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U.S. COMMODITY FUTURES TRADING COMMISSION
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June 3, 1998

COMMODITY FUTURES TRADING COMMISSION
RECEIVED FOR PUBLIC RECORD
Jul 6 8 26 AM '98

Nils-Robert Persson
President
OM Stockholm AB
Brunkebergstock 2
Box 16305
103 26 Stockholm
Sweden

Re: OM Stockholm AB Request for No-Action Letter for Futures Contract Based on the OMX Stock Index

Dear Mr. Persson:

This is in response to letters and facsimiles dated from October 30, 1996 through February 6, 1998 requesting that the Office of the General Counsel of the Commodity Futures Trading Commission ("Commission") issue a "no-action" letter concerning the offer and sale in the United States of the OM Stockholm AB ("OM Stockholm") standardized futures contract based on the OMX Stock Index ("OMX Index" or "Index").[1] Your request has been forwarded to the Commission for a response.

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[1] The request was submitted solely with regard to the standardized futures contract based on the OMX Index. By letter dated July 23, 1996, the Office of the General Counsel granted no-action relief to OMLX, The London Securities and Derivatives Exchange Limited ("OMLX exchange") concerning the offer and sale in the United States of its futures contract based on the OMX Index and the OMX Index Flex futures contract. The OM Stockholm standardized futures contract based on the OMX Index is fungible with the OMLX exchange's standardized OMX Index futures contract which was the subject of the General Counsel's July 23rd letter. We understand that both the OM Stockholm and the OMLX exchange are wholly-owned subsidiaries of OM Gruppen.

We understand the facts to be as follows. OM Stockholm is a wholly-owned subsidiary of OM Gruppen. OM Stockholm is authorized as an exchange by the Swedish Financial Supervisory Authority ("SFSA") and is authorized to provide clearing services under the Swedish legislation governing exchange and clearing operations. OM Stockholm provides a combined marketplace for the OMX Futures Contracts and for other contracts which are not the subject of this request, in conjunction with the OMLX exchange. The OMLX exchange and OM Stockholm function as two distinct exchanges, have their own rules and members, and are supervised by their own national regulator. In relation to standardized OMX futures contracts, however, members of each exchange benefit from the provision of a combined marketplace. The price barometer for such products is produced by the best orders provided by the membership of the two exchanges at any time. Each exchange is responsible for the supervision of the activities of its members and for the clearing and settlement of transactions entered into by its members. As members of the OMLX exchange and OM Stockholm participate in a combined market relating to these instruments, the exchanges ensure that their respective rules relating to their trading and clearing are harmonized.

The OMX Index is the proprietary interest of OM Gruppen which has granted the OMLX exchange and OM Stockholm the right to use the OMX Index in connection with the trading of futures and options contracts based on such Index on the respective exchanges. OM Stockholm acts as the Index Provider. OM Gruppen has appointed the independent Swedish company, SIX AB (formerly Dextel Findata AB), to act as the Index Calculator for the OMX Index and to undertake to calculate the OMX Index in accordance

with the rules of the OMLX exchange and OM Stockholm. OM Gruppen has appointed KPMG Bohlins AB, the Swedish arm of the international accounting firm, KPMG, as an independent Index Ombudsman responsible for supervising the action of the Index Calculator particularly with reference to adjustments in the composition of the OMX Index and verifying the expiration values.

The OMX Index was launched in Sweden in September, 1986. It is a capitalization-weighted index designed to reflect the development of the Swedish equity market. The OMX Index contains the 30 most liquid stocks traded on the Stockholm Stock Exchange ("SSE") which represent approximately 70 percent of all trading on the SSE. The OMX Index represents 14 industry groups, the largest industry group being engineering which represents a little more than 46 percent of the Index. As of February 2, 1998, the highest weighted stock in the Index, Ericsson, constituted no more than 20.1 percent of the total weight of the Index. As of the same date, the top five highest weighted stocks accounted for no more than 54 percent of the total weight of the Index. The total capitalization of stocks in the OMX Index as of February 2, 1998 was over $174 billion.

The OMX Index is calculated continuously on all Swedish Bank Days using automated data from the SSE. The Index is calculated by reference to the last paid price (last trade price) for each constituent stock of the Index. The OMX Index is disseminated throughout the world through major quote vendors every minute throughout the trading day and is published daily in a number of newspapers, including the Financial Times.

The value of the OMX Index futures contract is determined by multiplying the level of the Index by 100 Swedish Kronor.[2] The futures contract provides for cash settlement. The final settlement price of the OMX Index futures contract is ratified on the Swedish Bank Day following the Expiration Date. The Expiration Date of a standardized futures contract typically is the fourth Friday of the contract month. The final settlement price is a special calculation of the OMX Index which is based, for each stock, on the aggregate value (in Swedish Kronor) of all transactions on the SSE on the futures' last trading day divided by the share volume that day. The last trading day is the Swedish Bank Day immediately preceding the Expiration Date.

The offer and sale in the United States of futures contracts traded on or subject to the rules of a foreign exchange is subject to the Commission's exclusive jurisdiction.[3] Section 2(a)(1)(A), 7 U.S.C. § 2 (1994); 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

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[2] Standardized OMX futures contracts have traded at the OM Stockholm since April, 1987.

[3] Section 12(e) of the Commodity Exchange Act 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) (1994). 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 (1997).

executed on a foreign board of trade, exchange or market).[4] Section 2(a)(1)(B)(v) of the Act, 7 U.S.C. § 2a(v) (1994), 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) (1994). In turn, Section 2(a)(1)(B)(ii) sets forth three criteria to govern Commission designation of futures contracts on a group or index of securities:

(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 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 OM Stockholm does not seek designation as a contract market. However, 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 House Committee on Agriculture explained that a foreign

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[4] In this regard, pursuant to the authority in, among other provisions, Section 4(b) of the Act, 7 U.S.C. § 6(b) (1994), 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 (1997).

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.

We understand that the securities in the OMX Index are issued by Swedish companies. The House Committee 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 futures trading in "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. We have examined the OM Stockholm OMX Stock Index futures contract in light of these requirements.[5]

Based on the information noted herein and as set forth in the letters, attachments and facsimiles noted above, the Commission will not take any enforcement action based on Sections 2(a)(1)(B)(v), 4(a), or 12(e) of the Commodity Exchange Act, as amended, if the standardized OMX Index futures contract traded on the OM Stockholm is offered and sold in the United States. Because this position is based upon facts and representations

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[5] The staff of the Securities and Exchange Commission ("SEC") has informed us that they would have no objection to the offer and sale of this futures contract in the United States. See letter dated April 30, 1998 from Howard L. Kramer, Senior Associate Director, Division of Market Regulation, SEC, to Daniel R. Waldman, General Counsel, Commission. We understand that the OM Stockholm has entered into an agreement with the SEC regarding the weighting of issuers in the OMX Index. See May 23, 1997 letter to the SEC from Per E. Larsson, Chairman, OM Stockholm and Hans Berggren, General Counsel, OM Stockholm.

contained in the above-noted letters, attachments and facsimiles, it should be noted that any different, omitted or changed facts or conditions might require a different conclusion.[6] This position also is contingent on the continued compliance by the OM Stockholm with all regulatory requirements imposed by the SFSA and the applicable statutes of Sweden.

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

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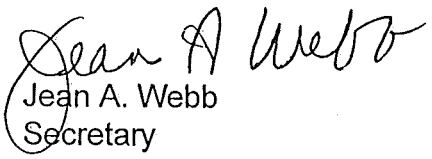
[6] The OM Stockholm has represented that it is willing and able to share information of a regulatory nature in relation to the OMX Index futures contracts with the Commodity Futures Trading Commission. See Letter dated October 30, 1996 to Daniel R. Waldman, from Nils-Robert Persson, President, and Hans Berggren, General Counsel, OM Stockholm. In addition, OM Stockholm and the OMLX exchange are signatories to the Memorandum of Understanding and Agreement signed on March 15, 1996 at Boca Raton, Florida. Moreover, the SFSA has confirmed that it is willing and able to undertake information sharing with the Commission in regard to the OM Stockholm to the extent permitted by laws, rules or other regulations. See letters dated March 11, 1997 and June 10, 1997 to David Merrill, Deputy General Counsel, Commission, from Brent Magnusson, SFSA. Finally, on January 16, 1997, the SFSA became a signatory to the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations for the sharing of large exposure information dated March 15, 1996.

In evaluating requests for no-action relief with regard to foreign futures contracts based on foreign stock indices, the Commission generally examines whether a surveillance sharing arrangement exists between the futures exchange and the securities exchange on which the underlying stocks are traded. In this regard, the OM Stockholm has a market supervision arrangement with the SSE which covers broad surveillance and information sharing arrangements. These arrangements focus on market integrity and insider trading issues relating to the trading of derivative instruments at OM Stockholm and the OMLX exchange and the underlying stocks at the SSE. See October 30, 1996 letter to Daniel R. Waldman.

17 C.F.R. Part 30. The offer and sale in the United States of the OM Stockholm standardized OMX Index futures contract is, of course, governed by these regulations.

Sincerely,



Jean A. Webb
Secretary

cc: Howard Kramer
Division of Market Regulation
Securities and Exchange Commission