



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of General Counsel

CFTC letter No. 07-03  
March 5, 2007  
No-Action  
Office of General Counsel

Mr. Gilles Clerc  
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### By Facsimile and U.S. Mail

Dear Mr. Clerc:

This letter is in response to your request dated February 13, 2007, on behalf of Euronext Paris SA (“Euronext Paris”). You seek confirmation from the Office of General Counsel (“Office”) of the U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”) that the no-action relief granted by this Office to LIFFE Administration and Management (“LIFFE”) on January 22, 2004,<sup>1</sup> to offer and sell in the United States LIFFE’s futures contracts based on the FTSEurofirst 80 Index (“FTSEurofirst 80”) and the FTSEurofirst 100 Index (“FTSEurofirst 100”) (collectively “Indices”), will be extended to futures contracts based on these Indices listed and traded on Euronext Paris.

We understand that LIFFE and Euronext Paris are part of the same group owned by Euronext NV. Both exchanges operate on the same trading platform, although the corresponding markets remain cleared by two separate clearing houses within the London Clearing House Group, *i.e.* LCH.Clearnet Ltd. and LCH.Clearnet SA. The exchanges are included in Euronext.liffe, which is the international derivatives markets division of the Euronext group. Within the framework of the Euronext group organization, the decision was made to remove the futures contracts on the Indices listed and traded on LIFFE, and to make futures contracts on the Indices available to be listed and traded on Euronext Paris--in effect to transfer the contracts.<sup>2</sup>

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<sup>1</sup> CFTC Staff Letter No. 04-05 [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,677 (Jan. 22, 2004).

<sup>2</sup> You state that this decision was made in order to enhance the cross-margining possibilities with other correlated equity index futures contracts that are cleared by LCH.Clearnet SA, namely the CAC 40 Index and AEX Index futures contracts that are the subject of no-action relief for offer and sale in the U.S.

This decision was implemented on December 1, 2006, when futures contracts on the Indices were admitted to list and trade on Euronext Paris, while futures contracts on the Indices listed and traded on LIFFE were withdrawn following the expiration of the last available maturity tradeable there.<sup>3</sup>

The terms and conditions of the Euronext Paris cash-settled futures contracts generally are identical to the terms and conditions of LIFFE's futures contracts on the FTSEurofirst 80 and FTSEurofirst 100 that existed when this Office originally issued the no-action letter to LIFFE. The primary difference is the method for calculating the final settlement price. Previously, the final settlement price for each contract was calculated based on the levels of the relevant index observed every 15 seconds between 9:50 a.m. and 10:00 a.m. London Time (41 observations). The final settlement price was the average of those 41 Index levels. The amended final settlement price for each of the Euronext Paris contracts is based on the closing prices of the component stocks.<sup>4</sup>

Both the FTSEurofirst 80 and FTSEurofirst 100 continue to be based on highly capitalized and actively traded securities currently listed on major European stock exchanges. Based on information supplied by Euronext.liffe, the Indices continue to be not narrow-based.<sup>5</sup> In this regard, the FTSEurofirst 80 contains 79 stocks and the FTSEurofirst 100 contains 101 stocks. The largest stock accounted for 4.65 percent and 3.92 percent, respectively, of the FTSEurofirst 80 and FTSEurofirst 100. The largest five stocks accounted for 16.67 percent and 16.53 percent, respectively, of the FTSEurofirst 80 and FTSEurofirst 100. Finally, the lowest weighted 25 percent of each respective index had an average daily trading volume of about €1 billion.<sup>6</sup>

In evaluating requests for no-action relief from foreign boards of trade seeking to offer and sell in the U.S. foreign futures contracts based on foreign security indices, this Office has applied the three criteria enumerated in Section 2(a)(1)(C)(ii) of the Act when those foreign

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<sup>3</sup> See letter from Gilles Clerc, Deputy Director, Market Operations, Euronext.liffe to Julian E. Hammar, Counsel, CFTC, dated February 13, 2007, at 1.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> According to Section 1a(25)(A) of the Commodity Exchange Act ("CEA" or "Act"), 7 U.S.C. § 1a(25), a security index is a narrow based security index if it meets any one of the following criteria: (1) it has nine or fewer component securities; (2) any one of its component securities comprises more than 30% of its weighting; (3) the five highest weighted component securities in the aggregate comprise more than 60% of the index's weighting; or (4) the lowest weighted component securities comprising, in the aggregate, 25% of the index's weighting, have an aggregate dollar value of average daily trading volume of less than \$50 million (or in the case of an index with 15 or more component securities, \$30 million). See also Section 3(a)(55)(B) of the Securities Exchange Act of 1934 ("Exchange Act"). Thus, an index that does not have any of these elements is not a narrow-based security index.

<sup>6</sup> See letter from Mr. Clerc to Mr. Hammar, dated February 13, 2007, at 1-2.

boards of trade do not seek designation as a contract market or registration as a DTEF. Those three criteria are: (1) the contract must provide for cash settlement; (2) the contract must not be readily susceptible to manipulation nor to being used to manipulate any underlying security; and (3) the group or index of securities must not constitute a narrow-based security index.<sup>7</sup>

In our considered view, the change in the method for calculating the final settlement price from the LIFFE futures contracts to the Euronext Paris futures contracts noted above does not make the Euronext Paris futures contracts readily susceptible to manipulation, nor to being used to manipulate any underlying security.<sup>8</sup> In addition, an important consideration is the requesting exchange's ability to access information regarding the securities underlying the index. Euronext Paris represents that it will have access to surveillance information regarding the constituent stocks of the FTSEurofirst 80 and FTSEurofirst 100, either directly or indirectly through the French regulator of Euronext Paris, the Autorité des Marchés Financiers ("AMF").<sup>9</sup> Therefore, Euronext Paris should have access to information necessary to detect and deter manipulation. Finally, as noted above, the Indices are not narrow-based, and Euronext Paris's futures contracts on the Indices are cash settled. Accordingly, the Indices and the futures contracts based thereon listed on Euronext Paris conform to the criteria set forth in CEA Section 2(a)(1)(C)(ii).

In light of the foregoing, this Office confirms that the no action relief previously granted to LIFFE concerning the offer and sale in the United States of its futures contracts based on the FTSEurofirst 80 and FTSEurofirst 100 will be extended to the futures contracts based on the Indices listed and traded on Euronext Paris. Because this letter is based upon the facts and representations contained in your February 13, 2007 letter, attachments thereto and supplemental

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<sup>7</sup> With regard to the third criterion, the CFTC and SEC jointly promulgated Rule 41.13 under the CEA and Rule 3a55-3 under the Exchange Act, governing security index futures contracts traded on foreign boards of trade. These rules provide that "[w]hen a contract of sale for future delivery on a security index is traded on or subject to the rules of a foreign board of trade, such index shall not be a narrow-based security index if it would not be a narrow-based security index if a futures contract on such index were traded on a designated contract market or registered derivatives transaction execution facility." CFTC Rule 41.13, 17 C.F.R. § 41.13; Exchange Act Rule 3a55-3, 17 C.F.R. § 240.3a55-3.

<sup>8</sup> In this regard, the component stocks for each of the Indices are among the largest, in terms of market capitalization, and most liquid stocks listed for trading in Europe. Moreover, the close is one of the most active times of the trading day.

<sup>9</sup> See electronic mail from Giles Clerc, Deputy Director, Market Operations, Euronext.liffe to Julian E. Hammar, Counsel, CFTC, dated February 16, 2007. Specifically, Euronext Paris would be able to obtain information about trading in securities on the Euronext securities cash markets directly from those markets and, in relation to securities traded on other European markets, AMF would be able to obtain the relevant information via the Committee of European Securities Regulators' Memorandum of Understanding, known as the FESCO MOU. Euronext Paris, as successor to the Parisbourse <sup>SBF</sup> SA, also is a signatory to the International Information Sharing Memorandum of Understanding and Agreement signed on March 15, 1996, at Boca Raton, Florida.

electronic mail, as well as those facts and representations contained in the original request for no-action relief for the futures contracts based on the Indices made by LIFFE, it should be noted that any different, omitted or changed facts or conditions might require a different conclusion. This position also is contingent on the continued compliance by Euronext Paris with all regulatory requirements imposed by the AMF, and the applicable laws and regulations of France. In addition, this position may be affected by any rules that the Commission may adopt regarding futures contracts based on non-narrow-based security indices.

We note that in the event that Euronext Paris is unable to obtain access to adequate surveillance data, or is unable to share such data with the CFTC, this Office reserves the right to reconsider the position we have taken herein. With respect to its ability to share surveillance information with the CFTC, Euronext Paris represents that it is willing and able to share information in relation to its futures contracts on the Indices under the terms and conditions defined in the foreign terminal no-action letter granted to Euronext Paris by CFTC staff in 1999.<sup>10</sup> Under that arrangement, information which is not confidential will be provided directly to the CFTC by Euronext Paris, whereas any confidential information would be provided to the CFTC via the Memorandum of Understanding dated June 6, 1990, between the CFTC and the Commission des Opérations de Bourse (“COB”), now the AMF.<sup>11</sup>

Euronext Paris also has requested that, upon issuance of the confirmation of relief granted herein, it be permitted to make its futures contracts based on the Indices available for trading through its electronic terminals in the U.S. in accordance with the terms and conditions of the foreign terminal no-action letter dated August 10, 1999, issued by Commission staff to Parisbourse <sup>SBF</sup> SA, the predecessor to Euronext Paris.<sup>12</sup> In this regard, Euronext Paris has certified that it is in compliance with the terms and conditions of the August 10, 1999 no-action letter and that the contracts on the Indices will be traded in accordance with the terms and conditions of the foreign terminal no-action letter. We have consulted with the Commission’s Division of Market Oversight (“Division”), which is the Division in the Commission that administers foreign terminal no-action letters. The Division has concluded that allowing Euronext Paris to make its futures contracts on the Indices available for trading pursuant to the August 10, 1999 no-action letter would not be contrary to the public interest. Accordingly, on behalf of the Division, this Office hereby confirms that the no-action relief granted to Euronext Paris in the August 10, 1999 letter extends to Euronext Paris’s futures contracts based on the Indices.

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<sup>10</sup> See letter from Mr. Clerc to Mr. Hammar, dated February 13, 2007, at 2; CFTC Staff Letter No. 99-33 [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,746 (August 10, 1999).

<sup>11</sup> We note that AMF is a signatory to the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information of the International Organization of Securities Commissions (“IOSCO MOU”), to which the Commission also is a signatory. The AMF, as successor to the COB, is also a signatory to the Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organizations, as amended, signed on March 15, 1996, at Boca Raton, Florida.

<sup>12</sup> See *supra* note 10, CFTC Staff Letter No. 99-33.

The offer and sale in the U.S. of Euronext Paris's futures contracts on the Indices is, of course, subject to Part 30 of the Commission's regulations, which governs the offer and sale of foreign futures and foreign option contracts in the U.S.<sup>13</sup>

Sincerely,

Elizabeth L. Ritter  
Deputy General Counsel

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<sup>13</sup> See 17 C.F.R. Part 30.