

CFTC letter No. 03-16
April 7, 2003
No-Action
Office of General Counsel

Mr. J.N.M. Olling
Legal Counsel
Euronext Amsterdam N.V.
Gravenstraat 4
P.O. Box 19163
1000 GD Amsterdam
The Netherlands

Re: Euronext Amsterdam N.V.'s Request for No-Action Relief in Connection with the Offer and Sale of its Futures Contracts Based on the Amsterdam Exchanges Index in the United States

Dear Mr. Olling:

This is in response to letters, attachments, facsimiles and electronic mail dated from July 20, 1999 to March 19, 2003, requesting on behalf of Euronext Amsterdam N.V. ("Euronext Amsterdam"), that the Office of General Counsel ("Office") 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 Euronext Amsterdam's futures contracts based on the Amsterdam Exchanges Index ("AEX Index"), the AEX Index futures contract and the Light AEX Index futures contract.

We understand the facts to be as follows. The Amsterdam Exchanges N.V. had requested a no-action letter with respect to its futures contracts on the AEX Index.^[1] That request was deemed withdrawn by this Office.^[2] Subsequent to that initial request, Amsterdam Exchanges N.V. merged with Société des Bourses Françaises S.A. and Société des Bours de Valeurs Mobilières de Bruxelles/Effectenbeursvennootschap van Brussel N.V. As a part of the merger, a new holding company was established under the laws of the Netherlands, Euronext N.V. This holding company is now the sole shareholder of Euronext Paris S.A., Euronext Amsterdam (previously Amsterdam Exchanges N.V.), and Euronext Brussels N.V./S.A.

By letter dated December 13, 2001, Euronext Amsterdam requested that, on its behalf as legal successor to the Amsterdam Exchanges N.V., this Office continue to process the request for no-action relief with regard to the AEX Index futures contract and the Light AEX Index futures contract.^[3] Euronext Amsterdam is subject to the regulatory oversight of the Netherlands Authority for the Financial Markets, previously known as the Securities Board of the Netherlands, which supervises the financial markets in the Netherlands.^[4]

Both Euronext Amsterdam's AEX Index futures contract and Light AEX Index futures contract share the same underlying index, the AEX Index. The AEX Index is a broad-based, modified capitalization-weighted composite security index. Owned and managed by Euronext Indices B.V., a wholly-owned subsidiary of Euronext Amsterdam,^[5] the AEX Index is designed to be a benchmark index for the Dutch stock market. The AEX Index is constructed to include 25 of the most liquid stocks, in terms of annual value of trading volume, traded in the Netherlands on Euronext Amsterdam. Based on data supplied by Euronext Amsterdam, the total market capitalization of the AEX Index was U.S. \$421 billion as of December 11, 2001.^[6] The largest single stock by weight represented 14.05%, and the five most heavily weighted stocks represented 52.19%, of the AEX Index, as of October 31, 2002.^[7] The stocks comprising the lowest 25% of the AEX Index had a six-month aggregate dollar value of average daily trading volume in excess of U.S. \$30 million: approximately U.S. \$472 million for the 6-month period ending September 2002.^[8] The AEX Index is calculated in real time and is disseminated by electronic means through major data vendors, such as Bloomberg.^[9]

Euronext Amsterdam's AEX Index futures contract and Light AEX Index futures contract both provide for cash settlement. Both contracts list for trading the three nearest calendar months and the next three months in the January quarterly cycle, and the last trading day for both contracts is the third Friday of the contract expiration month. Cash settlement occurs on the last trading day for both contracts. The contracts differ in terms of their notional value, the value of the minimum tick and final settlement price. Thus, the notional value for the AEX Index futures contract is determined by multiplying the AEX Index by 200 euros, while the notional value of the Light AEX Index futures contract is determined by multiplying the AEX Index by 200 euros times 1/10 the AEX Index level. The value of the minimum tick for the AEX Index futures contract is 100 euros, while the value of the minimum tick for the Light AEX Index futures contract is 10 euros. The final settlement price for the AEX Index futures contract is the average level of the AEX Index calculated using observations of the AEX Index taken at one-minute intervals from 3:30 p.m. to 4:00 p.m. on the last day of trading. The final settlement price for the Light AEX Index futures contract is 1/10 the final settlement price of the AEX Index futures contract.^[10]

The Commodity Exchange Act ("CEA"),^[11] as amended by the Commodity Futures Modernization Act of 2000 ("CFMA"),^[12] provides that the offer or sale in the U.S. 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,^[13] with the exception of security futures products,^[14] over which the Commission shares jurisdiction with the Securities and Exchange Commission ("SEC").^[15] 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).^[16]

CEA Section 2(a)(1)(C)(iv) generally prohibits any person from offering or selling a futures contract based on a security index in the United States, except as permitted under CEA Section 2(a)(1)(C)(ii) or

CEA Section 2(a)(1)(D).^[17] By its terms, CEA Section 2(a)(1)(C)(iv) applies to futures contracts on security indices traded on both domestic and foreign boards of trade. CEA Section 2(a)(1)(C)(ii) sets forth three criteria to govern the trading of futures contracts on a group or index of securities on designated contract markets and registered derivatives transaction execution facilities (“DTFs”):

- (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.^[18]

While Section 2(a)(1)(C)(ii) provides that no board of trade or DTF may trade a security index futures contract unless it meets the three criteria noted above, it does not explicitly address the standards to be applied to a foreign security index futures contract traded on a foreign board of trade. This Office has applied those same three criteria in evaluating requests by foreign boards of trade to allow the offer and sale within the U.S. of their foreign security 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.^[19]

Accordingly, this Office has examined the AEX Index and Euronext Amsterdam’s futures contracts based thereon to determine whether the AEX Index 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, facsimiles and electronic mail noted above, we have determined that the AEX Index and Euronext Amsterdam’s AEX Index futures contract and Light AEX Index futures contract based thereon, conform to these requirements.^[20]

In determining whether a foreign futures contract based on a foreign security 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 securities underlying the index. As noted above, all of the equity securities underlying the AEX Index are traded on Euronext Amsterdam. Euronext Amsterdam represents that it has access to market surveillance and trading information for the stocks underlying the AEX Index.^[21] Thus, Euronext Amsterdam should have access to information necessary to detect and deter manipulation. In the event that Euronext Amsterdam 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.^[22]

In light of the foregoing, this Office 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 Euronext Amsterdam’s AEX Index futures contract and Light AEX Index futures contract are offered or sold in the U.S. Because this

position is based upon facts and representations contained in the letters, attachments, facsimiles and electronic mail 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 Euronext Amsterdam with all regulatory requirements imposed by the Netherlands Authority for the Financial Markets, and the applicable laws and regulations of the Netherlands. 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.

The offer and sale in the U.S. of Euronext Amsterdam's AEX Index futures contract and Light AEX Index futures contract 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. [\[23\]](#)

Sincerely,

Patrick J. McCarty
General Counsel

[\[1\]](#) See letter from Annette C. Otten, Legal Department, Amsterdam Exchanges N.V., to General Counsel, CFTC, dated July 20, 1999. The Amsterdam Exchanges N.V. was founded in 1997 as a result of a merger between the Amsterdam Stock Exchange, the European Options Exchange and the Financial Futures Market Amsterdam. Both futures contracts on equity security indices and equity securities were traded on Amsterdam Exchanges N.V. *Id.*

[\[2\]](#) See letter from David R. Merrill, Deputy General Counsel, CFTC, to Annette C. Otten, Legal Department, Amsterdam Exchanges, NV, dated September 26, 2001.

[\[3\]](#) See letter from J.L.C. Koning, Manager, Quality of Derivatives Markets, Euronext Amsterdam, to David R. Merrill, Deputy General Counsel, CFTC, dated December 13, 2001.

[\[4\]](#) See letter from J.N.M. Olling, Legal Counsel, Euronext Amsterdam, to David R. Merrill, Deputy General Counsel, CFTC, dated April 10, 2002.

[\[5\]](#) All of the employees working for Euronext Indices, B.V. are Euronext Amsterdam employees. These employees are prohibited from trading futures contracts and equity securities traded on Euronext Amsterdam, including the futures contracts on and the equity securities underlying the AEX Index. See letter from Mr. Koning to Mr. Merrill dated December 13, 2001.

[\[6\]](#) *Id.*

^[7] See electronic mail from J.N.M. Olling, Legal Counsel, Euronext Amsterdam, to Julian E. Hammar, Counsel and Michael Penick, Economist, CFTC, dated November 13, 2002.

^[8] *Id.*

^[9] See letter from Mr. Koning to Mr. Merrill, dated December 13, 2001.

^[10] The contract specifications for Euronext Amsterdam's AEX Index futures contract and Light AEX Index futures contract are contained in Euronext Amsterdam's Reference Book – Euronext Amsterdam Derivatives Market at 33-34 (August 2002), which is available on Euronext Amsterdam's website, <www.euronext.com>.

^[11] 7 U.S.C. § 1 *et seq.*

^[12] Appendix E of Pub. L. No. 106-554, 114 Stat. 2763 (2000).

^[13] See CEA Section 2(a)(1)(C)(ii).

^[14] 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).

^[15] See CEA Section 2(a)(1)(D).

^[16] See CEA Section 2(a)(1)(C)(ii).

^[17] CEA Section 2(a)(1)(D) governs the offer and sale of security futures products.

^[18] 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 of 1934 (“Exchange Act”), 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); Exchange Act 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); Exchange Act Section 3(a)(55)(C).

[19] 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.

[20] In making this determination, the Commission staff has concluded that the AEX Index does not have any of the elements of a narrow-based security index as enumerated in CEA Section 1a(25)(A), and accordingly the AEX Index would not be a narrow-based security index if traded on a designated contract market or DTF.

[21] *See* letter from Mr. Olling to Mr. Merrill, dated April 10, 2002.

[22] Euronext Amsterdam has confirmed that it is willing and able to share information with the CFTC concerning its futures contracts on the AEX Index, the AEX Index futures contract and the Light AEX Index futures contract, and the securities underlying the AEX Index. *See* letter from Paul J.D. Benschop, Director, Market Supervision and Compliance and Jurjen N.M. Olling, Legal/Regulations Department, Euronext Amsterdam, to David R. Merrill, Deputy General Counsel, CFTC, dated March 19, 2003. In addition, the Amsterdam Exchanges N.V., of which, as noted above, Euronext Amsterdam N.V. is the legal successor, were a signatory to the International Information Sharing Memorandum of Understanding, signed on March 15, 1996.

On April 29, 1993, the U.S. Government and the Government of the Kingdom of the Netherlands signed an Agreement on Mutual Administrative Assistance in the Exchange of Information in Futures Matters (“Mutual Administrative Assistance Agreement”). The Securities Board of the Netherlands confirmed that it was in a position and also willing to provide the CFTC with information concerning the trade in futures contracts on the AEX Index. *See* letter from Jelle Dinant and Paul Mulder, Legal Department, Securities Board of the Netherlands, to Pat Nicolette, Acting General Counsel, CFTC, dated September 30, 1999. The Netherlands Authority for the Financial Markets, successor to the Securities Board of the Netherlands, confirmed that it can furnish the information pursuant to the Mutual Administrative Assistance Agreement. *See* letter from Sjako Weering, Secondary Market Department and Paul Mulder, Head Legal Department, Netherlands Authority for the Financial Markets to J.N.M. Olling, Euronext Amsterdam, dated March 7, 2002. In addition, the Securities Board of the Netherlands, predecessor to the Netherlands Authority for the Financial Markets, was a signatory to the Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organizations, as amended, March 20,

1998.

[\[23\]](#) *See* 17 C.F.R. Part 30.