



U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of General Counsel

CFTC letter No. 07-21
November 13, 2007
No-Action
Office of General Counsel

Henrik Paulsson
Head of OMX Derivatives Markets
OMX AB
SE-105 78 Stockholm
SWEDEN

Re: OMX Nordic Exchange Stockholm AB's Request for a No-Action Letter in Connection with the Offer and Sale in the United States of its Futures Contract Based on the VINX30 Index

Dear Mr. Paulsson:

This letter is in response to letters, attachments, facsimiles and electronic mail dated from December 21, 2006 to July 9, 2007, requesting on behalf of OMX Nordic Exchange Stockholm AB ("OMX Stockholm") 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 OMX Stockholm's futures contract based on the VINX30 Index ("VINX30" or "Index").

We understand the facts to be as follows. OMX Stockholm is a wholly-owned subsidiary of OMX Exchanges, Ltd., which in turn is a wholly-owned subsidiary of OMX AB ("OMX"). OMX Stockholm is authorized as an exchange in Sweden to trade securities and derivatives and is licensed to carry out clearing operations by the Swedish Financial Supervisory Authority (*Swedish*: Finansinspektionen, "FI").¹ As a regulated exchange and clearing house, OMX Stockholm is under the supervision of and subject to active market surveillance by FI. FI is responsible for authorization, supervision and monitoring of all companies operating in the

¹ OMX Stockholm underwent a name change effective July 1, 2007. Previously, OMX Stockholm was known as the Stockholm Stock Exchange Ltd. ("SSE"). See electronic mail from Gila Mörée, Legal Counsel, OMX to Julian E. Hammar, Assistant General Counsel, CFTC, dated July 2, 2007. This Office issued a letter on April 17, 2007, confirming that no-action relief granted in 1998 to SSE, then known as OM Stock Exchange AB, applied to SSE's standardized futures contract based on the OMXS30 Index. See CFTC Staff Letter No. 07-04, [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,498 (April 17, 2007). See also CFTC Staff Letter No. 98-41, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,364 (June 3, 1998).

Swedish financial markets. FI also is responsible for promoting stability and efficiency in the financial system as well as ensuring effective consumer protection. FI is accountable to the Swedish Ministry of Finance.²

The VINX30 is a broad-based, market-capitalization-weighted, price security index comprised of 30 of the most highly capitalized and actively traded stocks listed and traded on OMX Stockholm, OMX Nordic Exchange Copenhagen A/S (“OMX Copenhagen”), OMX Nordic Exchange Helsinki Oy (“OMX Helsinki”), OMX Nordic Exchange Iceland hf (“OMX Iceland”), and the Oslo Stock Exchange (“OSE”).³ OMX Stockholm is the calculator for the Index. Based on data supplied by OMX, the total adjusted market capitalization of the VINX30 was approximately U.S.\$ 814.36 billion as of June 27, 2007.⁴ The largest single security by weight represented 15.98%, and the five most heavily-weighted securities represented 42.8%, of the VINX30 as of November 23, 2006.⁵ The securities comprising the lowest 25% of the Index had a six-month aggregate dollar value of average daily trading volume in excess of U.S.\$ 30 million (approximately U.S.\$ 1.02 billion for the 6-month period ending September 30, 2006).⁶ The Index is calculated in real time and is disseminated by electronic means at one-minute intervals through several data vendors.⁷

OMX Stockholm’s futures contract on the VINX30 provides for cash settlement. Prices are quoted in Index points with each Index point equal to 10 euros per contract. The minimum price movement is one-tenth of one Index point. OMX Stockholm lists for trading contracts with series terms ending three, six and thirty-six months from listing. The last trading day of the contract is the third Friday of the relevant expiration month (or, if such day is not a bank day for any of the markets where Index shares are listed, the bank day immediately preceding such Friday). Cash settlement occurs on the first bank day after the last trading day. The final cash settlement price is calculated based on the volume-weighted price of each component stock in

² See letter from Henrik Paulsson, Head of OMX Derivatives Markets, OMX to Nanette R. Everson, General Counsel, CFTC, dated December 21, 2006, at 2.

³ *Id.* at 14-15. OMX, the corporate parent of OMX Stockholm, also is the parent of OMX Copenhagen, OMX Helsinki, and OMX Iceland. These exchanges were formerly known as the Copenhagen Stock Exchange, Helsinki Stock Exchange and Iceland Stock Exchange, but like OMX Stockholm, their names were changed on July 1, 2007. The name changes reflect OMX’s strategy to develop and integrate the Nordic securities market. See electronic mail from Ms. Mörée to Mr. Hammar, dated July 2, 2007.

⁴ See electronic mail from Ms. Mörée to Mr. Hammar, dated July 2, 2007 (attached spreadsheet).

⁵ See letter from Mr. Paulsson to Ms. Everson, dated December 21, 2006, at 21.

⁶ *Id.* at 20.

⁷ *Id.* at 15.

the Index from transactions occurring between 3:00 p.m. and 4:00 p.m. (Central European Time) on the last trading day.⁸

The Commodity Exchange Act (“CEA”),⁹ as amended by the Commodity Futures Modernization Act of 2000 (“CFMA”),¹⁰ 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,¹¹ with the exception of security futures products,¹² over which the Commission shares jurisdiction with the Securities and Exchange Commission (“SEC”).¹³ Thus, the Commission’s jurisdiction remains exclusive with regard to futures contracts on a group or index of securities that is broad-based pursuant to CEA Section 1a(25).¹⁴

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 U.S., except as permitted under CEA Section 2(a)(1)(C)(ii) or CEA Section 2(a)(1)(D).¹⁵ 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 (“DTEFs”):

- (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

⁸ *Id.* at 23 and Attachment 3.

⁹ 7 U.S.C. § 1 *et seq.*

¹⁰ Appendix E of Pub. L. No. 106-554, 114 Stat. 2763 (2000).

¹¹ *See* CEA Section 2(a)(1)(C)(ii).

¹² 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).

¹³ *See* CEA Section 2(a)(1)(D).

¹⁴ *See* CEA Section 2(a)(1)(C)(ii).

¹⁵ CEA Section 2(a)(1)(D) governs the offer and sale of security futures products.

- (3) the group or index of securities must not constitute a narrow-based security index.¹⁶

While Section 2(a)(1)(C)(ii) provides that no designated contract market or DTEF 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 DTEF to trade those products.¹⁷

Accordingly, this Office has examined the VINX30 and OMX Stockholm's futures contract based thereon to determine whether the Index and the futures contract 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 VINX30, and OMX Stockholm's futures contract based thereon, conform to these requirements.¹⁸

¹⁶ 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).

¹⁷ 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.

¹⁸ In making this determination, Commission staff has concluded that the VINX30 does not have any of the elements of a narrow-based security index as enumerated in CEA Section 1a(25)(A), and accordingly the Index would not be a narrow-based security index if traded on a designated contract market or DTEF.

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, the VINX30 consists of stocks traded on OMX Copenhagen, OMX Helsinki, OMX Iceland, and the OSE, as well as OMX Stockholm. OMX Stockholm, the exchange requesting relief, represents that it has access to market surveillance information from the exchanges that list the securities that comprise the VINX30, including customer identification information.¹⁹ With respect to constituent securities listed on OMX Stockholm, OMX Stockholm represents that, according to its license to operate a Swedish exchange, it is required to operate efficient and well functioning market surveillance of its markets.²⁰ With regard to securities in the VINX30 listed on other exchanges, OMX Stockholm, along with OMX Iceland and OSE, are affiliate members of the Intermarket Surveillance Group ("ISG"), a group of securities and futures exchanges that shares surveillance information.²¹ Although OMX Copenhagen and OMX Helsinki are not ISG members, OMX Stockholm represents that it has been able to share surveillance information with these exchanges as needed. Recently, OMX Stockholm entered into an information sharing agreement with these exchanges in order to formalize the sharing of surveillance information and establish procedures for cooperation in market supervision.²²

Thus, OMX Stockholm should have access to information necessary to detect and deter manipulation. In the event that OMX Stockholm is unable to obtain access to adequate

¹⁹ See electronic mail from Gila Mörée, Legal Counsel, OMX to Julian E. Hammar, Assistant General Counsel, CFTC, dated July 9, 2007.

²⁰ See letter from Mr. Paulsson to Ms. Everson, dated December 21, 2006, at 28.

²¹ Specifically, the ISG was created under the auspices of the SEC in 1983 as a forum to ensure that U.S. national securities exchanges and national securities associations adequately share surveillance information and coordinate inquiries and investigations designed to address potential intermarket manipulations and trading abuses. All national securities exchanges and national securities associations are full members of the ISG. In view of the growth of stock index futures contracts, since 1987, several futures exchanges and non-U.S. exchanges and associations have become affiliate members of the ISG. It has been noted that this framework is an essential mechanism to ensure that there is adequate information sharing and investigatory coordination for potential intermarket manipulations and trading abuses. See 66 Fed. Reg. 37932, 37934 (July 20, 2001).

²² See electronic mail from Ms. Mörée to Mr. Hammar, dated July 9, 2007 (attachments).

surveillance data in this regard, or is unable, either directly or through the FI, to share such data with the CFTC, this Office reserves the right to reconsider the position we have taken herein.²³

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 OMX Stockholm's futures contract based on the VINX30 is 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 OMX Stockholm with all regulatory requirements imposed by the FI, and the applicable laws and regulations of Sweden. 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 OMX Stockholm's futures contract on the VINX30 is, of course, subject to Part 30 of the Commission's regulations, which governs the offer and sale of foreign futures and foreign option contracts in the U.S.²⁴

Sincerely,

Terry S. Arbit
General Counsel

²³ OMX Stockholm represents that it is willing and able to share information of a regulatory nature in relation to trading on its VINX30 futures contract with the Commission. *See* letter from Mr. Paulsson to Ms. Everson, dated December 21, 2006, at 28. OMX Stockholm also is a signatory to the International Information Sharing Memorandum of Understanding and Agreement signed on March 15, 1996, at Boca Raton, Florida. OMX Stockholm's regulator, the FI, represents that it is willing and able to undertake information sharing with the CFTC to the extent permitted by laws, rules or regulations. *See* electronic mail from Elina Yrgård, Jurist/Legal Counsel, FI to Gila Mörée, Legal Counsel, OMX, dated December 15, 2006. In addition, FI is a signatory to the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations for the sharing of large exposure information, signed on March 15, 1996, at Boca Raton, Florida.

²⁴ *See* 17 C.F.R. Part 30.