

**CFTC Letter No. 00-103****November 13, 2000****No-Action****Office of General Counsel**

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1440 New York Avenue, N.W.  
Washington, D.C. 20005-2111

Re: No-Action Request to Permit the Offer and Sale in the U.S. of the SPI 200  
Futures Contract Based on the Standard & Poors/Australian Stock Exchange 200  
Index Traded on the Sydney Futures Exchange, Limited

Dear Mr. Johnson:

This is in response to letters and facsimiles dated from May 10, 2000, through October 13, 2000, requesting that the Office of the General Counsel of the Commodity Futures Trading Commission ("Commission" or "CFTC") issue a "no-action" letter concerning the offer and sale in the United States ("U.S.") of the SPI 200 futures contract (the "contract") based on the Standard & Poors/Australian Stock Exchange Index ("S&P/ASX 200 Index" or "Index") traded on the Sydney Futures Exchange, Limited ("SFE").<sup>1</sup>

We understand the facts to be as follows. The SFE is an Australian-approved, self-regulating futures exchange located in Sydney, Australia. The SFE is under the regulatory jurisdiction of the Australian Securities and Investments Commission ("ASIC"), which administers Chapter 8 of the Corporations Law governing the operation of futures markets in Australia. The ASIC also regulates Australian securities markets.<sup>2</sup>

The S&P/ASX 200 Index is a broad-based, modified capitalization-weighted composite index designed and administered by Standard & Poors Index Services Australia Pty Ltd. ("S&P"). The Index is designed to consist of the 200 most highly-capitalized and actively-traded stocks currently listed on the Australian Stock Exchange ("ASX"), classified into twenty-four industry sectors. Based on data supplied by the SFE, the total market capitalization of the S&P/ASX 200 Index was approximately U.S. \$403 billion as of December 31, 1999.<sup>3</sup> Also as of that date, the Index represented approximately 82% of the market capitalization of the ASX. The Index is reviewed quarterly for Index revisions and on an on-going basis to account for changes in the nature of the securities underlying the Index. Any modifications to the Index are announced to the market two weeks prior to their implementation. Authority for making additions to and removals from the Index ultimately rests with an Index Selection Committee comprised

of two senior ASX staff and three senior S&P Staff. As of December 31, 1999, no single stock in the Index represented more than 10.52% of the Index, and the five most heavily-weighted stocks in the Index represented 35.06% of the Index. The Index is calculated in real time and is disseminated through electronic media, such as Bloomberg.

The futures contract based on the Index has been traded on the SFE since May 2, 2000. The contract provides for cash settlement. The notional value for the contract is determined by multiplying the Index by 25 Australian dollars ("AU\$"). Prices are quoted in Index points with each Index point equal to AU \$25 per contract. Contract delivery months are the March, June, September and December cycle, with the nearest six available for trading. The last trading day for the contract is the last business day of the contract month. The final settlement price is derived from the closing quotation for the S&P/ASX 200 Index on the last day of trading calculated to one decimal place by 12:00 noon on the business day following the last trading day.<sup>4</sup>

The offer and sale in the U.S. of futures contracts traded on or subject to the rules of a foreign exchange is subject to the Commission's exclusive jurisdiction.<sup>5</sup> Section 2(a)(1)(B)(v) of the Act, 7 U.S.C. § 2a(v) (1994), generally prohibits any person from offering or selling a futures contract based on a securities index except as permitted under Section 2(a)(1)(B)(ii), 7 U.S.C. § 2a(ii) (1994), which sets forth three criteria to govern Commission designation of futures contracts on a group or index of securities:

- (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 index must be predominately composed of the securities of unaffiliated issuers and reflect the market for all publicly traded securities or a substantial segment thereof.

See H.R. Rep. No. 565, Part 1, 97th Cong., 2d Sess. 39 (1982).

Section 2(a)(1)(B)(ii) also provides that the Commission shall not designate a board of trade as a contract market unless the Commission finds that the board of trade meets the criteria enumerated therein. Although we understand that the SFE does not seek designation as a contract market, the Committee on Agriculture of the U.S. House of Representatives ("House Committee") suggested that a foreign board of trade like the SFE could apply to the Commission for "certification" that its stock index contract conforms with the requirements of the Act established for a specifically identified contract and therefore could be offered and sold in the U.S. See H.R. Rep. No. 565, Part 1, 97th Cong., 2d Sess. 85 (1982). The House Committee explained, for example, that a foreign exchange could seek certification from the Commission that its futures contract based upon an index of U.S. securities meets the requirements set forth in Section 2(a)(1)(B)(ii). Id.

As noted above, we understand that the securities in the Index are issued by Australian companies only. With respect to foreign exchange-traded futures contracts based on foreign securities indices, the House Committee suggested that the Commission may use such criteria as it deems appropriate to determine whether such futures contracts may be offered and sold in the U.S. *Id.* In this regard, the requirements of Section 2(a)(1)(B)(ii) of the Act were designed to permit futures trading in "broad-based . . . indices that are not conducive to manipulation or disruption of the market for the underlying securities." S. Rep. No. 390, 97th Cong., 2d Sess. 6 (1982). See also H.R. Rep. No. 565, Part 1, 97th Cong., 2d Sess. at 39. Accordingly, we have examined the SFE's futures contract on the S&P/ASX 200 Index in light of these criteria. Based on the information noted herein and as set forth in the letters, attachments and facsimiles noted above, we have determined that the futures contract conforms to these requirements.

In evaluating whether a foreign futures contract based on a foreign stock index is not readily susceptible to manipulation or being used to manipulate any underlying security, this Office evaluates the requesting exchange's ability to access information regarding the stocks underlying the index. As noted above, all the stocks underlying the Index are traded on the ASX. The SFE and the ASX have a Memorandum of Understanding ("MOU") which provides for both exchanges to use their best endeavors in accordance with their respective business rules to obtain and exchange information in order that they may fully carry out their regulatory responsibilities.<sup>6</sup> Thus, the SFE should have access to information necessary to detect or deter manipulation. In the event that the SFE is unable to obtain access to adequate surveillance data in this regard, this Office reserves the right to reconsider the position we have taken herein.<sup>7</sup>

In light of the foregoing, the Office of the General Counsel will not recommend any enforcement action to the Commission based on Sections 2(a)(1)(B)(v), 4(a), or 12(e) of the Commodity Exchange Act, as amended, if the S&P/ASX 200 Index futures contract traded on the SFE is offered and sold in the U.S.<sup>8</sup> Because this position is based upon facts and representations contained in the letters, attachments and facsimiles cited above, 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 the SFE with all regulatory requirements imposed by the ASIC and the applicable laws and regulations of Australia.

The offer and sale in the U.S. of the SFE's S&P/ASX 200 Index futures contract is, of course, subject to the Part 30 regulations which govern the offer and sale of foreign futures and foreign option contracts in the U.S.<sup>9</sup>

Yours truly,

C. Robert Paul  
General Counsel

cc: Ms. Annette L. Nazareth, Director  
Division of Market Regulation

## Securities and Exchange Commission

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1 The SFE currently lists for trading a futures contract that is based on the All Ordinaries Share Price Index (“AOI”) compiled by the Australian Stock Exchange (“ASX”). On September 15, 1991, Commission staff issued a no-action letter regarding the offer or sale of that contract in the United States. See CFTC Staff Letter No. 91-1, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,122 (August 29, 1991).

2 The Commission staff recently reviewed the regulatory structure in Australia and the regulation of the SFE and its members in connection with the relief granted to the SFE to make available its electronic trading system in the United States. See CFTC Staff Letter No. 99-37, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,757 (August 10, 1999). In addition, the Commission has granted Regulation 30.10 comparability relief to designated members of the SFE. See 53 Fed. Reg. 44856 (November 7, 1988).

3 See letter from Rick Holliday-Smith, Chairman, SFE, to David R. Merrill, Deputy General Counsel, CFTC, dated May 10, 2000.

4 Specifically, the closing price is the price of each component stock arrived at in the ASX’s 4:05 P.M. closing price auction on the final trading day. If no trade occurs during that auction, the last traded price is used with adjustment for any higher bid or lower offer outstanding at 4:00 P.M. See letter from Philip McBride Johnson, Skadden, Arps, Slate, Meagher & Flom, to David R. Merrill, Deputy General Counsel, CFTC, dated June 30, 2000.

5 The terms "any other board of trade, exchange, or market" in Section 2(a)(1)(A)(i) make clear the Commission's exclusive jurisdiction includes futures contracts executed on a foreign board of trade, exchange or market. Section 2(a)(1)(A), 7 U.S.C. § 2 (1994); 120 Cong. Rec. 34497 (1974) (statement of Senator Talmadge).

6 The SFE represents that this MOU authorizes the exchange of information between the parties with respect to transactions on either market, clearing of executed transactions and the identification of specific customers. The SFE further represents that nothing in the MOU will impede the ability of the SFE or the ASX to share such information with either or both the CFTC and SEC. See letter from Philip McBride Johnson, Skadden, Arps, Slate, Meagher & Flom, to Joshua Kans, Division of Market Regulation, SEC, dated October 13, 2000.

7 The SFE has confirmed that it is able and willing to share information with the CFTC with respect to trading in futures and options on the S&P/ASX 200 Index. See letter from Mr. Holliday-Smith to Mr.

Merrill, dated May 10, 2000. The Commission has granted Regulation 30.10 relief to designated members of the SFE based on the SFE's confirmation of its ability to share information. See Appendix C to Commission Regulation 30.10, 17 C.F.R. § 30.10. The SFE also is a signatory to the International Information Sharing Memorandum of Understanding and Agreement signed on March 15, 1996 at Boca Raton, Florida. In addition, a Memorandum of Understanding ("MOU") was entered into on October 19, 1994 by the Australian Securities Commission, predecessor to the SFE's regulator, the ASIC, and the U. S. CFTC concerning consultation and cooperation in the administration and enforcement of futures laws. The ASIC has confirmed that it has the necessary powers to obtain and provide market surveillance data regarding the SFE's S&P/ASX 200 Index futures contract to the CFTC and that it is able and willing to do so according to the terms of the October 19, 1994 MOU. See letter from Rose Webb, Director, Office of International Relations, ASIC, to David R. Merrill, Deputy General Counsel, CFTC, dated May 23, 2000. ASIC is also a signatory to the Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organizations, dated March 15, 1996.

8 The staff of the SEC has informed us that they would have no objection to the offer and sale of the S&P/ASX 200 Index futures contracts traded on the SFE to U.S. persons. See letter from Elizabeth K. King, Associate Director, Division of Market Regulation, SEC, to C. Robert Paul, General Counsel, CFTC, dated October 27, 2000.

9 See 17 C.F.R. Part 30.