

**CFTC Letter No. 01-61**  
**June 14, 2001**  
**No-Action**  
**Office of General Counsel**

Mr. Eudald Canadell  
Director of Strategic Planning  
MEFF Sociedad Holding de Productos  
Financieros Derivados S.A.  
Torre Picasso  
Planta 26  
28020 Madrid  
Spain

Re: No-Action Request to Permit the Offer and Sale in the United States of Futures Contracts Based on the S&P Euro Index and the S&P Europe 350 Index Traded on MEFF Renta Variable

Dear Mr. Canadell:

This is in response to your letters, attachments, and facsimiles, dated from November 23, 2000 to May 22, 2001, requesting that the Office of 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 S&P Euro Index (“S&P Euro”) and the S&P Europe 350 Index (“S&P Europe 350”) (collectively, “Indices”) traded on the MEFF Renta Variable (“MEFF RV”).

We understand the facts to be as follows. MEFF RV, wholly owned by MEFF Sociedad Holding de Productos Financieros Derivados S.A. (“MEFF Holding”), is an official exchange and clearing house for equity derivatives in Spain. MEFF RV is subject to regulatory oversight by the Comisión Nacional del Mercado de Valores (“CNMV”). CNMV has comprehensive authority for the supervision of Spain’s securities and derivatives markets.

The S&P Euro and S&P Europe 350 are both broad-based, modified capitalization-weighted Indices designed and administered by Standard and Poors Corporation.<sup>[1]</sup> The S&P Euro is currently composed of 161 highly capitalized and actively traded securities selected for their accurate aggregate representation of the equities markets in the countries that have joined the European Monetary Union (“EMU”).<sup>[2]</sup> The S&P Europe 350 consists of 350 of the most highly capitalized and actively traded securities from countries that comprise the EMU plus securities from other European nations including Denmark, Great Britain, Norway, Sweden, and Switzerland. The S&P Euro represents approximately 66% of the market capitalization of the EMU equity markets, and the S&P Europe 350 represents approximately 71% of the market capitalization of the European markets represented in the index.

Based on data supplied by MEFF Holding, the total market capitalizations of the S&P Euro and the S&P Europe 350 were U.S. \$3.7 trillion and U.S. \$6.91 trillion, respectively, as of August 31, 2000. As of that date, no single stock in the S&P Euro and the S&P Europe 350 represented more than 7.28% and 4.38% of the Indices, respectively. The five most heavily weighted stocks in the Indices represented 22.73% of the S&P Euro and 16.37% of the S&P Europe 350. The stocks comprising the lowest 25% of both the S&P Euro and S&P Europe 350 had a six-month average daily trading volume in excess of U.S. \$30 million. In that regard, the six lowest weighted stocks that accounted for 0.22% of the S&P Euro had a six-month aggregate value of average daily trading volume of U.S. \$31.6 million. Six of the lowest weighted stocks in the S&P Europe 350 that accounted for 0.09% of the Index had a six-month aggregate value of average daily trading volume of U.S. \$33.8 million. The Indices are calculated in real time and are disseminated through electronic means in 15-second intervals.

MEFF RV's futures contracts on both the S&P Euro and S&P Europe 350 provide for cash settlement. The notional value for both futures contracts is determined by multiplying the relevant index by 20 Euros. Both futures contracts are traded through the March quarterly cycle, and the last trading day for both futures contracts is the third Friday of the contract month. Cash settlement on the last trading day is based on the final settlement prices of the Indices on the last trading day. The final settlement prices for both contracts are determined based on the opening quote of the relevant index rounded to the nearest 0.01 index point on the last trading day.

The Commodity Exchange Act ("CEA"),<sup>[3]</sup> as amended by the Commodity Futures Modernization Act of 2000 ("CFMA"),<sup>[4]</sup> provides that the offer or sale in the United States of futures contracts based on a group or index of securities, including those contracts traded on or subject to the rules of a foreign board of trade, is subject to the Commission's exclusive jurisdiction,<sup>[5]</sup> with the exception of security futures products,<sup>[6]</sup> over which the Commission shares jurisdiction with the Securities and Exchange Commission ("SEC").<sup>[7]</sup> Thus, the Commission's jurisdiction remains exclusive with regard to futures contracts on a group or index of securities that are broad-based pursuant to CEA Section 1a(25).<sup>[8]</sup>

CEA Section 2(a)(1)(C)(iv) generally prohibits any person from offering or selling a futures contract based on a securities index in the United States, except as permitted under CEA Section 2(a)(1)(C)(ii) or CEA Section 2(a)(1)(D).<sup>[9]</sup> By its terms, CEA Section 2(a)(1)(C)(iv) applies to futures contracts on securities indices traded on both domestic and foreign boards of trade. CEA Section 2(a)(1)(C)(ii) sets forth three criteria to govern Commission designation of boards of trade as contract markets and registration of derivatives transaction execution facilities ("DTF") to trade 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 group or index of securities must not constitute a narrow-based securities index.<sup>[10]</sup>

While Section 2(a)(1)(C)(ii) provides that no board of trade shall be designated as a contract market (or registered as a DTF) with respect to stock index futures contracts unless it meets the three criteria noted above, it does not explicitly address the standards to be applied to foreign stock index futures contracts traded on foreign boards of trade. This Office has decided to apply those same three criteria in evaluating requests by foreign boards of trade to allow the offer and sale within the United States of their foreign stock index futures contracts when those foreign boards of trade do not seek designation as a contract market or registration as a DTF to trade those products.

Accordingly, this Office has examined the S&P Euro and S&P Europe 350 and the futures contracts based thereon to determine whether the Indices and the futures contracts meet the requirements enumerated in CEA Section 2(a)(1)(C)(ii). Based on the information noted herein and as set forth in the letters, attachments, and facsimiles noted above, we have determined that both the S&P Euro and S&P Europe 350 and MEFF RV's futures contracts based thereon conform to these requirements.<sup>[11]</sup>

In determining 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, one preliminary consideration is the requesting exchange's ability to access information regarding the stocks underlying the index. MEFF RV's regulator, the CNMV, is a signatory to the Multilateral Memorandum of Understanding on the Exchange of Information and Surveillance of Securities Activities, signed by the members of the Forum of European Securities Commissions ("FESCO MOU").<sup>[12]</sup> MEFF Holding, on behalf of MEFF RV, represents that the FESCO MOU establishes a general framework for cooperation and consultation between the signing authorities in order to facilitate the fulfillment of their supervisory responsibilities. These responsibilities include investigation and enforcement in connection with applicable laws or regulations relating to insider dealing, market manipulation, and other fraudulent or manipulative practices in the securities field. MEFF Holding represents that the FESCO MOU provides the means to carry on the necessary surveillance and supervision of the markets and to detect, deter, and prosecute market manipulation in connection with the trading of the futures contracts on the S&P Euro and S&P Europe 350 Indices and their underlying constituents. In particular, MEFF Holding states that information on ultimate customers of transactions involving the futures contracts on the S&P Euro and S&P Europe 350 Indices and their underlying constituents could be obtained pursuant to the FESCO MOU and exchanged with the Commission.<sup>[13]</sup>

All of the European countries represented in the S&P Euro are signatories of the FESCO MOU. The same is true for the S&P Europe 350, with the exception of Switzerland.<sup>[14]</sup> Thus, this Office has concluded that MEFF RV, through the CNMV, should have access to the information necessary to detect and deter manipulation. In the event that MEFF RV is unable to obtain access to adequate surveillance data in this regard, or is unable to share such data with the CFTC, this Office reserves the right to reconsider the position we have taken herein.<sup>[15]</sup>

In light of the foregoing, the Office of General Counsel will not recommend any enforcement action to the Commission based on Sections 2(a)(1)(C)(iv), 4(a), or 12(e) of the CEA, as amended, if MEFF RV's futures contracts based on the S&P Euro and S&P Europe 350 are offered or sold in the U.S. 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 MEFF RV with all regulatory requirements imposed by the CNMV and the applicable laws and regulations of Spain. In addition, this position may be affected by any rules that the Commission or SEC may adopt regarding futures contracts based on securities indices.

The offer and sale in the U.S. of MEFF RV's futures contracts on the S&P Euro and S&P Europe 350 is, of course, subject to Part 30 of the Commission's regulations which govern the offer and sale of foreign futures and foreign option contracts in the U.S. <sup>[16]</sup>

Sincerely,  
David R. Merrill  
Deputy General Counsel

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<sup>[1]</sup> See letter from Eudald Canadell, Director of Strategic Planning, MEFF Holding, to Harold L. Hardman, Assistant General Counsel, CFTC, dated November 23, 2000.

<sup>[2]</sup> Those countries include Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal, and Spain. Luxembourg is not represented in the S&P Euro because its indigenous equity markets are a comparatively slight proportion of the EMU equity markets.

<sup>[3]</sup> 7 U.S.C. § 1 *et seq.*

<sup>[4]</sup> Appendix E of Pub. L. No. 106-554, 114 Stat. 2763 (2000).

<sup>[5]</sup> See CEA Section 2(a)(1)(C)(ii).

<sup>[6]</sup> Security futures products are defined as a security future or any put, call, straddle, option, or privilege on any security future. See CEA Section 1a(32). A security future is defined as a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, with certain exceptions. See CEA Section 1a(31).

<sup>[7]</sup> See CEA Section 2(a)(1)(D).

[8] See CEA Section 2(a)(1)(C)(ii).

[9] Section 2(a)(1)(D) governs the offer and sale of security futures products.

[10] The first two criteria under CEA Section 2(a)(1)(C)(ii) were unchanged by the CFMA. With regard to the third criterion, an index is a “narrow-based security index” under both the CEA and the Securities Exchange Act (“SEA”), 15 U.S.C. § 78a *et seq.*, if it has any one of the following four characteristics: (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 CEA Section 1a(25)(A)(i)-(iv); SEA Section 3(a)(55)(B)(i)-(iv). Thus, an index that does not have any of these elements is not a narrow-based security index for purposes of CEA Section 2(a)(1)(C)(ii). See *also* CEA Section 1a(25)(B); SEA Section 3(a)(55)(C).

[11] In making this determination, the staff has concluded that neither the S&P Euro nor the S&P Europe 350 have any of the elements of a narrow-based security index as enumerated in CEA Section 1a(25)(A).

[12] The CNMV also has signed bilateral information sharing agreements with the competent authorities of Belgium, France, Germany, Italy, and Portugal. MEFF Holding represents that the FESCO MOU captures the provisions that are normally included in the bilateral agreements, and therefore it is no longer necessary to enter into bilateral agreements. Since the adoption of the FESCO MOU, MEFF Holding represents that there have not been any further signatures of bilateral agreements among the authorities of the European Union and European Economic Area.

[13] See letter from Mr. Canadell to Mr. Hardman, dated November 23, 2000.

[14] MEFF Holding represents that cooperation and exchange of information has existed and exists as a matter of routine between the relevant authorities of Spain and Switzerland. Securities from Switzerland represented only 8.33% of the S&P Europe 350 as of August 31, 2000.

[15] MEFF Holding, on behalf of MEFF RV, confirms that it is willing to cooperate through information sharing and other available means with the Commission. See letter from Mr. Canadell to Mr. Hardman, dated November 23, 2000. In addition, the CFTC has granted Regulation 30.10 relief to designated members of MEFF RV. See Appendix C to Commission

Regulation 30.10, 17 C.F.R. § 30.10. MEFF Holding also is a signatory to the Memorandum of Understanding and Agreement signed on March 15, 1996, at Boca Raton, Florida.

The CNMV and the CFTC entered into a Memorandum of Understanding on Mutual Assistance and Exchange of Information ("MOU") on October 26, 1992. The CNMV has confirmed that it is able and willing to cooperate and share market information with the CFTC pursuant to the MOU in connection with trading and clearing of MEFF RV's futures contracts on the S&P Euro and S&P Europe 350. See letter from Antonio Mass, General Director, CNMV, to Harold L. Hardman, Assistant General Counsel, CFTC, dated February 8, 2001. In this regard, the CNMV confirms that, among its competencies, it is able to obtain and exchange information, including the identity of ultimate customers involved in securities and futures transactions, that relates to insider dealing, market manipulation, and other fraudulent and manipulative practices. *Id.* The CNMV also is a signatory to the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations, as amended, signed on March 15, 1996.

[\[16\]](#) See 17 C.F.R. Part 30.