



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of General Counsel

CFTC Letter No. 10-32  
No-Action  
August 17, 2010  
Office of General Counsel

Michael S. Sackheim, Esq.  
Sidley Austin LLP  
787 Seventh Avenue  
New York, NY 10010

Re: Turkish Derivatives Exchange's Request for No-Action Relief in Connection with the Offer and Sale in the United States of its Futures Contract Based on the ISE-30 Stock Index

Dear Mr. Sackheim:

This is in response to your requesting letter, attachments, facsimiles and electronic mail dated from November 12, 2008 to March 20, 2009, requesting on behalf of the Turkish Derivatives Exchange ("TurkDEX" 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 TurkDEX's futures contract based on the Istanbul Stock Exchange ("ISE") 30 Stock Index ("ISE-30" or "Index").

We understand the facts to be as follows. TurkDEX is the derivatives and securities exchange of the Republic of Turkey, formed on July 4, 2001.<sup>1</sup> TurkDEX is subject to regulation under Turkey's Capital Markets Law, administered by the Capital Markets Board of Turkey ("CMB").<sup>2</sup> Established in 1982, the CMB supervises and regulates both the securities market and derivatives instruments in Turkey.<sup>3</sup> CMB approved TurkDEX's license to operate as a derivatives exchange on February 4, 2005.<sup>4</sup>

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<sup>1</sup>Further information on TurkDEX is available on its English language website, <http://www.turkdex.org.tr/VOBPortalEng/DesktopDefault.aspx>.

<sup>2</sup> See letter from Michael S. Sackheim, Esq. Sidley Austin LLP to Terry Arbit, General Counsel, CFTC, dated November 12, 2008 ("Sackheim letter") at 18.

<sup>3</sup> See Sackheim letter, at 3.

<sup>4</sup> *Id.* at 2.

The ISE-30 is a broad-based, free-float, market-capitalization-weighted composite index of 30 highly capitalized and actively traded stocks currently listed on the “National Market” of the ISE, accounting for 70% of Turkey’s market volume and market capitalization.<sup>5</sup> ISE, which was established in early 1986, owns and maintains the Index. Created by the ISE in 1996 as a subset of the ISE-100, the ISE-30 is designed and constructed in a standardized fashion and is reviewed on a quarterly basis.<sup>6</sup>

To be considered for inclusion in the Index, a stock must be listed on the National Market for at least 60 days.<sup>7</sup> Free-float market capitalizations of eligible stocks are calculated and the stocks are ranked from highest to lowest. For each stock, the average value of daily trading volume is calculated and the stocks are ranked from highest to lowest based on that criteria. At the end of each quarter, stocks that are ranked in the top 25 in both categories are automatically added to the ISE-30. Constituent stocks that fall below the top 35 in both categories are deleted from the Index.<sup>8</sup> If there are less than 30 stocks in the Index after this procedure, non-constituent stocks with the highest market capitalization and value of trading are included until 30 stocks are included. If there are more than 30 stocks in the Index, the stocks with the lowest market capitalization and value of trading volume are deleted in order to maintain just 30 stocks.<sup>9</sup> In addition to the 30 stocks in the ISE-30, two stocks are selected as reserve stocks in case of events between quarterly reviews that cause the number of stocks to fall below 30. These events include stock delistings and company mergers.<sup>10</sup>

Based on data supplied by TurkDEX, as of September 29, 2008, the adjusted market capitalization of the stocks in the ISE-30 was approximately US \$46 billion.<sup>11</sup> In addition, the stocks comprising the lowest 25 percent of the Index (in terms of weighting) over the six-month period ending on September 29, 2008 had an aggregate value of average daily trading volume of

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<sup>5</sup>“National Market” is the main stock market of the ISE where equities of companies that fulfill the listing and minimum circulation requirements determined by the ISE are traded. *See* Sackheim letter at 6 n.3.

<sup>6</sup> *See* Sackheim letter at 11-15 and attached Exhibit G.

<sup>7</sup> If a stock has been listed for less than 60 days, it may be considered for inclusion if it meets certain market capitalization criteria. *See* Sackheim letter at 14.

<sup>8</sup>*Id.*

<sup>9</sup>*Id.*

<sup>10</sup>*Id.*

<sup>11</sup> *See* Sackheim letter at 15 and attached Exhibit C. As of July 9, 2010, the market capitalization of the ISE-30 was approximately \$58.2 billion.

US \$236 million.<sup>12</sup> As of July 9, 2010, Bloomberg data analyzed by CFTC staff indicated that the largest stock in the Index represented 18.9 percent of the Index, and the five most heavily weighted stocks accounted for 56.7 percent of the Index.

TurkDEX's futures contract on the ISE-30 began trading on February 4, 2005. The futures contract provides for cash settlement. Prices are quoted in Index points, with each Index point equal to TRY (New Turkish Lira) 0.10 per contract (about US\$0.06 per contract).<sup>13</sup> The minimum price fluctuation is 25 Index points (about US \$1.61 per contract). TurkDEX lists for trading the three nearest months of the bi-monthly cycle (February, April, June, August, October and December). The last trading day and the final settlement day is the last business day of the contract month. The final settlement price is the simple average of 10 ISE-30 values randomly selected at least 30 seconds apart within the last 15 minutes of trading on the last trading day.<sup>14</sup> For each contract month, the rules of the Exchange specify a daily price limit of fifteen percent above and below the base price, which is normally the previous day's settlement price. The Exchange determines the base price for newly-listed contract months. During "market emergencies," TDEX may increase or decrease the price limit. The absolute position limit is 20,000 contracts for all months combined. No individual trader may hold more than ten percent of all positions. TDEX may change position limit requirements during market emergencies.

The Commodity Exchange Act ("CEA" or "Act"),<sup>15</sup> as amended by the Commodity Futures Modernization Act of 2000 ("CFMA"),<sup>16</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>17</sup> with the exception of security futures products,<sup>18</sup> over which the Commission

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<sup>12</sup> See Exhibit H of Sackheim letter. As of July 9, 2010, the value of average daily trading volume over the previous six months was about \$339.5 million.

<sup>13</sup> The exchange rate on July 9, 2010 was 1.00 TRY per 0.6440 U.S. dollar. See <http://www.bloomberg.com/invest/calculators/currency.html>

<sup>14</sup> See Sackheim letter at 6-7 and attached Exhibit F.

<sup>15</sup> 7 U.S.C. § 1 *et seq.*

<sup>16</sup> Appendix E of Pub. L. No. 106-554, 114 Stat. 2763 (2000).

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

<sup>18</sup> 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).

shares jurisdiction with the Securities and Exchange Commission (“SEC”).<sup>19</sup> 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).<sup>20</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>21</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 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>22</sup>

While 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

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<sup>19</sup> See CEA Section 2(a)(1)(D).

<sup>20</sup> See CEA Section 2(a)(1)(C)(ii).

<sup>21</sup> CEA Section 2(a)(1)(D) governs the offer and sale of security futures products.

<sup>22</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) 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).

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>23</sup>

Accordingly, Commission staff has examined the ISE-30 and TurkDEX'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 letter, attachments, facsimiles and electronic mail cited above, we have determined that the ISE-30, and TurkDEX's futures contract based thereon, conform to these requirements.<sup>24</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 ISE-30 are listed and traded on ISE's National Market, which is its main securities market. In addition, recent amendments to the Turkish Derivatives Exchange Regulation and the Istanbul Stock Exchange Regulation indicate cooperation and information-sharing between TurkDEX and the ISE.<sup>25</sup> Accordingly, the requesting letter maintains that both TurkDEX and ISE have access to all material information necessary to conduct effective surveillance of securities and derivative products traded on these exchanges.<sup>26</sup> In the event that ISE or TurkDEX is unable, through the CMB, to share such information with the CFTC, this Office reserves the right to reconsider the position taken herein.<sup>27</sup>

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<sup>23</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 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.

<sup>24</sup> In making this determination, Commission staff has concluded that the ISE-30 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.

<sup>25</sup> See Sackheim letter at 18; Email from Michael S. Sackheim to Julian Hammar, dated March 17, 2008 and attached English translation of the 2008 regulatory amendments to Turkish securities and derivative law.

<sup>26</sup> Sackheim letter at 17.

<sup>27</sup> TurkDEX has agreed to cooperate with Commission requests for information regarding the trading of the ISE-30 futures contract. *Id.* TurkDEX's regulator, the CMB, and the CFTC entered into a Memorandum of Understanding ("MOU") in 2001, creating arrangements to exchange supervisory, surveillance, and investigatory information in order to assist the

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 TurkDEX's futures contract based on the ISE-30 is offered or sold in the U.S. Because this position is based upon facts and representations contained in the requesting letter, 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 TurkDEX with all regulatory requirements imposed by the CMB, and the applicable laws and regulations of Turkey. 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.

The offer and sale in the U.S. of TurkDEX's futures contract based on the ISE-30 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>28</sup>

Sincerely,

Dan M. Berkovitz  
General Counsel

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regulatory authorities in Turkey and the United States in securing compliance with their laws, rules and regulations regarding futures matters, thus promoting the integrity of the markets in Turkey and the United States. CMB is also a signatory to the IOSCO multilateral MOU and the Boca Declaration, *See* [http://www.iosco.org/library/index.cfm?section=mou\\_siglist](http://www.iosco.org/library/index.cfm?section=mou_siglist) and [http://www.iosco.org/library/declarations/pdf/boca\\_declaration.pdf](http://www.iosco.org/library/declarations/pdf/boca_declaration.pdf), respectively.

<sup>28</sup> *See* 17 C.F.R. Part 30.