



U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of General Counsel

CFTC Letter No. 11-06
No-Action
August 31, 2011
Office of General Counsel

Mr. Vincent Van Dessel
CEO and Chairman of the Board
Euronext Brussels, S.A.
Palais de la Bourse Beurspaleis/
Place de la Bourse Beursplein
1000 Bruxelles Brussel
Belgium

Re: Euronext Brussels, S.A.'s Request for No-Action Relief in Connection with the Offer and Sale in the United States of its Futures Contract Based on the BEL 20 Stock Index

Dear Mr. Van Dessel:

This is in response to the letter and attachments dated May 9, 2009, from Mr. Bruno Colmant and your letter dated September 21, 2009, requesting on behalf of Euronext Brussels ("EB" or "Exchange") that the Office of General Counsel ("Office") of the Commodity Futures Trading Commission ("Commission" or "CFTC") issue a "no-action" letter in connection with the offer and sale in the United States of EB's futures contract based on the BEL 20 Index ("B20" or "Index").

We understand the facts to be as follows. EB is a subsidiary of NYSE Euronext ("NE"), and trading on EB is governed by the rules and procedures that govern trading on all Euronext markets.¹ The EB is governed by the Belgian Act of August 2, 2002 and is subject to regulation by the Commission Bancaire, Financiere et des Assurances/Commissie voor het Bank-, Financien Assurantiewezen ("CBFA"). The B20 is a free-float, market-capitalization weighted index of the largest and most liquid 20 stocks listed on EB, and it serves as the blue-chip index for the Belgian equity market.²

¹ See letter from Vincent Van Dessel, CEO and Chairman of the Board, Euronext Brussels, to Julian Hammar, Assistant General Counsel, CFTC, dated September 21, 2009 ("Van Dessel letter").

² See letter from Bruno Colmant, Chairman of the Board, Euronext Brussels, to Julian Hammar, Counsel, CFTC, dated May 4, 2009 ("Colmant letter") and attachment.

The B20 futures contract began trading on October 29, 1993.³ The B20 is calculated in real time by NE and disseminated through electronic media every fifteen seconds from 9:00 a.m. to 5:40 p.m. Central European time. The B20 is designed and constructed in a standardized fashion and is reviewed on an annual basis at the end of December.⁴

To be considered for inclusion in the Index, at least 30 percent of the issued shares of a company must be available for trading on the EB. To remain in the Index, existing shares must maintain a free-float ratio of at least 15 percent. Securities must turn over at least 30 percent of their free-float shares in the twelve months prior to an annual review to be eligible for inclusion in the B20. Existing stocks in the B20 must maintain an annual free-float turnover rate of at least 25 percent. The maximum weight of a constituent stock may not exceed 12 percent at the time of the annual adjustment of the Index.

The selection criteria are specified in the NE “Rules for the BEL 20 Index” at articles 1.3 through 1.5.⁵ During the annual review, eligible stocks are ranked from highest to lowest based on free-float market capitalization. If fewer than ten companies comply with the selection criteria, the largest companies complying with the selection criteria except article 1.4.2, which pertains to minimum free-float market capitalization, are added to the list until ten companies are included, and the Index will be composed of these ten companies. If at least ten and a maximum of 20 stocks comply with the basic selection criteria, all companies are included in the Index. If more than 20 companies comply with the selection criteria, the top 18 companies are selected for inclusion automatically regardless of whether they are already in the Index. Existing constituents that no longer comply with the selection criteria or have fallen below the 22nd position are removed from the Index. The last two companies are selected based on a series of criteria specified in article 3.5.4.6 of the rules.

As of December 2, 2010, Bloomberg data analyzed by CFTC staff indicated that the total adjusted market capitalization of the stocks in the Index was US \$89 billion. In addition, the largest stock in the Index accounted for 13.6 percent of the Index and the five most heavily weighted stocks accounted for 46.5 percent of the Index. The stocks comprising the lowest 25 percent of the Index (in terms of weighting) over the 6-month period ending December 2, 2010, had an aggregate value of average daily trading volume of US \$84.9 million.

As noted above, the B20 futures contract began trading on October 29, 1993. The futures contract provides for cash settlement. Prices are quoted in Index points, with each Index point

³ The contract began trading on the Belgium Futures and Options Exchange (“BELFOX”), which was acquired by NYSE Euronext in 2003 and became Euronext Brussels.

⁴ See attachment to Colmant letter.

⁵ The rules are publicly-available. A PDF file containing the rules can be found at: <http://www.euronext.com/editorial/documentation/wide/documents-1908-EN.html>

equal to EURO10 per contract (about US \$12.75 per contract).⁶ The minimum price fluctuation is 0.1 Index point (about US \$1.275 per contract). EB lists for trading in the spot month, the next month, and the three nearest months in the March quarterly cycle. The last trading day is the third Friday of the expiration month, and the settlement day is the first business day following the last trading day.⁷ The final settlement price is the simple average of the B20 taken every 15 seconds from 3:40 p.m. to 4:00 p.m. on the last trading day.⁸

The rules of the Exchange specify no daily price limit. EB will suspend trading of the B20 futures contract when there is a halt or suspension of trading in the underlying stock market, or upon the discretion of EB. In addition, the EB trading system checks each incoming order against the prevailing reference price of the contract. Any incoming buy order that is priced above the “value range” of the contract is rejected by the trading system, as is any incoming sell order that is below the value range. The contract has no position limits.

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

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

⁶ The exchange rate on December 2, 2010 was 1.325 Euros per U.S. dollar. *See* <http://www.bloomberg.com/invest/calculators/currency.html>

⁷ *See* attachment to Colmant letter.

⁸ *Id.*

⁹ 7 U.S.C. § 1 *et seq.*

¹⁰ *See* CEA Section 2(a)(1)(C)(ii).

¹¹ 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).

¹² *See* CEA Section 2(a)(1)(D).

¹³ *See* CEA Section 2(a)(1)(C)(ii).

2(a)(1)(C)(ii) or CEA Section 2(a)(1)(D).¹⁴ 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
- (3) the group or index of securities must not constitute a narrow-based security index.¹⁵

While CEA 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.¹⁶

¹⁴ CEA Section 2(a)(1)(D) governs the offer and sale of security futures products.

¹⁵ 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) 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).

¹⁶ 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 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.

Accordingly, Commission staff has examined the B20 and EB'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 and attachments cited above, we have determined that the B20, and EB's futures contract based thereon, conform to these requirements.¹⁷

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 B20 are listed and traded on the EB, and the EB has access to information necessary to detect and deter manipulation. The EB conducts inter-market surveillance to monitor market movements and trades in both the futures market and in the underlying securities. In the event the EB is unable, either directly or through its regulator, the CBFA, to share such information with the CFTC, this Office reserves the right to reconsider the positions taken herein.¹⁸

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 the EB's futures contract based on the B20 is offered or sold in the U.S. Because this position is based upon facts and representations contained in the requesting letters and attachments 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 the EB with all regulatory requirements imposed by its regulator, the CBFA, and the applicable laws and regulations of Belgium. 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.

¹⁷ In making this determination, Commission staff has concluded that the B20 does not have any of the elements of a narrow-based security index as enumerated in CEA Section 1a(25)(A). Accordingly, the Index would not be a narrow-based security index if traded on a designated contract market or DTEF.

¹⁸ Regarding information sharing, Belgium has no statutes that would prevent the sharing of information concerning trading in the B20 futures contract with the Commission or the SEC. The Chairman of the EB has stated that EB is willing and able to share information with the Commission. *See* Colmant letter at 2. Information that is not confidential will be provided directly to the CFTC by EB, and confidential information will be provided via the CBFA utilizing the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (the "MMOU"). The CBFA is also a signatory to the Declaration on the Cooperation and Supervision of International Futures Exchanges and Clearing Organizations (the "Boca Declaration").

The offer and sale in the U.S. of EB's futures contract based on the B20 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.¹⁹

Sincerely,

Dan M. Berkovitz
General Counsel

¹⁹ See 17 C.F.R. Part 30.