

Firms designated by the Tokyo Grain Exchange.

FR date and citation: February 23, 1993, 58 FR 10957; May 2, 1994, 59 FR 22506.

Firms designated by the MEFF Sociedad Rectora de Productos Financieros Derivados de Renta Fija ("MEFF Renta Fija").

FR date and citation: June 9, 1995, 60 FR 30466.

Firms designated by the New Zealand Futures and Options Exchange ("NZFOE").

FR date and citation: December 10, 1996, 61 FR 64989.

Firms designated by the MEFF Sociedad Rectora de Productos Financieros Derivados de Renta Variable ("MEFF Renta Variable").

FR date and citation: April 8, 1997, 62 FR 16690.

Firms designated by the Financial Services Authority ("FSA").

FR date and citation: October 10, 2003, 68 FR 58587.

Firms designated by the Australian Stock Exchange Limited ("ASXL").

FR date and citation: 68 FR 39006, July 1, 2003.

FR date and citation: 70 FR 75937, December 22, 2005.

Firms designated by the Taiwan Futures Exchange.

FR date and citation: March 28, 2007, 72 FR 14413.

Firms designated by the Tokyo Commodity Exchange.

FR date and citation: February 9, 2006, 71 FR 6759.

Firms designated by the Bolsa de Mercadorias & Futuros.

FR date and citation: July 8, 2002, 67 FR 45056.

Firms designated by Eurex Deutschland.

FR date and citation: May 8, 2002, 67 FR 30785.

[54 FR 809, Jan. 10, 1989]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting appendix C to part 30, see the List of CFR Sections Affected, which appears in the Finding Aids sections of the printed volume and on GPO Access.

APPENDIX D TO PART 30—INFORMATION THAT A FOREIGN BOARD OF TRADE SHOULD SUBMIT WHEN SEEKING NO-ACTION RELIEF TO OFFER AND SELL, TO PERSONS LOCATED IN THE UNITED STATES, A FUTURES CONTRACT ON A FOREIGN NON-NARROW-BASED SECURITY INDEX TRADED ON THAT FOREIGN BOARD OF TRADE

A. Section 2(a)(1)(C)(iv) of the Commodity Exchange Act ("Act") generally prohibits any person from offering or selling a futures

contract based on a security index in the U.S., except as otherwise permitted under the Act, including Section 2(a)(1)(C)(ii) of the Act. By its terms, Section 2(a)(1)(C)(iv) of the Act applies to futures contracts on security indices traded on both domestic and foreign boards of trade. Section 2(a)(1)(C)(ii) of the Act sets forth three criteria to govern the trading of futures contracts on a group or index of securities on contract markets and derivatives transaction execution facilities:

(1) The contract must provide for cash settlement;

(2) The contract must not be readily susceptible to manipulation or to being used to manipulate any underlying security; and

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

B. While Section 2(a)(1)(C)(ii) of the Act provides that no board of trade or derivatives transaction execution facility 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. The Office of General Counsel has applied those same three criteria in evaluating requests by foreign boards of trade to allow the offer and sale within the United States 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 derivatives transaction execution facility to trade those products.¹

C. In the analysis of a no-action request for a foreign security index futures contract traded on a foreign board of trade, the Office of the General Counsel asks the Division of Market Oversight (Division) to evaluate the foreign security index futures contract to ensure that it complies with the three criteria of Section 2(a)(1)(C)(ii) of the Act.

D. Because security index futures contracts are cash settled, the Division also evaluates the contract to ensure that the

¹With regard to the third criterion, and CFTC and SEC jointly promulgated Rule 41.13 under the Act and Rule 3a55-3 under the Securities Exchange Act of 1934 ("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.

contract terms and conditions relating to cash settlement are consistent with the Commission's Guideline No. 1 requirements for cash settled contracts. In that regard, Guideline No. 1 requires that the cash price series be reliable, acceptable, publicly available and timely; that the cash settlement price be reflective of the underlying cash market; and that the cash settlement price not be readily susceptible to manipulation. In making its determination, the Division considers the design and maintenance of the index, the method of index calculation, the nature of the component security prices used to calculate the index, the breadth and frequency of index dissemination, and any other relevant factors.

E. In considering the susceptibility of an index to manipulation, the Division examines several factors, including the structure of the primary and secondary markets for the component equities, the liquidity of the component stocks, the method of index calculation, the total capitalization of stocks underlying the index, the number, weighting and capitalization of individual stocks in the index, and the existence of surveillance sharing agreements between the board of trade and the securities exchange(s) on which the underlying securities are traded.

F. To verify that the index is not narrow based, the Division considers the number and weighting of the component securities and the value of average daily trading volume of the lowest weighted quartile of securities. Under the Act, a security index is narrow-based if it meets any one of the following criteria:

- (1) The index is composed of fewer than 10 securities;
- (2) Any single security comprises more than 30% of the total index weight
- (3) The five largest securities comprise more than 60% of the total index weight; or
- (4) The lowest-weighted securities that together account for 25% of the total weight of the index have an aggregate dollar value of average daily trading volume of less than US\$30 million (or US\$50 million if the index includes fewer than 15 securities).

G. Accordingly, a foreign board of trade seeking no-action relief to offer and to sell, to persons located in the U.S., a futures contract on a non-narrow based foreign security index traded on that foreign board of trade should submit to the Office of General Counsel the following in English:

(1) The terms and conditions of the contract and all other relevant rules of the exchange and, if applicable, of the exchange on which the underlying securities are traded, which have an effect on the over-all trading of the contract, including circuit breakers, price limits, position limits or other controls on trading;

(2) Surveillance agreements between the foreign board of trade and the exchange(s) on which the underlying securities are traded;

(3) Assurances from the foreign board of trade of its ability and willingness to share information with the Commission, either directly or indirectly;

(4) When applicable, information regarding foreign blocking statutes and their impact on the ability of United States government agencies to obtain information concerning the trading of such contracts;

(5) Information and data denoted in U.S. dollars (and the conversion date and rate used) relating to:

(i) The method of computation, availability, and timeliness of the index;

(ii) The total capitalization, number of stocks (including the number of unaffiliated issuers if different from the number of stocks), and weighting of the stocks by capitalization and, if applicable, by price in the index as well as the combined weighting of the five highest-weighted stocks in the index;

(iii) Procedures and criteria for selection of individual securities for inclusion in, or removal from, the index, how often the index is regularly reviewed, and any procedures for changes in the index between regularly scheduled reviews;

(iv) Method of calculation of the case-settlement price and the timing of its public release;

(v) Average daily volume of trading, measured by share turnover and dollar value, in each of the underlying securities for a six-month period of time and, separately, the dollar value of the average daily trading volume of the securities comprising the lowest weighted 25% of the index for the past six calendar months, calculated pursuant to Commission Rule 41.11; and

(vi) If applicable, average daily futures trading volume;

(6) A statement that the index is not a narrow-based security index as defined in Section 1a(25) of the Act and the analysis supporting that statement; and

(7) When applicable, a request to make the futures contract available for trading in accordance with the terms and conditions of, and through the electronic trading devices identified in, the Foreign Trading System No-Action letter that the foreign board of trade received from Commission staff and a certification from the foreign board of trade that it is in compliance with the terms and conditions of that no-action letter.

[68 FR 33624, June 5, 2003]