

**CFTC Letter No. 00-21**

**February 29, 2000**

**No-Action**

**Office of General Counsel**

Jane Kang Thorpe, Esq.

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Washington, D.C. 20006-1208

Re: No-Action Request to Permit the Offer and Sale in the U.S. of Futures  
Contracts on the Dow Jones STOXX 50 Index and Dow Jones EURO STOXX 50  
Index Traded on MONEP

Dear Ms. Thorpe:

This is in response to your letters and facsimiles dated from June 5, 1998 through July 14, 1999 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 (the "U.S.") of the MONEP Exchange's futures contracts based on the Dow Jones STOXX 50 Index ("STOXX 50 Index") and the Dow Jones EURO STOXX 50 Index ("EURO STOXX 50 Index") (collectively "Indices").

We understand the facts to be as follows. The MONEP Exchange ("MONEP") is a subsidiary of PARISBOURSE SA, an entity formed on June 1, 1999, from the merger of four market operators, MONEP SA, SBF-Paris Bourse ("SBF"), MATIF SA, and La Société du Nouveau Marché ("SNM"). Although the merger consolidated management, surveillance, clearing, and guarantee functions of these markets, they remain separate with distinct rules and memberships.<sup>1</sup> MONEP is located in France and is regulated by the Commission des Operations de Bourse ("COB"), which has general responsibility for ensuring the proper functioning of French financial markets.

On February 26, 1998, SBF-Paris Bourse entered into a joint venture with Deutsche Börse,

Dow Jones, and Schweizer Börse to form a Swiss company, STOXX Limited, to develop and maintain a new group of indices.<sup>2</sup> Among others, STOXX Limited has developed and maintains the STOXX 50 Index, a capitalization-weighted index comprised of 50 blue-chip stocks selected from the Dow Jones STOXX Index,<sup>3</sup> and the EURO STOXX 50 Index, a capitalization-weighted index comprised of 50 blue-chip stocks selected from the Dow Jones EURO STOXX Index.<sup>4</sup>

Both the STOXX 50 Index and the EURO STOXX 50 Index are broadly diversified. As of October 5, 1999, the STOXX 50 Index includes stocks from nine European countries and 18 industry sectors,<sup>5</sup> and the EURO STOXX 50 Index includes stocks from seven countries and 19 industry sectors.<sup>6</sup> The market capitalization as of October 5, 1999 of the STOXX 50 Index was 2.83 trillion euros (U.S. \$3.023 trillion)<sup>7</sup> and the EURO STOXX 50 Index was 1.925 trillion euros (U.S. \$2.057 trillion).<sup>8</sup> No single stock comprised more than 5.94% of the STOXX 50 Index's value, and the five most heavily weighted stocks in the STOXX 50 Index accounted for 22.91% of the STOXX 50 Index's value. No single stock comprised more than 6.27% of the EURO STOXX 50 Index's value, and the five most heavily weighted components accounted for 26.15% of the EURO STOXX 50 Index's value. The Indices are designed to reflect the leaders in each industry sector, and no single stock may constitute greater than 10% of the value of either of the Indices. The component stocks in the Indices are revised annually on the third Friday of September. Component weights are adjusted as part of the revision to ensure representation of the relevant underlying market. To maintain market continuity, an adjustment is made to the index divisor. STOXX Limited calculates and disseminates the value of the Indices in real-time every 15 seconds from 8:00 A.M. to 5:45 P.M. (Central European Time), using the last sale price for each component stock and the latest currency exchange rates. The index values are disseminated through newspapers and quotation vendors, including Bloomberg, Instinet and Reuters.

The STOXX 50 Index and the EURO STOXX 50 Index futures contracts have traded on the MONEP since June 22, 1998. The terms and conditions for each subject contract are identical, with the exception of the underlying index. Both contracts provide for cash settlement. The notional value of each futures contract is determined by multiplying the relevant index by 10 euros. Prices for the futures contracts are quoted in index points with each index point equal to 10 euros per contract. The minimum price fluctuation is one index point. Delivery months for the futures contracts on the Indices are the three nearest months of the March, June, September, December cycle, and the last trading day for the contracts is the third Friday of the delivery month. Cash settlement occurs on the first business day after the last trading day. The final settlement price for each contract is calculated on the last day of trading and is the arithmetic mean of the relevant STOXX 50 or EURO STOXX 50 Index values calculated every 15 seconds between 11:50 A.M. and 12:00 Noon (41 values).

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>9</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 MONEP 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 MONEP 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. 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 Indices are issued by European companies only. With respect to futures contracts based on such 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."<sup>10</sup> Accordingly, we have examined the STOXX 50 Index and the EURO STOXX 50 Index futures contracts 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 these futures contracts conform to these requirements.

In evaluating whether a foreign futures contract based on a foreign stock index is not readily

susceptible to manipulation or to being used to manipulate any underlying security, this Office inquires whether a surveillance-sharing arrangement exists between the requesting futures exchange and the securities exchange on which the underlying stocks are traded. The STOXX 50 and EURO STOXX 50 Indices contain stocks that, respectively, are traded on nine and seven European securities exchanges. Neither MONEP, nor its parent organization, PARISBOURSE, have surveillance-sharing arrangements with any of the securities exchanges outside of France that are represented in the Indices.<sup>11</sup> PARISBOURSE represents, however, that its regulator, the COB, has signed memoranda of understanding with five of the European securities regulators which have regulatory responsibility for stocks included in the Indices.<sup>12</sup> These memoranda of understanding would cover 69% and 67%, respectively, of the capitalization of the underlying stocks included in the STOXX 50 Index and EURO STOXX 50 Index.<sup>13</sup> Thus, when added to the underlying equity stocks issued within France, the COB would have access to information for 80% of the capitalization of the underlying stocks included in the STOXX 50 Index and 94% of those included in the EURO STOXX 50 Index. PARISBOURSE has represented that the memoranda of understanding will give it access to the same types of surveillance data that an exchange-to-exchange surveillance-sharing arrangement would, including information concerning the identity of the ultimate customer.<sup>14</sup>

In consideration of COB's MOUs with European securities regulators and the size and structure of the Indices, we have concluded that PARISBOURSE will have sufficient access to the information it may need to detect and deter manipulation. Nevertheless, this Office continues to advocate that exchange-to-exchange surveillance-sharing arrangements are preferable as the most expedient means to obtain the detailed information required for an effective surveillance program to detect manipulation. Therefore, we encourage PARISBOURSE to continue to pursue forging exchange-to-exchange surveillance agreements with regard to the stocks underlying these Indices. In the event that PARISBOURSE is unable to obtain access to adequate surveillance data under the memoranda of understanding or pursuant to other available means that it has cited, this Office reserves the right to reconsider its position taken herein.<sup>15</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 STOXX 50 Index Futures Contract and the EURO STOXX 50 Index Futures Contract traded on the MONEP are offered and sold in the U. S.<sup>16</sup> Because this position is based upon facts and representations contained in the above-noted letters, attachments and facsimiles, 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 MONEP and PARISBOURSE with all regulatory requirements imposed by the COB and the applicable laws and regulations of France.

The offer and sale in the U.S. of the STOXX 50 Index Futures Contract and the EURO STOXX 50 Index Futures Contract is, of course, subject to the Part 30 regulations adopted by the Commission to govern the offer and sale of foreign futures and foreign option contracts in the U.S.<sup>17</sup>

Yours truly,

C. Robert Paul

General Counsel

cc: Ms. Annette L. Nazareth

Director

Division of Market Regulation

Securities and Exchange Commission

<sup>1</sup> See Letter from Jane Kang Thorpe, Orrick, Herrington & Sutcliffe, to Daniel Waldman, General Counsel, CFTC, dated July 14, 1999.

<sup>2</sup> See Letter from Ms. Thorpe to Mr. Waldman dated June 5, 1998.

<sup>3</sup> The Dow Jones STOXX Index is a capitalization-weighted index composed of 650 highly-capitalized and liquid stocks from 16 European countries and 19 industry sectors as of October 22, 1999.

<sup>4</sup> The Dow Jones EURO STOXX Index is a capitalization-weighted index that is a subset of the STOXX Index and as of October 22, 1999 includes the stocks of companies from 10 countries that have adopted the European single currency, the euro.

<sup>5</sup> The countries represented in the STOXX 50 Index are Finland, France, Germany, Italy, the Netherlands, Spain, Sweden, Switzerland and the United Kingdom.

<sup>6</sup> The countries represented in the EURO STOXX 50 Index are Belgium, Finland, France, Germany, Italy, the Netherlands and Spain.

<sup>7</sup> The euro/U.S. dollar spot rate was 1.0737 euro per U.S. dollar on October 5, 1999.

<sup>8</sup> As of October 5, 1999, the aggregate weighting of securities in the STOXX 50 Index by

country was the following: (1) the United Kingdom (12 stocks, 30.99%); (2) Germany (9 stocks, 17.47%); (3) the Netherlands (8 stocks, 12.71%); (4) Switzerland (6 stocks, 13.69%); (5) France (7 stocks, 11.15%); (6) Italy (3 stocks 4.35%); (7) Spain (3 stocks, 3.91%); (8) Finland (1 stock, 3.83%); and (9) Sweden (1 stock, 1.90%). For the EURO STOXX 50 Index, the aggregate weighting was: (1) Germany (14 stocks, 31.30%); (2) France (6 stocks, 26.99%); (3) the Netherlands (8 stocks, 18.68%); (4) Spain (5 stocks, 7.88%); (5) Italy (4 stocks, 7.58%); (6) Finland (1 stock, 5.63%); and (7) Belgium (2 stocks, 2.01%).

9 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).

10 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.

11 PARISBOURSE currently is negotiating with the London Stock Exchange and EUREX to form a pan-European equities market. See Letter from Ms. Thorpe to David R. Merrill, Deputy General Counsel, CFTC, dated March 12, 1999. PARISBOURSE expects that agreements for sharing surveillance information among these exchanges will be an integral part of any market that they form. PARISBOURSE asserts, however, that it will not be feasible to conclude information-sharing agreements until the parties have completed their negotiations. Nevertheless, PARISBOURSE has represented that it will undertake to commence discussions with relevant counterpart exchanges in each of the eight jurisdictions represented in the Indices on comprehensive market-to-market surveillance-sharing arrangements. See June 5, 1998 letter, supra note 2.

12 The COB also is a member of the Forum of European Securities Commissions ("FESCO"). The members of FESCO have entered into a Multilateral Memorandum of Understanding on the Exchange of Information and Surveillance of Securities Activities, dated January 26, 1999 ("Multilateral MOU"). PARISBOURSE has represented that this Multilateral MOU complements the bilateral MOUs executed by the COB and that it would be able to use the Multilateral MOU to obtain information relating to insider dealing, market manipulation and other fraudulent and manipulative practices.

13 PARISBOURSE operates SBF, the French equities market, on which the French stocks included in the Indices are traded. PARISBOURSE has represented that it would be able to obtain surveillance information from SBF and share that information with MONEP.

14 See letter from Ms. Thorpe to Mr. Merrill dated October 22, 1998.

15 On June 6, 1990, a Mutual Recognition Memorandum of Understanding ("MRMOU") and

Administrative Agreements were entered into between the COB and the CFTC with respect to the sharing of confidential information among agencies and mutual assistance in investigation and enforcement matters. See 55 Fed. Reg. 23902 (June 13, 1990). Also, the CFTC has granted Regulation 30.10 relief to the COB and designated members of the MONEP (formerly MATIF). See Appendix C to Commission Regulation 30.10, 17 C.F.R. § 30.10. In this connection, the COB has confirmed that the MRMOU applies to the MONEP STOXX 50 Index and EURO STOXX 50 Index Futures Contracts and that it will cooperate in any CFTC inquiry into futures trading on the STOXX 50 Index and EURO STOXX 50 Index. See letter from Fabrice DeMarigny, Le Chef du Service des Relations Internationales, COB, to Daniel Waldman, General Counsel, CFTC, dated June 10, 1998. Further, the COB is a signatory to the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations for the sharing of large exposure information dated March 15, 1996. The SBF and PARISBOURSE have represented that they are able and willing to cooperate through information sharing and other means within the scope of their authority in any CFTC inquiry into futures on the STOXX 50 Index and EURO STOXX 50 Index. See letter from Ms. Thorpe to Mr. Merrill dated October 22, 1998. Finally, the MONEP also is a signatory to the International Information Sharing Memorandum of Understanding and Agreement signed on March 15, 1996 at Boca Raton, Florida.

16 The staff of the Securities and Exchange Commission ("SEC") has informed us that they would have no objection to the offer and sale of these futures contracts in the U.S. See letter dated January 19, 2000 from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, to C. Robert Paul, General Counsel, CFTC.

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