in Dispute 1 in accordance with its obligations under Rule J.12(a)(ii) and the relevant procedures in Section K of the Regulations.

It is the Panel's view that in a dispute of this nature involving a failure to perform by a party that damages is the appropriate remedy and that such damages should be calculated as the difference between the contract price and the market price at the time of the relevant failure to perform.

The Panel has considered the submissions of the parties and information supplied by the Exchange and has concluded that:-

- (i) the ICE Futures Europe Gasoil Futures Contract price, the invoiced price, for the February 2010 contract on expiry on 11 February 2010 was USD\$576.75 /tonne*;
- (ii) the market price on 1 March 2010, the first date subsequent to the date on which delivery failed to occur for which a price is available, was USD\$632.5/tonne⁺,

and, that, therefore, in respect of the Delivery Panel's determinations:

- regarding (a), the Buyer is invited to make a further submission to the Delivery Panel illustrating the relevant loss that the Buyer incurred in respect of the Buyer's sale of

* ICE Futures Europe settlement price on 12 January 2010;

⁺ Platts Gasoil 0.1% FOB ARA Barges.

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- off-spec Product in relation to the market price as referenced above, including relevant demurrage and other costs, as appropriate, within such calculation of loss;
- regarding (b), it is clear from an analysis of the prices referenced in (i) and (ii) above that no loss would have arisen for the Seller and that therefore no award of damages is required. Therefore, the Panel sees no reason to exercise any of its power under Rule I.18 (i)(i) or (ii).

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February Delivery Dispute 2 (“Dispute 2”)

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:	20-24 February 2010
Vessel(s):	Fantoom
No. of lots:	29
Nature of dispute:	Time of arrival of barge

The Panel has received written submissions from the parties to Dispute 2. On the basis of those submissions there appears to be agreement on the basic facts. The Barge Fantoom was nominated by the Buyer to take delivery of 29 lots of gasoil (“Product”) under the Contract within the delivery range 20 – 24 February 2010, as agreed between the parties in accordance with the ICE Futures Europe Regulations (“the Regulations”). The nominated delivery day, was confirmed in accordance with the Regulations, as being 21 February 2010, and was then subsequently altered and confirmed as 24 February 2010. The Barge Fantoom did not arrive to take up delivery of gasoil on 24 February 2010. The Buyers have confirmed that the barge Fantoom was “delayed on its previous trip” in paragraph 133 of its submission received on 15 April 2010, and further that it was delayed “...caused by congestion, ... outside of Noble’s control” in paragraph 24 of [Name]’s statement of 30 April 2010. No further details are provided by the Buyer in relation to the cause or location of the delay or congestion.

In the light of the relevant non-performance in relation to Dispute 2 amicable settlement papers were sent to the Buyer and Seller by the Clearing House in accordance with Rule 1.17(a) on 1 March 2010. Negotiations took place between the Buyer and the Seller during the amicable settlement period, however no amicable settlement of Dispute 2 was achieved by the parties by 6 March 2010 as required.

Dispute 2 was referred to the Exchange by the Clearing House in accordance with Rule I.17. The Exchange then referred the matter to the Delivery Committee in accordance with Rule I.17. A Delivery Panel was convened in accordance with its powers under I.18(c) since the dispute was deemed by the Exchange to require urgent resolution.

In their submissions Buyers had sought delivery of the lots which are the subject of Dispute 2 at the original Exchange Delivery Price or alternatively a reconversion, by the Delivery Panel, of the undelivered lots back to the front month price prevailing at the time of the Delivery Panel’s decision less the appropriate discount at the time that the futures expired under the February contract.

The Buyers, in their submissions, admitted that they had failed to present a barge to load within the agreed delivery range, but claimed that an event of force majeure prevented their presentation of a barge to load within the agreed delivery range.

There was no assertion of a force majeure event claim at the time of non-delivery.

The Sellers, in their submissions, denied that the Buyers are entitled to any remedy, and rejected the validity of a force majeure event in the Buyer’s defence and consider that the Buyers have defaulted on their delivery obligations in relation to Dispute 2.

The Delivery Panel rejects the suggestion that the failure to provide the barge amounts to force majeure in these circumstances.

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Accordingly, the Delivery Panel has determined that, in respect of Dispute 2, the Buyer has failed to perform its obligations to take up the Product in accordance with its obligations under Rule J.12(a)(ii) and the relevant procedures in Section K of the Regulations by not arriving in the agreed delivery range.

It is the Panel's view that in a dispute of this nature involving a failure to perform by a party that damages is the appropriate remedy and that such damages should be calculated as the difference between the contract price and the market price at the time of the Buyer's failure to perform.

The Panel has considered the submissions of the parties and information supplied by the Exchange and has concluded that:-

- (i) the ICE Futures Europe Gasoil Futures Contract price, the invoiced price, for the February 2010 contract on expiry on 11 February 2010 was USD\$576.75 /tonne*;
- (ii) the market price on 25 February 2010, the first date subsequent to the date on which delivery failed to occur for which a price is available, was USD\$609.25/tonne⁺.

It is clear from an analysis of the prices referenced in (i) and (ii) above that no loss would have arisen for the Seller and that therefore no award of damages is required. Therefore, the Panel sees no reason to exercise any of its power under Rule I.18 (i)(i) or (ii).

* ICE Futures Europe settlement price on 12 January 2010;

⁺ Platts Gasoil 0.1% FOB ARA Barges.

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February Delivery Dispute 3

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:	Rotterdam
Installation:	Eurotank
Delivery Range:	20-24 February 2010
Vessel(s):	Mayon
No. of lots:	30
Nature of dispute:	Time of arrival of barge

The Panel has received written submissions from the parties to Dispute 3. On the basis of those submissions there appears to be agreement on the basic facts. The Barge Mayon was nominated by the Buyer to take delivery of 30 lots of gasoil ("Product") under the Contract within the delivery range 20 – 24 February 2010, as agreed between the parties in accordance with the ICE Futures Europe Regulations ("the Regulations"). The nominated delivery day, was confirmed in accordance with the Regulations, as being 22 February 2010, and was then subsequently altered and confirmed as 24 February 2010. The Barge Mayon did not arrive to take up delivery of Product within the agreed delivery range. The Buyers provided no explanation for the barge Mayon's delay at the time, though within the submissions at attachments 71 and 72 there is evidence of the barge owners recommendation that the relevant delivery day should be re-nominated. Further, in paragraph 24 of [Name]'s statement of 30 April 2010 there is a reference to the barge being delayed "...caused by congestion, ... outside of Noble's control". No further details are provided by the Buyer in relation to the cause or location of the delay or congestion.

In the light of the relevant non-performance in relation to Dispute 3 amicable settlement papers were sent to the Buyer and Seller by the Clearing House in accordance with Rule 1.17(a) on 1 March 2010. Negotiations took place between the Buyer and the Seller during the amicable settlement period, however no amicable settlement of Dispute 3 was achieved by the parties by 6 March 2010 as required.

Dispute 3 was referred to the Exchange by the Clearing House in accordance with Rule I.17. The Exchange then referred the matter to the Delivery Committee in accordance with Rule I.17. A Delivery Panel was convened in accordance with its powers under I.18(c) since the dispute was deemed by the Exchange to require urgent resolution.

In their submissions Buyers had sought delivery of the lots which are the subject of Dispute 3 at the original Exchange Delivery Price or alternatively a reconversion, by the Delivery Panel, of the undelivered lots back to the front month price prevailing at the time of the Delivery Panel's decision less the appropriate discount at the time that the futures expired under the February contract.

The Buyers, in their submissions, admitted that they had failed to present a barge to load within the agreed delivery range, but claimed that an event of force majeure prevented their presentation of a barge to load within the agreed delivery range.

There was no assertion of a force majeure event claim at the time of non-delivery.

The Sellers, in their submissions, denied that the Buyers are entitled to any remedy, rejected the validity of a force majeure event in the Buyer's defence, and consider that the Buyers have defaulted on their delivery obligations in relation to Dispute 3.

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The Delivery Panel rejects the claim that the failure to provide the barge amounts to force majeure in these circumstances.

Accordingly the Delivery Panel has determined that, in respect of Dispute 3, the Buyer has failed to perform its obligations to take up the Product in accordance with its obligations under Rule J.12(a)(ii) and the relevant procedures in Section K of the Regulations by not arriving in the agreed delivery range.

It is the Panel's view that in a dispute of this nature involving a failure to perform by a party that damages is the appropriate remedy and that such damages should be calculated as the difference between the contract price and the market price at the time of the Buyer's failure to perform.

The Panel has considered the submissions of the parties and information supplied by the Exchange and has concluded that:-

- (i) the ICE Futures Europe Gasoil Futures Contract price, the invoiced price, for the February 2010 contract on expiry on 11 February 2010 was USD\$576.75 /tonne*;
- (ii) the market price on 25 February 2010, the first date subsequent to the date on which delivery failed to occur for which a price is available, was USD\$609.25/tonne⁺.

It is clear from an analysis of the prices referenced in (i) and (ii) above that no loss would have arisen for the Seller and that therefore no award of damages is required. Therefore, the Panel sees no reason to exercise any of its power under Rule I.18 (i)(i) or (ii).

* ICE Futures Europe settlement price on 12 January 2010;

⁺ Platts Gasoil 0.1% FOB ARA Barges.

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February Delivery Dispute 4

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:	Rotterdam
Installation:	Eurotank
Delivery Range:	20-24 February 2010
Vessel(s):	Arctic
No. of lots:	31
Nature of dispute:	Time of arrival of barge

The Panel has received written submissions from the parties to Dispute 4. On the basis of those submissions there appears to be agreement on the basic facts. The Barge Arctic was nominated by the Buyer to take delivery of 31 lots of gasoil ("Product") under the Contract within the delivery range 20 – 24 February 2010, as agreed between the parties in accordance with the ICE Futures Europe Regulations ("the Regulations"). The nominated delivery day, was confirmed in accordance with the Regulations, as being 21 February 2010. The Barge Arctic did not arrive to take up delivery of Product within the agreed delivery range. The Buyers provided no explanation for the barge Arctic's delay at the time ..Although within the submissions at attachments 71, 72 and 75 there is evidence of the barge owners recommendation that the relevant delivery day should be re-nominated, further, in paragraph 24 of [Name]'s statement of 30 April 2010 there is a reference to the barge being delayed "...caused by congestion, ... outside of Noble's control". No further details are provided by the Buyer in relation to the cause or location of the delay or congestion.

In the light of the relevant non-performance in relation to Dispute 4 amicable settlement papers were sent to the Buyer and Seller by the Clearing House in accordance with Rule 1.17(a) on 1 March 2010. Negotiations took place between the Buyer and the Seller during the amicable settlement period, however no amicable settlement of Dispute 4 was achieved by the parties by 6 March 2010 as required.

Dispute 4 was referred to the Exchange by the Clearing House in accordance with Rule I.17. The Exchange then referred the matter to the Delivery Committee in accordance with Rule I.17. A Delivery Panel was convened in accordance with its powers under I.18(c) since the dispute was deemed by the Exchange to require urgent resolution.

In their submissions Buyers had sought delivery of the lots which are the subject of Dispute 4 at the original Exchange Delivery Price or alternatively a reconversion, by the Delivery Panel, of the undelivered lots back to the front month price prevailing at the time of the Delivery Panel's decision less the appropriate discount at the time that the futures expired under the February contract.

The Buyers, in their submissions, admitted that they had failed to present a barge to load within the agreed delivery range, but claimed that an event of force majeure prevented their presentation of a barge to load within the agreed delivery range.

There was no assertion of a force majeure event claim at the time of non-delivery.

The Sellers, in their submissions, denied that the Buyers are entitled to any remedy, rejected the validity of a force majeure defence, and consider that the Buyers have defaulted on their delivery obligations in relation to Dispute 4.

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The Delivery Panel rejects the suggestion that the failure to provide the barge amounts to force majeure in these circumstances.

Accordingly the Delivery Panel has determined that, in respect of Dispute 4, the Buyer has failed to perform its obligations to take up the Product in accordance with its obligations under Rule J.12(a)(ii) and the relevant procedures in Section K of the Regulations by not arriving in the agreed delivery range.

It is the Panel's view that in a dispute of this nature involving a failure to perform by a party that damages is the appropriate remedy and that such damages should be calculated as the difference between the contract price and the market price at the time of the Buyer's failure to perform.

The Panel has considered the submissions of the parties and information supplied by the Exchange and has concluded that:-

- (i) the ICE Futures Europe Gasoil Futures Contract price, the invoiced price, for the February 2010 contract on expiry on 11 February 2010 was USD\$576.75 /tonne*;
- (ii) the market price on 25 February 2010, the first date subsequent to the date on which delivery failed to occur for which a price is available, was USD\$609.25/tonne⁺

It is clear from an analysis of the prices referenced in (i) and (ii) above that no loss would have arisen for the Seller and that therefore no award of damages is required. Therefore, the Panel sees no reason to exercise any of its power under Rule I.18 (i)(i) or (ii).

* ICE Futures Europe settlement price on 12 January 2010;

⁺ Platts Gasoil 0.1% FOB ARA Barges.

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February Delivery Dispute 5

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:	20-24 February 2010
Vessel(s):	Bolero IV
No. of lots:	27
Nature of dispute:	Time of arrival of barge

The Panel has received written submissions from the parties to Dispute 5. On the basis of those submissions there appears to be agreement on the basic facts. The Barge Bolero IV was nominated by the Buyer to take delivery of 27 lots of gasoil ("Product") under the Contract within the delivery range 20 – 24 February 2010, as agreed between the parties in accordance with the ICE Futures Europe Regulations ("the Regulations"). The nominated delivery day, was confirmed in accordance with the Regulations, as being 21 February 2010. On 24 February Buyers, realising that Barge Bolero IV, "due to congestion in discharging at her previous disport would not be able to arrive within the agreed delivery range", attempted to substitute an alternative barge with a nominated delivery day of 24 February 2010 at 16.04 on 24 February 2010 by email. The Buyers offered no further explanation in relation to the delay of the barge Bolero IV. The Sellers rejected the proposed substitution at 16.20 on 24 February 2010 by email "as per the ICE nomination schedule".

In the light of the relevant non-performance in relation to Dispute 5 amicable settlement papers were sent to the Buyer and Seller by the Clearing House in accordance with Rule 1.17(a) on 26 February 2010. Negotiations took place between the Buyer and the Seller during the amicable settlement period, however no amicable settlement of Dispute 5 was achieved by the parties by 3 March 2010 as required.

Dispute 5 was referred to the Exchange by the Clearing House in accordance with Rule I.17. The Exchange then referred the matter to the Delivery Committee in accordance with Rule I.17. A Delivery Panel was convened in accordance with its powers under I.18(c) since the dispute was deemed by the Exchange to require urgent resolution.

In their submissions Buyers had sought delivery of the lots which are the subject of Dispute 5 at the original Exchange Delivery Price or alternatively a reconversion, by the Delivery Panel, of the undelivered lots back to the front month price prevailing at the time of the Delivery Panel's decision less the appropriate discount at the time that the futures expired under the February contract.

The Buyers, in their submissions, accept that the Barge Bolero IV did not present itself to load within the agreed delivery range, but in paragraph 57 of their submission received on 15 April 2010 claimed that: the proposed substitute barge that was confirmed to the Seller for the purposes of loading within the agreed delivery range should have been accepted by the Seller unless a non-frivolous reason for rejecting the barge is provided; that the Seller's rejection on the basis of the timing of the substitution alone amounts to a frivolous reason; that further the Sellers did not consult with the installation prior to rejecting the proposed substitutions, and that no good reason was given by the Seller for the rejection. In paragraph 26 of the Buyer's submission received on 15 April 2010 the Buyers state that "the default position is that nominations 'shall be' accepted (K.7(c), unless a good (i.e. non-frivolous reason is given for the rejection". In paragraph 27 the Buyers contend that notice of less than 48 hours does not

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amount to a reason for rejection, and further (in paragraph 29) that a failure to consult with the installation by the Seller is a frivolous reason for rejection.

The Sellers, in their submissions, denied that the Buyers are entitled to any remedy, and consider that the Buyers failed to confirm the details of the relevant substitutions in accordance with the relevant obligations under Rule K.7(b) of the Regulations; and confirmed specifically in paragraph 49 of their submission of 23 April 2010, that the installation did not waive the 48 hour notice requirement; that the Sellers are entitled to reject the substitution notice in the absence of 48 hours notice; neither the Sellers nor the installation have an obligation under the Regulations to provide reasons for a rejection; that the Buyers were not attempting to alter the particular of a nomination, but were rather attempting to effect a substitution which does require that a 48 hour notice period cannot be waived, and, that the Buyers have therefore defaulted on their delivery obligations under Dispute 5.

The Delivery Panel rejects the Buyer's suggestion that the Seller was obliged to accept the proposed substitute barge and that reasons for the rejection must be provided and has therefore determined that the Buyer's defence in relation to the delay in the barge is not acceptable.

The Delivery Panel has determined that, in respect of Dispute 5, the Buyer has failed to perform its obligations to take up the Product in accordance with its obligations under Rule J.12(a)(ii) and the relevant procedures in Section K of the Regulations by not arriving within the agreed delivery range.

It is the Panel's view that in a dispute of this nature involving a failure to perform by a party that damages is the appropriate remedy and that such damages should be calculated as the difference between the contract price and the market price at the time of the Buyer's failure to perform.

The Panel has considered the submissions of the parties and information supplied by the Exchange and has concluded that:-

- (i) the ICE Futures Europe Gasoil Futures Contract price, the invoiced price, for the February 2010 contract on expiry on 11 February 2010 was USD\$576.75 /tonne*;
- (ii) the market price on 25 February 2010, the first date subsequent to the date on which delivery failed to occur for which a price is available, was USD\$609.25/tonne⁺.

It is clear from an analysis of the prices referenced in (i) and (ii) above that no loss would have arisen for the Seller and that therefore no award of damages is required. Therefore, the Panel sees no reason to exercise any of its power under Rule I.18 (i)(i) or (ii).

* ICE Futures Europe settlement price on 12 January 2010;

⁺ Platts Gasoil 0.1% FOB ARA Barges.

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February Delivery Dispute 6

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:	Rotterdam
Installation:	Eurotank
Delivery Range:	20-24 February 2010
Vessel(s):	Tristan
No. of lots:	29
Nature of dispute:	Time of arrival of barge

The Panel has received written submissions from the parties to Dispute 6. On the basis of those submissions there appears to be agreement on the basic facts. The Barge Tristan was nominated by the Buyer to take delivery of 29 lots of gasoil ("Product") under the Contract within the delivery range 20 – 24 February 2010, as agreed between the parties in accordance with the ICE Futures Europe Regulations ("the Regulations"). The nominated delivery day, was confirmed in accordance with the Regulations, as being 20 February 2010. The Sellers confirmed to Buyers by email at 12.21 on 25 February 2010 that the barge Tristan had tendered a notice of readiness to the installation at 22.45 on 24 February 2010, but had been unobtainable since 9.30 a.m. on 25 February 2010 despite various attempts by the Sellers to contact the barge by telephone. The Sellers further attempted to contact the barge Tristan via the barge owner (as per the Seller's statement in the email at 12.21 on 25 February 2010) and sent the inspector agreed between the parties to the berth where barge Tristan had confirmed she was positioned. Barge Tristan could not be located at such berth, as per the statement of [Name] of Inspectors Saybolt, at Seller's attachment 194. The Sellers, in the same email to Buyers, stated their conclusion that the Barge Tristan was unavailable to load within the time set by the Regulations and was therefore in default.

In the light of the relevant non-performance in relation to Dispute 6 amicable settlement papers were sent to the Buyer and Seller by the Clearing House in accordance with Rule 1.17(a) on 26 February 2010. Negotiations took place between the Buyer and the Seller during the amicable settlement period, however no amicable settlement of Dispute 6 was achieved by the parties by 3 March 2010 as required.

Dispute 6 was referred to the Exchange by the Clearing House in accordance with Rule I.17. The Exchange then referred the matter to the Delivery Committee in accordance with Rule I.17. A Delivery Panel was convened in accordance with its powers under I.18(c) since the dispute was deemed by the Exchange to require urgent resolution.

In their submissions Buyers had sought delivery of the lots which are the subject of Dispute 6 at the original Exchange Delivery Price or alternatively a reconversion, by the Delivery Panel, of the undelivered lots back to the front month price prevailing at the time of the Delivery Panel's decision less the appropriate discount at the time that the futures expired under the February contract.

The Buyers, in their submissions (paragraphs 115 – 124 of the submissions received on 15 April 2010), accept that the Barge Tristan was unavailable for the period 9.30 -11.25 on 25 February 2010. However, the Buyers, in their submissions (paragraph 118), have claimed that the presentation of a notice of readiness to load at 22.45 on 24 February 2010 was valid and discharged their obligations under the Regulations and that further the Sellers had until 23.59 on 25 February 2010 to deliver Product to the Buyer. The Buyers further suggest that the Sellers were obliged to request a 24 hour extension beyond the agreed delivery range

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having demonstrated that the Sellers had “made product ready for delivery but loading has been prevented by operational factors”.

The Sellers have accepted that the barge Tristan tendered a notice of readiness within the agreed delivery range, but do not accept that the barge Tristan actually arrived and was present at the installation within the agreed delivery range, nor do the Sellers accept therefore that the notice of readiness was valid (paragraphs 51 and 52 of their submissions of 23 April 2010).

The Sellers, in their submissions, assert that: the original notice of readiness was not valid in light of the subsequent unavailability of the barge Tristan when called by the installation to arrange delivery; the difficulties that the installation and the agreed inspector had in actually locating the barge Tristan at the berth confirmed as the location of the barge Tristan on 25 February 2010 further supports that fact that the notice of readiness was not valid. The Sellers have further queried whether the barge Tristan was in fact an “arrived vessel” (paragraph 89 of the Sellers’ submission dated 23 April 2010. Regarding the 24 hour extension of the agreed delivery range, Sellers have claimed that the Buyers analysis that such an extension must be formally requested is flawed on three grounds (in paragraphs 59 – 63 of the Sellers’ submissions of 23 April 2010). Firstly, the Sellers state that the Buyers agreed to the extension; secondly, the Sellers state that it is established market practice that if a barge arrives in the agreed delivery range the extension is automatically implemented without any formality being required; and, thirdly, the course of dealings between the parties according to which a 24 hour extension to a delivery range is considered automatic if the barge arrives within the agreed delivery range without any required formality being completed - amounting to a representation that the Buyer will not insist on or enforce its strict legal rights – estoppes the Buyer from subsequently enforcing such legal rights as may exist.

The Sellers, in their submissions, denied that the Buyers are entitled to any remedy, and consider that the Buyers have defaulted on their delivery obligations in relation to Dispute 6.

The Delivery Panel rejects the Buyer’s claim that the notice of readiness served by the Buyer was valid, since, on the basis of the submissions, it is not clear that the barge Tristan was an “arrived ship” or that the barge Tristan was physically ready to load at the time the notice of readiness was lodged. The Delivery Panel further rejects the Buyer’s claim that a formal request from the Seller for a 24 hour extension to the agreed delivery range must be provided by the Seller which must be accepted by the Buyer. The Delivery Panel accepts the Seller’s analysis in relation to the conduct of the parties, market practice and course of dealings as evidence of the fact that a formal request for an extension is not a requirement in these circumstances.

The Delivery Panel has determined that, in respect of Dispute 6, the Buyer has failed to perform its obligations to take up the Product in accordance with its obligations under Rule J.12(a)(ii) and the relevant procedures in Section K of the Regulations by not arriving in the agreed delivery range.

It is the Panel’s view that in a dispute of this nature involving a failure to perform by a party that damages is the appropriate remedy and that such damages should be calculated as the difference between the contract price and the market price at the time of the Buyer’s failure to perform.

The Panel has considered the submissions of the parties and information supplied by the Exchange and has concluded that:-

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- (i) the ICE Futures Europe Gasoil Futures Contract price, the invoiced price, for the February 2010 contract on expiry on 11 February 2010 was USD\$576.75 /tonne*;
- (ii) the market price on 25 February 2010, the first date subsequent to the date on which delivery failed to occur for which a price is available, was USD\$609.25/tonne⁺.

It is clear from an analysis of the prices referenced in (i) and (ii) above that no loss would have arisen for the Seller and that therefore no award of damages is required. Therefore, the Panel sees no reason to exercise any of its power under Rule I.18 (i)(i) or (ii).

* ICE Futures Europe settlement price on 12 January 2010;

⁺ Platts Gasoil 0.1% FOB ARA Barges.

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February Delivery Dispute 7

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:	18-22 February 2010
Vessel(s):	Somtrans XI
No. of lots:	47
Nature of dispute:	Time of arrival of barge

The Panel has received written submissions from the parties to Dispute 7. On the basis of those submissions there appears to be agreement on the basic facts. The Barge Somtrans XI was nominated by the Buyer to take delivery of 47 lots of gasoil ("Product") under the Contract within the delivery range 18 – 22 February 2010, as agreed between the parties in accordance with the ICE Futures Europe Regulations ("the Regulations"). The nominated delivery day, was confirmed in accordance with the Regulations, as being 20 February 2010. The barge Somtrans XI confirmed readiness to load to the installation at 23.25 on 22 February 2010, but when called into berth around this time was unable to comply. Buyer acknowledges in its submissions that the barge Somtrans XI was not in all respects ready to load and that the notice of readiness was invalid (paragraph 128 of the Buyer's submissions received on 15 April 2010). The Buyers confirmed in their submissions that the barge Somtrans XI did in fact arrive and tender a notice of readiness at 12.00 on 23 February 2010, outside of the agreed delivery range. The Buyers have not included any specific reason for the delay on the barge Somtrans XI in their submissions. However, at paragraphs 125 and 126 of the Buyers' submissions received on 15 April 2010 the Buyers have claimed that the failure of the barge Somtrans XI to arrive was "beyond the control of the Buyers" and that "Buyers were not responsible", and further in [Name]'s statement of 30 April 2010 he states that "the Somtrans XI missed its Delivery Range because of a slightly longer than expected discharge of its previous cargo, which was outside Noble's control".

In the light of the relevant non-performance by the Buyer of its obligations in relation to Dispute 7 amicable settlement papers were sent to the Buyer and Seller by the Clearing House in accordance with Rule 1.17(a) on 23 February 2010. Negotiations took place between the Buyer and the Seller during the amicable settlement period, however no amicable settlement of Dispute 7 was achieved by the parties by 28 February 2010 as required.

Dispute 7 was referred to the Exchange by the Clearing House in accordance with Rule I.17. The Exchange then referred the matter to the Delivery Committee in accordance with Rule I.17. A Delivery Panel was convened in accordance with its powers under I.18(c) since the dispute was deemed by the Exchange to require urgent resolution.

In their submissions Buyers had sought delivery of the lots which are the subject of Dispute 7 at the original Exchange Delivery Price or alternatively a reconversion, by the Delivery Panel, of the undelivered lots back to the front month price prevailing at the time of the Delivery Panel's decision less the appropriate discount at the time that the futures expired under the February contract.

The Buyers, in their submissions, admitted that they had failed to present a barge to load within the agreed delivery range, but claimed that an event of force majeure prevented their presentation of a barge to load within the agreed delivery range.

There was no assertion of a force majeure event at the time of non-delivery.

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The Sellers, in their submissions, denied that the Buyers are entitled to any remedy, rejected that the facts amounted to a force majeure event as there was no particular reason given for the barge's delay), and consider that the Buyers have defaulted on their delivery obligations in relation to Dispute 7.

The Delivery Panel rejects the suggestion that the failure to provide the barge on the facts of this case amounts to force majeure and therefore rejects the Buyer's defence.

The Delivery Panel has determined that, in respect of Dispute 7, the Buyer has failed to perform its obligations to take up the Product in accordance with its obligations under Rule J.12(a)(ii) and the relevant procedures in Section K of the Regulations by not arriving in the agreed delivery range.

It is the Panel's view that in a dispute of this nature involving a failure to perform by a party that damages is the appropriate remedy and that such damages should be calculated as the difference between the contract price and the market price at the time of the Buyer's failure to perform.

The Panel has considered the submissions of the parties and information supplied by the Exchange and has concluded that:-

- (i) the ICE Futures Europe Gasoil Futures Contract price, the invoiced price, for the February 2010 contract on expiry on 11 February 2010 was USD\$576.75 /tonne*;
- (ii) the market price on 23 February 2010, the first date subsequent to the date on which delivery failed to occur for which a price is available, was USD\$626.75/tonne⁺.

It is clear from an analysis of the prices referenced in (i) and (ii) above that no loss would have arisen for the Seller and that therefore no award of damages is required. Therefore, the Panel sees no reason to exercise any of its power under Rule I.18 (i)(i) or (ii).

* ICE Futures Europe settlement price on 12 January 2010;

⁺ Platts Gasoil 0.1% FOB ARA Barges.

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February Delivery Dispute 8

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:	Rotterdam
Installation:	Eurotank
Delivery Range:	16-20 February 2010
Vessel(s):	Promotion
No. of lots:	57
Nature of dispute:	Time of arrival of barge

The Panel has received written submissions from the parties to Dispute 8. On the basis of those submissions there appears to be agreement on the basic facts. The Barge Promotion was nominated by the Buyer to take delivery of 57 lots of gasoil ("Product") under the Contract within the delivery range 16 – 20 February 2010, as agreed between the parties in accordance with the ICE Futures Europe Regulations ("the Regulations"). The nominated delivery day, was confirmed in accordance with the Regulations, as being 17 February 2010, and was subsequently re-confirmed as 18 February 2010 and then 19 February 2010. On 19 February 2010 at 13.30 Buyers, having realised that Barge Promotion would not arrive to take up delivery of Product within the agreed delivery range, attempted to substitute two alternative barges with a nominated delivery day of 19 February 2010 by email notification to the Seller at 13.30 on 19 February 2010. The Sellers rejected the proposed substitution by email at 13.40 on 19 February 2010.

In the light of the relevant non-performance in relation to Dispute 8 amicable settlement papers were sent to the Buyer and Seller by the Clearing House in accordance with Rule 1.17(a) on 23 February 2010. Negotiations took place between the Buyer and the Seller during the amicable settlement period, however no amicable settlement of Dispute 8 was achieved by the parties by 28 February 2010 as required.

Dispute 8 was referred to the Exchange by the Clearing House in accordance with Rule I.17. The Exchange then referred the matter to the Delivery Committee in accordance with Rule I.17. A Delivery Panel was convened in accordance with its powers under I.18(c) since the dispute was deemed by the Exchange to require urgent resolution.

In their submissions Buyers had sought delivery of the lots which are the subject of Dispute 8 at the original Exchange Delivery Price or alternatively a reconversion, by the Delivery Panel, of the undelivered lots back to the front month price prevailing at the time of the Delivery Panel's decision less the appropriate discount at the time that the futures expired under the February contract.

The Buyers, in their submissions, accept that the Barge Promotion did not present itself to load within the agreed delivery range, but claimed that the proposed substitute barges that were confirmed to the Seller for the purposes of loading within the agreed delivery range should have been accepted by the Seller, especially since the proposed substitute barges were due to arrive at the installation at approximately the scheduled time of the barge Promotions' arrival on the nominated delivery day, that further the Sellers did not consult with the installation prior to rejecting the proposed substitutions, and that no good reason was given by the Seller for the rejections. The Buyers further assert that since the Sellers were the charterers of the barge Promotion prior to the Buyers, and that since the barge Promotion was delayed in discharging at an installation that was operated by the Sellers, the Sellers were responsible for the delay to the barge Promotion and therefore the cause of the late substitutions.

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The Sellers, in their submissions, denied that the Buyers are entitled to any remedy, and consider that the Buyers failed to confirm the details of the relevant substitutions in accordance with the obligations under Rule K.7(b) of the Regulations. The Sellers confirmed specifically in paragraph 49 of their submission of 23 April 2010, that the installation did not waive the 48 hour notice requirement; that the Sellers are entitled to reject the substitution notice in the absence of 48 hours notice; neither the Sellers nor the installation have an obligation under the Regulations to provide reasons for a rejection; that the Buyers were not attempting to alter the particular of a nomination, but were rather attempting to effect a substitution which does require that a 48 hour notice period cannot be waived, and, that the Buyers have therefore defaulted on their delivery obligations under Dispute 8. Further, in paragraph 40 of the Seller's submissions of 23 April 2010 the Sellers confirm that: the Sellers did consult with the installation; the installation rejected the proposed substitution; the installation rejected the proposed substitution inter alia because less than 48 hours notice was not acceptable to the installation and two barges were not acceptable given load port congestions. In their submissions the Sellers further refuted the allegation that the Sellers interfered with the arrival of the barge Promotion in any way or capacity and stressed that the Sellers were in no way responsible for the delay of the barge Promotion.

The Delivery Panel rejects the Buyer's suggestion that the Seller was obliged to accept the proposed substitute barges, that reasons for the rejection of the barges must be provided, or that the Seller was responsible in some capacity for the delay to the barge Promotion and has therefore determined that the Buyer has not provided a good defence in relation to the reasons for the delay in the barge

Accordingly the Delivery Panel has determined that, in respect of Dispute 8, the Buyer has failed to perform its obligations to take up the Product in accordance with its obligations under Rule J.12(a)(ii) and the relevant procedures in Section K of the Regulations by not arriving in the agreed delivery range.

It is the Panel's view that in a dispute of this nature involving a failure to perform by a party that damages is the appropriate remedy and that such damages should be calculated as the difference between the contract price and the market price at the time of the Buyer's failure to perform.

The Panel has considered the submissions of the parties and information supplied by the Exchange and has concluded that:-

- (i) the ICE Futures Europe Gasoil Futures Contract price, the invoiced price, for the February 2010 contract on expiry on 11 February 2010 was USD\$576.75 /tonne*;
- (ii) the market price on 22 February 2010, the first date subsequent to the date on which delivery failed to occur for which a price is available, was USD\$632.25/tonne⁺

It is clear from an analysis of the prices referenced in (i) and (ii) above that no loss would have arisen for the Seller and that therefore no award of damages is required. Therefore, the Panel sees no reason to exercise any of its power under Rule I.18 (i)(i) or (ii).

* ICE Futures Europe settlement price on 12 January 2010;

⁺ Platts Gasoil 0.1% FOB ARA Barges.

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February Delivery Dispute 9

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:	Rotterdam
Installation:	Eurotank
Delivery Range:	16-20 February 2010
Vessel(s):	Stanleystad
No. of lots:	46
Nature of dispute:	Time of arrival of barge

The Panel has received written submissions from the parties to Dispute 9. On the basis of those submissions there appears to be agreement on the basic facts. The Barge Stanleystad was nominated by the Buyer to take delivery of 46 lots of gasoil ("Product") under the Contract within the delivery range 16 – 20 February 2010, as agreed between the parties in accordance with the ICE Futures Europe Regulations ("the Regulations"). The nominated delivery day, was confirmed in accordance with the Regulations, as being 17 February 2010 and was subsequently re-confirmed as 19 February 2010. The barge Stanleystad tendered a notice of readiness to the installation at 23.45 on 19 February 2010. The barge was called in to load on 21 February 2010. On inspection of relevant documents on the barge's arrival at the berth at approximately 19.20 on 21 February 2010 the installation confirmed that a gas free certificate provided by an independent surveyor was required prior to any loading. Since the barge Stanleystad did not have the appropriate form of gas free certificate Sellers considered the barge Stanleystad not available for loading and further that the Buyers were in default. The barge Stanleystad then left the berth. The Buyers subsequently engaged a Gas Doctor to inspect the barge Stanleystad and issue a Gas Free certificate, which was completed, as advised to the Sellers by the installation by email, at 21.23 on 21 February 2010.

In the light of the relevant non-performance in relation to Dispute 9 amicable settlement papers were sent to the Buyer and Seller by the Clearing House in accordance with Rule 1.17(a) on 23 February 2010. Negotiations took place between the Buyer and the Seller during the amicable settlement period, however no amicable settlement of Dispute 9 was achieved by the parties by 27 February 2010 as required.

Dispute 9 was referred to the Exchange by the Clearing House in accordance with Rule I.17. The Exchange then referred the matter to the Delivery Committee in accordance with Rule I.17. A Delivery Panel was convened in accordance with its powers under I.18(c) since the dispute was deemed by the Exchange to require urgent resolution.

In their submissions Buyers had sought delivery of the lots which are the subject of Dispute 9 at the original Exchange Delivery Price or alternatively a reconversion, by the Delivery Panel, of the undelivered lots back to the front month price prevailing at the time of the Delivery Panel's decision less the appropriate discount at the time that the futures expired under the February contract.

The Buyers, in their submissions, have claimed that their presentation of a notice of readiness to load at 23.45 on 19 February 2010 was valid and discharged their obligations under the Regulations and that the requirement for an independently issued gas free certificate was not known to the Buyers and was not mandated under relevant Dutch law or installation regulations. The Buyers state that the Sellers were obliged to request a 24 hour extension beyond the agreed delivery range having demonstrated that the Sellers had "made product ready for delivery but loading has been prevented by operational factors", and that by failing

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to do so were in breach of their obligations under the Regulations. The Buyers state that even if the agreed delivery range had been expanded by an additional 24 hours, and the barge Stanleystad was not considered ready to load without an independently issued gas free certificate, then the Sellers had until 23.59 on 21 February 2010 to comply with its obligation to load, and therefore should have begun loading subsequent to the Buyer's obtaining of an independently issued gas free certificate at 21.23 on 21 February 2010.

The Sellers, in their submissions, assert that the original notice of readiness was not valid in light of the fact that the barge Stanleystad did not have an independently issued gas free certificate, which was mandated under the installation regulations (in this regard the statement of [Name] of Euro Tank Terminal BV on 23 April 2010 found at documents 181 – 182 of the Seller's submissions of 23 April 2010 is noted), at the time of tender of the notice of readiness at 23.45 on 19 February 2010 and that further once the relevant independently issued gas free certificate was obtained the Seller could not load the Product within the extended delivery range. Regarding the 24 hour extension of the agreed delivery range, Sellers have claimed that the Buyers analysis that such an extension must be formally requested is flawed since the Sellers state that the Buyers agreed to the extension as referenced in paragraph 75 of the Sellers' submissions dated 23 April 2010.

The Sellers, in their submissions, denied that the Buyers are entitled to any remedy, and consider that the Buyers have defaulted on their delivery obligations in relation to Dispute 9.

The Delivery Panel rejects the Buyer's claim that the notice of readiness served by the Buyer was valid. This is because the barge did not have a valid Gas Free certificate and thus was not physically able to load and so made the Buyer in default of its obligation to present itself in readiness to load within the agreed delivery range. It is the Delivery Panel's view that the Buyer should have been aware of the Gas Free certificate requirement. The Delivery Panel rejects the Buyer's claim that the Seller should have loaded the barge Stanleystad subsequent to receipt by the Buyer of a Gas Free certificate at 21.23 on 21 February 2010. This is because by then the agreed delivery range had expired prior to a valid notice of readiness being tendered. The Delivery Panel further rejects the Buyer's claim that a formal request from the Seller for a 24 hour extension to the agreed delivery range must be provided by the Seller which must be accepted by the Buyer. The Delivery Panel accepts the Seller's analysis in relation to the conduct of the parties, market practice and course of dealings as evidence of the fact that a formal request for an extension is not a requirement in these circumstances.

The Delivery Panel has determined that, in respect of Dispute 9, the Buyer has failed to perform its obligations to take up the Product in accordance with its obligations under Rule J.12(a)(ii) and the relevant procedures in Section K of the Regulations by not arriving in the agreed delivery range.

It is the Panel's view that in a dispute of this nature involving a failure to perform by a party that damages is the appropriate remedy and that such damages should be calculated as the difference between the contract price and the market price at the time of the Buyer's failure to perform.

The Panel has considered the submissions of the parties and information supplied by the Exchange and has concluded that:-

- (i) the ICE Futures Europe Gasoil Futures Contract price, the invoiced price, for the February 2010 contract on expiry on 11 February 2010 was USD\$576.75 /tonne*;

* ICE Futures Europe settlement price on 12 January 2010;

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- (ii) the market price on 22 February 2010, the first date subsequent to the date on which delivery failed to occur for which a price is available, was USD\$632.25/tonne⁺.

It is clear from an analysis of the prices referenced in (i) and (ii) above that no loss would have arisen for the Seller and that therefore no award of damages is required. Therefore, the Panel sees no reason to exercise any of its power under Rule I.18 (i)(i) or (ii).

⁺ Platts Gasoil 0.1% FOB ARA Barges.

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February Delivery Dispute 10

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:	Rotterdam
Installation:	Eurotank
Delivery Range:	16-20 February 2010
Vessel(s):	Zwarte Zee
No. of lots:	29
Nature of dispute:	Time of arrival of barge

The Panel has received written submissions from the parties to Dispute 10. On the basis of those submissions there appears to be agreement on the basic facts. The Barge Zwarte Zee was nominated by the Buyer to take delivery of 29 lots of gasoil ("Product") under the Contract within the delivery range 16 – 20 February 2010, as agreed between the parties in accordance with the ICE Futures Europe Regulations ("the Regulations"). The nominated delivery day, was confirmed in accordance with the Regulations, as being 16 February 2010 and was subsequently re-confirmed as 18 February 2010. The barge Zwarte Zee tendered a notice of readiness to the installation at 20.30 on 20 February 2010. The installation attempted to call the barge in to load on 21 February 2010 but could not make contact with barge Zwarte Zee – confirming in an email passed to the Buyers by the Sellers on 22 February at 16.29 (Buyers attachment 53) that "the Terminal has tried to contact the Skipper of Barge Zwarte Zee multiple times on 21 February 2010 as of 1755 hrs but no response". The installation also confirmed that it had attempted to contact the barge Zwarte Zee via its owners, Ruudtrans, who in turn failed to contact the barge leading the owners, as also confirmed in the referenced email, to ask the harbour and police authorities to contact the barge Zwarte Zee. The barge owners confirmed in an email sent by the Buyers to the Sellers at 17.27 on 22 February 2010 that they had made contact with the barge Zwarte Zee at 20.30 on the evening of 21 February 2010. As per Buyer's attachment 53, the installation has confirmed that the barge Zwarte Zee subsequently made contact with the installation at noon on 22 February 2010. The Sellers consider the Buyers in default since the barge Zwarte Zee was not ready to load nor would it have been able to complete loading within an extended delivery range.

In the light of the relevant non-performance in relation to Dispute 10 amicable settlement papers were sent to the Buyer and Seller by the Clearing House in accordance with Rule 1.17(a) on 23 February 2010. Negotiations took place between the Buyer and the Seller during the amicable settlement period, however no amicable settlement of Dispute 10 was achieved by the parties by 27 February 2010 as required.

Dispute 10 was referred to the Exchange by the Clearing House in accordance with Rule I.17. The Exchange then referred the matter to the Delivery Committee in accordance with Rule I.17. A Delivery Panel was convened in accordance with its powers under I.18(c) since the dispute was deemed by the Exchange to require urgent resolution.

In their submissions Buyers had sought delivery of the lots which are the subject of Dispute 10 at the original Exchange Delivery Price or alternatively a reconversion, by the Delivery Panel, of the undelivered lots back to the front month price prevailing at the time of the Delivery Panel's decision less the appropriate discount at the time that the futures expired under the February contract.

The Buyers, in their submissions, have claimed that their presentation of a notice of readiness to load on 20 February 2010 was valid and discharged their obligations under the Regulations.

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Further, the Buyers have claimed that the installation had indicated that the barge *Zwarte Zee* would be loaded on 22 February 2010. The Buyers accept that the barge *Zwarte Zee* was out of contact for a period of time on 21 February 2010, but that this short period of time whilst it was out of contact should not have prevented the installation loading the barge *Zwarte Zee* as appropriate. The Buyers state that the Sellers were obliged to request a 24 hour extension beyond the agreed delivery range having demonstrated that the Sellers had “made product ready for delivery but loading has been prevented by operational factors”, and that by failing to do so were in breach of their obligations under the Regulations.

The Sellers, in their submissions, query the location of the barge *Zwarte Zee* at the point of submission of its notification of readiness. The installation has confirmed) to Sellers that it did not give an indication of a 22 February 2010 loading time to barge *Zwarte Zee*, and the statement of [Name] of Euro Tank Terminal BV on 23 April 2010 found at documents 181 – 182 of the Seller’s submissions of 23 April 2010 is noted in this regard. In an email forwarded by the Sellers to the Buyers at 16.29 on 22 February 2010 the installation provided a “recap” in relation to its attempts to contact the barge *Zwarte Zee*: attempting to call in the barge *Zwarte Zee* for loading at 17.55 on 21 February 2010, and only establishing contact with the barge *Zwarte Zee* at noon on 22 February 2010. There is no evidence to suggest that the barge *Zwarte Zee* made contact with the installation at 20.30 on 21 February 2010. The Sellers further state that even if the barge *Zwarte Zee* was available for loading at 21.30 that would not have presented sufficient time to complete the relevant loading. Regarding the 24 hour extension of the agreed delivery range, Sellers have claimed that the Buyers analysis that such an extension must be formally requested is flawed since the Buyers are estopped from claiming that the Sellers failed to comply with the requirement of K.7(a) for the reasons set out in paragraphs 58 – 63 of Sellers submissions dated 23 April 2010.

The Sellers, in their submissions, denied that the Buyers are entitled to any remedy, and consider that the Buyers have defaulted on their delivery obligations in relation to Dispute 10.

The Delivery Panel rejects the Buyer’s claim that the notice of readiness served by the Buyer at 20.30 on 20 February 2010 was valid since, on the basis of the submissions, it is not clear that the barge *Zwarte Zee* was physically ready to load at the time the notice of readiness was lodged or was an arrived ship. The Delivery Panel notes that no evidence is provided to support the claim that the barge *Zwarte Zee* was given an indication that loading would take place on 22 February 2010 and further notes the statement of [Name] of Euro Tank Terminal BV on 23 April 2010 found at documents 181 – 182 of the Seller’s submissions of 23 April 2010 is noted in this regard, confirming the installation policy in relation to predictions of loading. The Delivery Panel further rejects the Buyer’s claim that a formal request from the Seller for a 24 hour extension to the agreed delivery range must be provided by the Seller which must be accepted by the Buyer. The Delivery Panel accepts the Seller’s analysis in relation to the conduct of the parties, market practice and course of dealings as evidence of the fact that a formal request for an extension is not a requirement in these circumstances.

The Delivery Panel has determined that, in respect of Dispute 10, the Buyer has failed to perform its obligations to take up the Product in accordance with its obligations under Rule J.12(a)(ii) and the relevant procedures in Section K of the Regulations by not arriving in the agreed delivery range.

It is the Panel’s view that in a dispute of this nature involving a failure to perform by a party that damages is the appropriate remedy and that such damages should be calculated as the difference between the contract price and the market price at the time of the Buyer’s failure to perform.

The Panel has considered the submissions of the parties and information supplied by the Exchange and has concluded that:-

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- (i) the ICE Futures Europe Gasoil Futures Contract price, the invoiced price, for the February 2010 contract on expiry on 11 February 2010 was USD\$576.75 /tonne*;
- (ii) the market price on 22 February 2010, the first date subsequent to the date on which delivery failed to occur for which a price is available, was USD\$632.25/tonne⁺.

It is clear from an analysis of the prices referenced in (i) and (ii) above that no loss would have arisen for the Seller and that therefore no award of damages is required. Therefore, the Panel sees no reason to exercise any of its power under Rule I.18 (i)(i) or (ii).

* ICE Futures Europe settlement price on 12 January 2010;

⁺ Platts Gasoil 0.1% FOB ARA Barges.

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The Delivery Panel has not dealt with the issue of payment of the Exchanges' costs pursuant to Rule 1.18(i)(iii). Such costs may comprise, in accordance with Rule 1.18(i)(iii): the fees and expenses of the Chairman; the expenses of Delivery Panel members or any expert; any legal costs; and expenses which the Exchange or Clearing House may incur or be subjected to in respect of relevant disputes. The Delivery Panel requests the parties to provide, within 3 business days, any submissions they want to make as to who should be responsible for payment of these sums or any part of them. The Delivery Panel will then issue a direction concerning payment of these sums.