

CFTC Letter No. 00-77**June 21, 2000****Exemption****Office of General Counsel**

Philip McBride Johnson, Esq.
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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 Futures Contracts
on the Morgan Stanley Capital International Incorporated Singapore Free Stock Index
Traded on the Singapore Exchange Derivatives Trading, Limited

Dear Mr. Johnson:

This is in response to letters and facsimiles dated from June 17, 1998, through May 17, 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 futures contracts based on the Morgan Stanley Capital International Incorporated ("MSCI") Singapore Free Stock Index ("Index") traded on the Singapore Exchange Derivatives Trading, Limited ("SGX-DT").

We understand the facts to be as follows. The Stock Exchange of Singapore ("SES") and the Singapore International Monetary Exchange ("SIMEX") demutualized and merged to form the Singapore Exchange, Limited ("SGX") effective December 1, 1999.¹ SGX operates through several wholly-owned subsidiaries. Derivatives products, including futures contracts on stock indices, are traded on SGX-DT and cleared through Singapore Exchange Derivatives Clearing, Limited. Securities are traded on the Singapore Exchange Securities Trading Limited ("SGX-ST"). SGX-DT, through various specialized departments, performs market surveillance and monitors trading activity in derivatives products to ensure against manipulation and to prevent unfair trade practices.

SGX and its subsidiaries, including SGX-DT, are regulated by the Monetary Authority of Singapore ("MAS") under, among others, the Futures Trading Act of 1986, last amended on March 6, 2000. The MAS is an independent governmental authority established under the Monetary Authority of Singapore Act. It is charged with, among other things, protecting customers and the integrity of Singapore securities and futures markets.

The MSCI Singapore Free Stock Index is a broad-based, modified capitalization-weighted composite index designed and administered by MSCI. As of November 30, 1999, the Index consisted of 28 highly-capitalized and actively traded stocks currently listed on SGX-ST. Based on data supplied by SGX-DT, the total market capitalization of the MSCI Singapore Free Stock Index was approximately U.S. \$82 billion as of November 30, 1999.² MSCI Group, a wholly-owned subsidiary of MSCI, determines the composition of the Index. The Index is reviewed quarterly for Index revisions to ensure that the Index generally includes a representative sampling of Singapore stocks.³ Specifically, the Index is designed following each quarterly revision to capture 60% of the market capitalization of each of the 17 industry groups represented in the Index. There is no provision for a minimum number of stocks in the Index. As of November 30, 1999, no single stock in the Index represented more than 14.12% of the Index, and the five most heavily-weighted stocks in the Index represented 57.15% of the Index. MSCI Group applies a "market cap factor" ("MCF") to stocks represented in the Index.⁴ The Index is calculated in real time and is disseminated through electronic media, such as Bloomberg.

The futures contract based on the Index provides for cash settlement. The notional value for the contract is determined by multiplying the Index by 200 Singapore dollars ("S\$"). Prices are quoted in Index points with each Index point equal to S\$20 per contract. Contract delivery months are the four nearest months in the March quarterly cycle and the two nearest months in a monthly cycle. The last trading day for the contracts is the second to last business day of the contract month. The final settlement price is derived from the average of the Index values taken at one minute intervals during the last hour of trading on the underlying stock market on the last trading day, excluding the highest and lowest 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.⁵ 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 SGX-DT 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 SGX-DT 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 Singapore 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 SGX-DT's futures contract on the MSCI Singapore Free Stock 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 SGX-ST, a wholly-owned subsidiary of SGX-DT's parent company, SGX. Thus, SGX-DT should have access to information necessary to detect or deter manipulation.⁶ In the event that SGX-DT 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.⁷

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 MSCI Singapore Free Stock Index futures contract traded on SGX-DT is offered and sold in the U.S.⁸ 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 SGX-DT with all regulatory requirements imposed by the MAS and the applicable laws and regulations of Singapore.

The offer and sale in the U.S. of SGX-DT's MSCI Singapore Free Stock 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.⁹

Yours truly,

C. Robert Paul
General Counsel

Attachment

cc: Ms. Annette L. Nazareth, Director
Division of Market Regulation
Securities and Exchange Commission

1 The original request was made by you on behalf of SIMEX, which is now SGX-DT. This letter provides no-action relief to SGX-DT, the successor entity.

2 See letter from Philip McBride Johnson, Skadden, Arps, Slate, Meagher & Flom to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Securities and Exchange Commission ("SEC"), dated February 9, 2000.

3 In the event a stock is delisted (e.g., due to a merger), it may be removed from the Index between quarterly revisions.

4 MSCI Group includes within the Index 20% of the market capitalization of a stock if its "float" (shares held by the public) equals or exceeds 10% of all shares; 30% for 15% or greater float; 40% for 20% or greater float; 50% for 25% or greater float; 60% for 30% or greater float; 80% for 35% or greater float; and 100% for 40% or greater float. See letter from Mr. Johnson to Ms. Lawson, dated February 9, 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 In its original submission, SIMEX indicated that on March 24, 1999, it entered into a surveillance-sharing agreement with the SES. See letter from Leonard J. Schuman, President, SIMEX America Ltd. to Michael Walinkas, Senior Special Counsel, SEC, dated April 7, 1999.

7 SGX-DT has represented that any suspected violations of the Futures Trading Act of 1986, including manipulation, will be referred to MAS for investigation and prosecution. See letter from Mr. Johnson to Ms. Lawson dated February 9, 2000. MAS has confirmed that it would use its best efforts to co-operate with the CFTC and SEC with respect to any investigation or inquiry that the CFTC or SEC may initiate with respect to the MSCI Singapore Free Stock Index futures contract traded on SGX-DT. See letter from Seow Kok Leong, Senior Director (Financial Futures), MAS to Daniel Waldman, General Counsel, CFTC, dated July 31, 1998. MAS is a signatory to the Declaration on Cooperation and Supervision of

International Futures Markets and Clearing Organizations, dated March 15, 1996. Further, on May 16, 2000, a Memorandum of Understanding ("MOU") was entered into by MAS and the U.S. CFTC and SEC with respect to the sharing of confidential information among agencies and mutual assistance in investigation and enforcement matters. In addition, the CFTC has granted Regulation 30.10 relief to SIMEX, SGX-DT's predecessor. See Appendix C to Commission Regulation 30.10, 17 C.F.R. § 30.10. SGX-DT, through its predecessor SIMEX, has confirmed that its information-sharing agreement with the Commission would apply to the MSCI Singapore Free Stock Index futures contract, and that it would cooperate with the Commission in any inquiries, investigations and enforcement proceedings relating to the offer or sale of the contract in the U.S. See letter from Philip McBride Johnson, Skadden, Arps, Slate, Meagher & Flom to Daniel R. Waldman, General Counsel, CFTC, dated June 17, 1998. SIMEX also is a signatory to the International Information Sharing Memorandum of Understanding and Agreement signed on March 15, 1996 at Boca Raton, Florida.

8 The staff of the SEC has informed us that they would have no objection to the offer and sale of the MSCI Singapore Free Stock Index futures contracts traded on SGX-DT to U.S. persons. See letter from Belinda Blaine, Associate Director, SEC, to C. Robert Paul, General Counsel, CFTC, dated May 30, 2000.

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