



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of General Counsel

CFTC Letter No. 08-11  
July 10, 2008  
No-Action  
Office of the General Counsel

Gilles Clerc  
Deputy Director, Market Operations  
Euronext.liffe  
Cannon Bridge House  
1 Cousin Lane  
London EC4R 3XX United Kingdom

Re: Euronext Paris SA's Request for No-Action Relief in Connection with the Offer and Sale in the United States of its Futures Contracts Based on the FTSE EPRA/NAREIT Europe Index and the FTSE EPRA/NAREIT Euro Zone Index

Dear Mr. Clerc:

This is in response to your letters, attachments, facsimiles and electronic mail dated from September 17, 2007 to February 1, 2008, requesting on behalf of Euronext Paris SA ("Euronext Paris"), 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 of Euronext Paris's futures contracts based on the FTSE EPRA/NAREIT Europe Index ("FTSE EPRA/NAREIT Europe") and the FTSE EPRA/NAREIT Euro Zone Index ("FTSE EPRA/NAREIT Euro Zone") (collectively, "Indices").

We understand the facts to be as follows. Euronext Paris is the French securities and derivatives exchange ultimately owned by NYSE Euronext, the holding company that became the parent company of NYSE Group, Inc. and Euronext, N.V. and their subsidiaries, on April 4, 2007.<sup>1</sup> Euronext Paris is operated by Euronext.liffe, the international derivatives business of Euronext, N.V., comprising derivatives markets in Amsterdam, Brussels, Lisbon, London and Paris, which share a common electronic trading platform, LIFFE CONNECT®. Euronext Paris includes a derivatives segment, the MONEP, upon which the futures contracts on the Indices are listed and traded. The contracts are cleared by LCH.Clearnet SA, which provides clearing services for the Euronext.liffe markets. Euronext Paris is subject to regulation by the Autorité

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<sup>1</sup> This Office recently issued a no-action letter to Euronext Paris confirming that no-action relief granted to LIFFE Administration and Management, another NYSE Euronext subsidiary, extends to futures contracts on the FTSEurofirst 80 Index and FTSEurofirst 100 Index traded on Euronext Paris. See CFTC Staff Letter No. 07-03, [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,457 (Mar. 5, 2007).

des marchés financiers (“AMF”), an independent public agency in France responsible for regulating and overseeing French financial markets.<sup>2</sup>

Both the FTSE EPRA/NAREIT Europe and FTSE EPRA/NAREIT Euro Zone are broad-based, free-float-market-capitalization-weighted, total-return security indices composed of real estate securities, either shares of real estate investment trusts (“REITs”) or real estate companies, that are listed and traded in Europe. As of August 31, 2007, the FTSE EPRA/NAREIT Europe included 101 stocks from 16 European countries,<sup>3</sup> and the FTSE EPRA/NAREIT Euro Zone included 48 stocks from 10 Euro Zone countries.<sup>4</sup> Each of the Indices represents a subset of the FTSE EPRA/NAREIT Global Real Estate Index Series®, which is designed to represent general trends in eligible listed real estate securities worldwide. The subject Indices include only real estate securities that are listed and traded on eligible markets in Europe and the Euro Zone, respectively.<sup>5</sup> The management of FTSE acts as the compiler of the Indices, and is responsible for their day-to-day management. The FTSE EPRA/NAREIT Europe Index Advisory Committee acts as an advisory body for the compiler and as a supervisor of the Indices, and reviews the Indices on a quarterly basis in March, June, September and December.<sup>6</sup> Real estate

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<sup>2</sup> See letter from Gilles Clerc, Deputy Director, Market Operations, Euronext.liffe, to Julian E. Hammar, Assistant General Counsel, CFTC, dated October 4, 2007, at 2; *see generally*, NYSE Euronext Amendment No. 1 to Form 10-K, dated May 1, 2007.

<sup>3</sup> Countries represented in the FTSE EPRA/NAREIT Europe are Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Norway, Poland, Spain, Sweden, Switzerland and the United Kingdom. *See* FTSE EPRA/NAREIT Europe Index Factsheet, available at:  
<[http://www.ftse.com/Indices/FTSE\\_EPRA\\_NAREIT\\_Global\\_Real\\_Estate\\_Index\\_Series/Downloads/EPRA\\_NAREIT\\_Europe\\_Index\\_Factsheet.pdf](http://www.ftse.com/Indices/FTSE_EPRA_NAREIT_Global_Real_Estate_Index_Series/Downloads/EPRA_NAREIT_Europe_Index_Factsheet.pdf)>.

<sup>4</sup> Countries represented in the FTSE EPRA/NAREIT Euro Zone are Austria, Belgium, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, and Spain. *See* FTSE EPRA/NAREIT Euro Zone Index Factsheet, available at:  
<[http://www.ftse.com/Indices/FTSE\\_EPRA\\_NAREIT\\_Global\\_Real\\_Estate\\_Index\\_Series/Downloads/EPRA\\_NAREIT\\_Eurozone\\_Index\\_Factsheet.pdf](http://www.ftse.com/Indices/FTSE_EPRA_NAREIT_Global_Real_Estate_Index_Series/Downloads/EPRA_NAREIT_Eurozone_Index_Factsheet.pdf)>

<sup>5</sup> To be included, a company must have derived in the previous full financial year at least 75 percent of its earnings before interest, taxes, depreciation and amortization from relevant real estate activities in Europe. An eligible REIT must be a closed-end company listed on an official stock exchange. *See* letter from Mr. Clerc to Mr. Hammar, dated October 4, 2007, Attachment 2, Ground Rules for the Management of the FTSE EPRA/NAREIT Global Real Estate Index Series®, version 2.8, July 2007, Ground Rule 5.8.

<sup>6</sup> Stocks eligible for inclusion in the Indices are subject to three “screens”: size, liquidity and free float. A stock is eligible for inclusion in the Indices if its investable market capitalization is equal to or greater than 0.10% of the regional index market capitalization, and it has a turnover of at least 0.05% of the shares in issue based on its median daily trade per month. An existing constituent will be excluded from the Indices if its investable market capitalization is less than

stocks can be added to or deleted from the Indices outside of the quarterly review in certain circumstances.<sup>7</sup>

Based on data supplied by Euronext Paris, the total adjusted market capitalization of the FTSE EPRA/NAREIT Europe was approximately U.S. \$179 billion, and of the FTSE EPRA/NAREIT Euro Zone was approximately U.S. \$82 billion, as of August 31, 2007.<sup>8</sup> The largest single security by weight represented 10.93% of the FTSE EPRA/NAREIT Europe and 23.82% of the FTSE EPRA/NAREIT Euro Zone. The five most heavily-weighted securities represented 37.28% of the FTSE EPRA/NAREIT Europe and 47.58% of the FTSE EPRA/NAREIT Euro Zone. The stocks comprising the lowest 25% of the FTSE EPRA/NAREIT Europe and FTSE EPRA/NAREIT Euro Zone each had six-month aggregate dollar values of average daily trading volume in excess of U.S. \$30 million: approximately U.S. \$236 million and U.S. \$96 million, respectively, for the 6-month period ending August 31, 2007.<sup>9</sup> The Indices are calculated in real time and disseminated every 15 seconds from 8:00 a.m. to 4:30 p.m. (U.K. time) to various information vendors, including Bloomberg and Reuters.<sup>10</sup>

Euronext Paris's futures contracts on the Indices began trading on October 1, 2007. With the exception of the index underlying each contract, the terms and conditions of the contracts are identical. Both contracts provide for cash settlement. Prices are quoted in index points, with each index point equal to 10 euros per contract. The minimum price fluctuation is half of one index point, equal to 5 euros per contract. Euronext Paris lists for trading the three nearest months of the March quarterly cycle. The last trading day of the contracts is the third Friday of

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0.05% of the regional index market capitalization, and it has a turnover less than 0.04% of the shares in issue based on its median daily trade per month. The weighting of a component security is affected by free float restrictions, such that the market capitalization for each security may be reduced depending on the proportion of the total number of shares that is restricted. Free float restrictions include: trade investments in an index constituent either by another constituent (*i.e.*, cross-holdings) or by a non-constituent company or entity; significant long-term holdings by founders, their families and/or directors; employee share plans (if restricted); government holdings; foreign ownership limits; and portfolio investments subject to a lock-in clause, for the duration of that clause. *See id.* Ground Rule 6.

<sup>7</sup> These circumstances include the case of a new issue, delisting, bankruptcy, insolvency, liquidation, merger, takeover, spin-off, or suspension of dealing. *See id.* Ground Rule 7.

<sup>8</sup> *See* letter from Mr. Clerc to Mr. Hammar, dated October 4, 2007, at Attachment 1 (spreadsheet). Both Indices are denominated in euros ("€"). The exchange rate on August 31, 2007, was €U.S.\$ 1.3633.

<sup>9</sup> *Id.* at 1-2 and Attachment 1 (spreadsheet).

<sup>10</sup> *See id.*, Attachment 2, Appendix 5, and letter from Giles Clerc, Deputy Director, Market Operations, Euronext.liffe to Julian E. Hammar, Assistant General Counsel, CFTC, dated December 11, 2007, at 1.

the expiration month (in the event that the third Friday is not a business day, the last trading day is the last business day preceding the third Friday). Cash settlement occurs on the first business day after the last trading day, based on the “Exchange Delivery Settlement Price” (“EDSP”). The EDSPs for the contracts are calculated based on the closing level of the relevant index on the last trading day.<sup>11</sup>

The Commodity Exchange Act (“CEA”),<sup>12</sup> as amended by the Commodity Futures Modernization Act of 2000 (“CFMA”),<sup>13</sup> 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,<sup>14</sup> with the exception of security futures products,<sup>15</sup> over which the Commission shares jurisdiction with the Securities and Exchange Commission (“SEC”).<sup>16</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>17</sup>

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).<sup>18</sup> 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

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<sup>11</sup> See letter from Gilles Clerc, Deputy Director, Market Operations, Euronext.liffe, to Julian E. Hammar, Assistant General Counsel, CFTC, dated September 17, 2007, at 6. A circuit breaker may be activated for each contract if a market imbalance leads to the suspension of trading in a number of stocks that together represent more than 75% of the capitalization of the relevant index. A complete list of contract specifications for both contracts is available on Euronext’s website, <[www.euronext.com](http://www.euronext.com)>.

<sup>12</sup> 7 U.S.C. § 1 *et seq.*

<sup>13</sup> Appendix E of Pub. L. No. 106-554, 114 Stat. 2763 (2000).

<sup>14</sup> See CEA Section 2(a)(1)(C)(ii).

<sup>15</sup> A security futures product is 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>16</sup> See CEA Section 2(a)(1)(D).

<sup>17</sup> See CEA Section 2(a)(1)(C)(ii).

<sup>18</sup> CEA Section 2(a)(1)(D) governs the offer and sale of security futures products.

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
- (3) the group or index of securities must not constitute a narrow-based security index.<sup>19</sup>

While Section 2(a)(1)(C)(ii) provides that no 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.<sup>20</sup>

Accordingly, Commission staff has examined the FTSE EPRA/NAREIT Europe and the FTSE EPRA/NAREIT Euro Zone, and Euronext Paris’s respective futures contracts based thereon, to determine whether the Indices and the futures contracts meet the requirements

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<sup>19</sup> 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).

<sup>20</sup> 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.

enumerated in CEA Section 2(a)(1)(C)(ii). Based on the information noted herein and as set forth in the letter, attachments, facsimiles and electronic mail cited above, we have determined that the Indices, and Euronext Paris's respective futures contracts based thereon, conform to these requirements.<sup>21</sup>

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 component securities in the Indices are listed on European exchanges. Euronext-listed securities account for approximately 29% of the market capitalization of the FTSE EPRA/NAREIT Europe and 61% of the FTSE EPRA/NAREIT Euro Zone. You represent that Euronext cash market operations can share surveillance information directly with Euronext Paris and Euronext.liffe for these securities.<sup>22</sup>

For those component securities not listed on Euronext markets, surveillance information may be obtained directly from the relevant exchanges upon request, or indirectly through the AMF, which has information-sharing arrangements with the regulators of all exchanges represented in the Indices. Specifically, you state that under the Markets in Financial Instruments Directive ("MiFID") of the European Union, there is a duty for European Union country regulators to cooperate, governed by Articles 56 and 59 of the MiFID directive, and the AMF has been appointed as the contact point in France for such information-sharing requests. In addition, the AMF and all the other regulators of the countries represented in the Indices, with the exception of Switzerland, are signatories to the Committee of European Securities Regulators' Memorandum of Understanding (known as the FESCO MOU), through which surveillance information may be shared. The AMF also has entered into a bilateral cooperation agreement with Switzerland.<sup>23</sup> Thus, Euronext Paris should have access to information necessary to detect and deter manipulation. In the event that Euronext Paris 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 taken herein.<sup>24</sup>

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<sup>21</sup> In making this determination, Commission staff has concluded that the FTSE EPRA/NAREIT Europe Index and the FTSE EPRA/NAREIT Euro Zone Index do not have any of the elements of a narrow-based security index as enumerated in CEA Section 1a(25)(A). Accordingly, the Indices would not be narrow-based security indices if traded on a designated contract market or DTEF.

<sup>22</sup> See letter from Mr. Clerc to Mr. Hammar, dated October 4, 2007, at 2.

<sup>23</sup> See letter from Mr. Clerc to Mr. Hammar, dated December 11, 2007, at 2.

<sup>24</sup> Euronext Paris represents that it is willing and able to share information in relation to its contracts on the Indices under the terms and conditions defined in the Foreign Trading System No-Action Relief granted to Parisbourse <sup>SBF</sup> SA, the predecessor of Euronext Paris, by CFTC Staff in 1999. See letter from Mr. Clerc to Mr. Hammar, dated October 4, 2007, at 2; CFTC Staff Letter No. 99-33 [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,746 (August 10, 1999). Under that arrangement, information which is not confidential will be

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 Paris's futures contracts based on the FTSE EPRA/NAREIT Europe and FTSE EPRA/NAREIT Euro Zone 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 Paris with all regulatory requirements imposed by the AMF, and the applicable laws and regulations of France. 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.

Euronext Paris also has requested that, upon issuance of the no-action relief granted herein, it be permitted to make its futures contracts based on the Indices available for trading through its electronic terminals in the U.S. in accordance with the terms and conditions of the foreign terminal no-action letter dated August 10, 1999, as amended ("August 10, 1999 letter"), issued by Commission staff to Parisbourse<sup>SBF</sup> SA, the predecessor to Euronext Paris.<sup>25</sup> In this regard, Euronext Paris has certified that it is in compliance with the terms and conditions of the August 10, 1999 letter and that the contracts on the Indices will be traded in accordance with the terms and conditions of the August 10, 1999 letter.<sup>26</sup> We have consulted with the Commission's Division of Market Oversight ("Division"), which is the Division in the Commission that administers foreign terminal no-action letters. The Division has concluded that allowing Euronext Paris to make its futures contracts on the Indices available for trading pursuant to the August 10, 1999 letter would not be contrary to the public interest. Accordingly, on behalf of the Division, this Office hereby confirms that the no-action relief granted to Euronext Paris in the August 10, 1999 letter extends to Euronext Paris's futures contracts based on the Indices.

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provided directly to the CFTC by Euronext Paris, whereas any confidential information will be provided to the CFTC via the Memorandum of Understanding dated June 6, 1990, between the CFTC and the Commission des Opérations de Bourse ("COB"), now the AMF. Euronext Paris also is a signatory to the International Information Sharing Memorandum of Understanding and Agreement signed on March 15, 1996, at Boca Raton, Florida. In addition to the bilateral information sharing arrangement between the Commission and the AMF, both the Commission and the AMF are signatories to the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information of the International Organization of Securities Commissions ("IOSCO MOU"). The AMF, as successor to the COB, also is a signatory to the Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organizations, signed on March 15, 1996, at Boca Raton, Florida.

<sup>25</sup> See *supra* note 24, CFTC Staff Letter No. 99-33.

<sup>26</sup> See letter from Mr. Clerc to Mr. Hammar, dated September 17, 2007, at 2.

The offer and sale in the U.S. of Euronext Paris's futures contracts on the Indices 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.<sup>27</sup>

Sincerely,

Terry S. Arbit  
General Counsel

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<sup>27</sup> See 17 C.F.R. Part 30.