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COMMODITY FUTURES TRADING COMMISSION
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OFFICE OF
THE GENERAL COUNSEL

August 30, 1995

Attilio Ventura
Chairman
Italian Stock Exchange Council
Piazza degli Affari, 6
20123 Milano
Italy

Re: Italian Stock Exchange Council's Request for a No-Action Letter for the Italian Derivatives Market's MIB 30 Futures Contract

Dear Mr. Ventura:

This is in response to your letter dated October 26, 1994 and subsequent letters and communications through July 25, 1995 requesting a no-action letter allowing the Italian Derivatives Market's ("IDEM")[1/] futures contract based on the MIB 30 to be offered and sold in the United States.[2/]

The MIB 30 is a capitalization-weighted stock index which is based on the prices of the 30 most liquid and highly capitalized stocks listed on the ISE. The stocks comprising the MIB 30

1/ The Italian Stock Exchange Council ("ISEC") is responsible for the management and promotion of the IDEM as well as for the Italian Stock Exchange ("ISE"). The ISEC recently has been delegated certain powers of market surveillance by the Commissione Nazionale per le Società e la Borsa ("CONSOB") relating to both the stock market and the stock index futures market.

The CONSOB is the regulatory authority for the stock market and the derivatives market. It holds all the powers relating to the rules and the organization of all regulated markets, including the stock market and derivatives market. It oversees the proper functioning of both markets.

The Cassa di Compensazione e Garanzia ("Cassa") is the clearinghouse for the IDEM. The regulations concerning the organization and functioning of the Cassa were established by the Bank of Italy and the CONSOB. Both the CONSOB and the Bank of Italy are responsible for the surveillance and regulation of the Cassa.

2/ The IDEM became operational on November 28, 1994.

represent ten industry groups with the largest sector, insurance, representing approximately 31 percent as of October, 1994. The highest capitalized stock in the MIB 30 as of October, 1994, Generali Assicurazioni, constituted approximately 16 percent of the aggregate capitalization. The five highest capitalized stocks of the MIB 30 accounted for approximately 52 percent of the total market capitalization as of October, 1994. The total capitalization of the stocks included in the MIB 30 equaled 185 trillion Italian lira as of October, 1994 or approximately U.S. $120 billion.

The MIB 30 is calculated by using the market price for each stock underlying the MIB 30.[3/] The MIB 30 calculation is expressed by a percentage to the eighth decimal point. The MIB 30 is reviewed and may be revised by the ISEC on an annual basis, generally in October, and the ISEC may make intra-annual revisions to the MIB 30 in the event of such circumstances as a cancellation of a stock from listing or in the event of bankruptcy or mergers.

While the ISEC is assigned the management of the MIB 30, it has chosen the Ced Borsa, a private computer company owned by intermediaries, to calculate and disseminate the MIB 30 values. The MIB 30 is calculated continuously and transmitted in real time every minute when the futures contract is being traded and every five minutes when the futures contract is not being traded. The MIB 30 value is disseminated through market data vendors including Reuters and Bloomberg.

The MIB 30 futures contract began trading on the IDEM on November 28, 1994. The value of the futures contract, which is cash settled, is determined by multiplying the level of the MIB 30 by 10,000 Italian lira. There are no price or position limits on the MIB 30 futures contract although the CONSOB, the ISEC's regulatory supervisor, has the authority to impose such limits. The final settlement of the futures contract is based on the opening prices of the shares that make up the MIB 30 on the last day of trading. Settlement takes place the day following the last trading day.

3/ The ratio of each stock's current market price to its base period is multiplied by its base period market capitalization. The sum of such products is divided by the total base period market capitalization, then multiplied by 10,000 and multiplied by a link co-efficient to produce the MIB 30 value.

The offer and sale of futures contracts traded on or subject to the rules of a foreign exchange is subject to the Commission's exclusive jurisdiction.[4/] Section 2(a)(1)(A), 7 U.S.C. § 2 (1988); 120 Cong. Rec. 34497 (1974) (statement of Senator Talmadge) (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).[5/] Section 2(a)(1)(B)(v) of the Act, 7 U.S.C. § 2a(v), 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) (1988). In turn, Section 2(a)(1)(B)(ii) sets forth three criteria to govern Commission designation of futures contracts in a group or index of securities:

(1) the contract must provide for cash settlement;

(2) the proposed 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) 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 enumerated criteria. As noted above, we understand that the IDEM does not seek designation as a contract market. However, Congress understood that a foreign exchange might lawfully offer futures

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4/ Section 12(e) of the Commodity Exchange Act ("CEA") prohibits the application of any federal or state statute to a transaction that is conducted on or subject to the rules of a foreign exchange "except as otherwise specified by the Commission by rule or regulation." 7 U.S.C. § 16(e) (1988). The Commission has authorized the application of state law to "any person required to be registered under . . . [Part 30] who solicits foreign futures and foreign options customers and who shall fail or refuse to obtain such registration, unless such person is exempt from such registration . . . ." 17 C.F.R. § 30.11 (1994).

5/ In this regard, pursuant to the authority in, among other provisions, Section 4(b) of the Act, the Commission has promulgated rules to regulate the offer and sale in the United States of foreign futures and options contracts. See 17 C.F.R. Part 30 (1994).

contracts on stock indices absent designation. Thus, the House Committee on Agriculture suggested that a foreign board of trade could apply for "certification" that its stock index contract met all applicable Commission requirements. H.R. Rep. No. 565, Part 1, 97th Cong., 2d Sess. 85 (1982). The Commission has not established criteria for certification of foreign futures contracts. However, the House Committee on Agriculture explained that a foreign exchange seeking certification for a futures contract based upon an index of American securities must demonstrate that the proposed futures contract meets the requirements set forth in Section 2(a)(1)(B)(ii). Id.

The House Committee Report suggests that the Commission may use such criteria as it deems appropriate in evaluating a foreign stock index contract based on "foreign securities." Id. The requirements of Section 2(a)(1)(B)(ii) of the Act were designed to permit innovative financial instruments "while at the same time [assuring] that futures trading is limited to 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. As a result, we would recommend that the Commission use the criteria set forth in Section 2(a)(1)(B)(ii) in establishing any certification procedures for the MIB 30 futures contract. Accordingly, the staff has examined the MIB 30 futures contract in light of these criteria.[6/]

Based on the information set forth above, this Office 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 MIB 30 futures contract traded on the IDEM is offered and sold in the United States.[7/] Because this position is based upon facts and representations contained in the above-noted letters and communications, it should be noted that any different, omitted or changed facts or conditions might require a different conclusion.[8/] This position also is contingent on the

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6/ We also have sought the opinion of the staff of the Securities and Exchange Commission which informs us that they would have no objection to the offer and sale of this futures contract in the United States.

7/ This no-action position is applicable solely to the IDEM futures contract based on the MIB 30 and does not apply to any option contract based on such futures contract. See 17 C.F.R. § 30.3 (1994).

8/ The Commission and the CONSOB have signed a memorandum of understanding ("MOU") which allows the parties to share information. See Memorandum of Understanding Between the United

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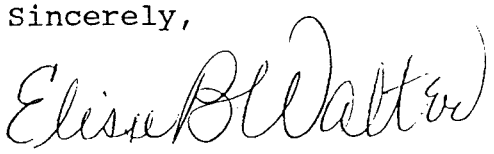
continued compliance by ISEC and IDEM with all regulatory requirements imposed by the CONSOB and the applicable statutes of Italy.

As you are aware, the Commission has adopted rules governing the offer and sale of foreign futures and foreign option contracts in the United States. See 17 C.F.R. Part 30. The offer and sale in the United States of the IDEM MIB 30 futures contract is, of course, governed by these regulations.

Sincerely,



Elisse B. Walter
General Counsel

cc: Brandon Becker
Director
Division of Market Regulation
Securities and Exchange Commission

8/ (...continued)
States Commodity Futures Trading Commission and the Commissione Nazionale per le Società e la Borsa of Italy on Consultation and Mutual Assistance for the Exchange of Information signed on June 22, 1995. The CONSOB has confirmed that it has the ability to retrieve any necessary information on MIB 30 trading and forward it to the Commission under the MOU between the Commission and CONSOB. See letter from Enzo Berlanda, Chairman, CONSOB to Elisse Walter, General Counsel, Commission, dated August 10, 1995.

The ISEC represents that since the ISE and IDEM are both regulated by the CONSOB and managed by one institution, the ISEC, there is no need for formal surveillance sharing agreements between the cash and derivative markets.