U.S. COMMODITY FUTURES TRADING COMMISSION
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Office of General Counsel

CFTC Letter No. 11-03
No-Action
June 28, 2011
Office of General Counsel

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35 West Wacker Drive
Chicago, Illinois 60601-9703

Re: Bursa Malaysia Berhad's Request for No-Action Relief in Connection with the Offer and Sale in the United States of a Futures Contract Based on the FTSE Bursa Malaysia Kuala Lumpur Composite Index

Dear Mr. Philipp:

This is in response to your requesting letter, attachments, facsimiles and electronic mail dated from December 5, 2008 to December 15, 2009, requesting on behalf of the Bursa Malaysia Berhad ("Bursa Malaysia") and its wholly-owned subsidiary Bursa Malaysia Derivatives Bhd ("Bursa Derivatives" or "BD"), 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 Bursa Derivatives' futures contract based on the FTSE Bursa Malaysia Kuala Lumpur Composite Index ("KLCI" or "Index").[1]

We understand the facts to be as follows. Bursa Malaysia, previously known as Kuala Lumpur Stock Exchange ("KLSE"), dates back to 1930 when the Singapore Stockbrokers' Association was set up as a formal organization dealing in securities in Malaysia. Incorporated in 1976 as the KLSE, Bursa Malaysia took its current name in 2004, following a demutualization process.[2] Currently, Bursa Malaysia is approved to be an exchange holding company under Malaysia's Capital Markets and Services Act 2007 ("CMSA").[3] Bursa Malaysia is also

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[1] While Bursa Malaysia listed a futures contract based on a 100 component stock index as of December 2008, its no-action request anticipated a futures contract based on a 30 component stock index, which eventually replaced the 100 component stock index in July 2009.

[2] Further information on Bursa Malaysia is available on its English language website, http://www.bursamalaysia.com/website/bm/derivatives/about-us/index.html

[3] *See* letter from Michael M. Philipp, Esq., Winston & Strawn LLP to Terry Arbit, General Counsel, CFTC, dated December 5, 2008 ("Philipp letter") at 7, which states, "[b]ased on

approved under the CMSA as a stock market and a futures market by virtue of the fact that it controls the operation of Bursa Derivatives and Bursa Securities.[4] Bursa Malaysia is regulated by the Securities Commission.[5] Established in 1993, the Securities Commission supervises and regulates both the securities market and derivatives instruments in Malaysia.[6] Bursa Derivatives, the subsidiary of Bursa Malaysia, also falls under the jurisdiction of the Ministry of Finance of Malaysia.[7]

The KLCI is a broad-based, free-float, market-capitalization-weighted index of 30 highly capitalized and actively traded stocks currently listed on the Main Board of Bursa Securities.[8] Prior to July 6, 2009, the old KLCI consisted of 100 stocks, which on that date was revised to consist of 30 stocks.

The KLCI is designed and constructed in a standardized fashion and is reviewed on a semi-annual basis.[9] Semi-annual reviews of the Index occur in June and December based on data from the last business day of May and November. Any changes to the Index are implemented after the close of business on the third Friday in June and December, respectively.[10] To be considered for inclusion in the Index, a stock must be listed on the Main Board of the Bursa Malaysia.[11] Free-float market capitalizations of eligible stocks are calculated and the stocks are ranked from highest to lowest.[12] Securities must turn over at least 10% of their free-float shares in the 12 months prior

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Section 21 of the CMSA, an exchange holding company must ensure, among other things, an orderly and fair market in relation to securities and futures contracts that are traded on the market."

[4] *Id.*

[5] *Id.*

[6] *Id.*; *see also* the Securities Commission's English language website, http://www.sc.com.my/main.asp?pageid=219&menuid=188&newsid=&linkid=&type=

[7] *See* Bursa Derivatives website, http://www.bursamalaysia.com/website/bm/products_and_services/bm_derivatives.html

[8] *See* Philipp letter at 2.

[9] *See* Philipp letter at 12 and attached Appendix 3, *Ground Rules for the Management of the FTSE Bursa Malaysia Index Series ("Ground Rules")*, Section 4.3 (Rules for Insertion and Deletion at the Semi-Annual Review), at 14.

[10] *See* Philipp letter at 12 and attached Appendix 3, *Ground Rules*, Section 4.1 (Review Dates), at 14.

[11] Appendix 3, *Ground Rules*, Section 3.6 (Index Qualification Criteria), at 12-13.

[12] *Id.*

to an annual review in December to be eligible for inclusion in the KLCI.[13] Stocks that are ranked in the top 25 in free-float market capitalization are automatically added to the Index. Constituent stocks that fall below the top 35 are deleted from the Index.[14] If there are less than 30 stocks in the Index after this procedure, non-constituent stocks with the highest market capitalization are added until 30 stocks are included. If there are more than 30 stocks in the Index, the stocks with the lowest market capitalization are deleted to maintain just 30 stocks. In addition to the 30 stocks in the KLCI, five stocks are selected as reserve stocks in case of events, i.e., delistings and company mergers, that occur between semi-annual reviews which may cause the number of stocks to fall below 30.[15]

Based on Bloomberg data reviewed by CFTC staff, the total adjusted market capitalization of the stocks in the KLCI was approximately US $265 billion as of May 17, 2011. The stocks comprising the lowest 25 percent of the Index (in terms of weighting) over the six-month period ending on May 17, 2011 had an aggregate value of average daily trading volume of US $80.4 million. In addition, the largest stock in the Index represented 10 percent of the Index, and the five most heavily weighted stocks accounted for 43.7 percent of the Index.

The KLCI futures contract began trading on Bursa Derivatives on December 15, 1995. The futures contract provides for cash settlement.[16] Prices are quoted in Index points, with each Index point equal to MYR50 per contract (about US $15.15 per contract).[17] The minimum price fluctuation is 0.5 Index point, valued at MYR25 (about U.S. $8.25 per contract). Bursa Derivatives lists for trading the spot month, the next month and the next two quarterly calendar months. The calendar quarterly months are March, June, September and December. The last trading day and the final settlement day is the last business day of the contract month.[18] The final settlement price is the simple average, rounded to the nearest 0.5, of the KLCI taken every 15 seconds from 3:45:30 p.m. to 4:45:15 p.m. on the last trading day. The highest and the lowest three observations are discarded from the sample.[19] The rules of Bursa Derivatives specify a daily price limit during the first trading session of 20% above and below the previous day's

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[13] *Id.*

[14] *Id.*

[15] *See* Philipp letter at 12-13.

[16] *See* Philipp letter at 13.

[17] The exchange rate on May 19, 2011 was 3.03 Malaysian Ringgit (MYR) per 1 U.S Dollar (USD), http://www.bloomberg.com/personal-finance/calculators/currency-converter/

[18] *See* current contract specifications on the KLCI futures contract, at http://www.klse.com.my/website/bm/derivatives/products/Equity_Derivatives/fkli2.html

[19] *Id.*

settlement price.[20] During the second trading session, there is a price limit of 20% above or below the first trading session's last traded price.[21] However, there are no limits for the spot month contract or for the next contract month during the last five trading days of the spot month contract.[22] Bursa Derivatives may suspend trading of the KLCI futures contract when there is a halt or suspension of trading in the underlying stock market, where there is a delay in the opening of the underlying market, or if an issuer of an underlying instrument is about to make an important announcement affecting the issuer.[23]

The Commodity Exchange Act ("CEA" or "Act")[24] 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,[25] with the exception of security futures products,[26] over which the Commission shares jurisdiction with the Securities and Exchange Commission ("SEC").[27] 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).[28]

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).[29] 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

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[20] *See* Philipp letter at 5.

[21] *Id.*

[22] *Id*.

[23] *Id*. at 4.

[24] 7 U.S.C. § 1 *et seq.*

[25] *See* CEA Section 2(a)(1)(C)(ii).

[26] 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, in turn, 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).

[27] *See* CEA Section 2(a)(1)(D).

[28] *See* CEA Section 2(a)(1)(C)(ii).

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

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.[30]

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 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.[31]

Accordingly, Commission staff has examined the KLCI and Bursa Malaysia'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

[30] 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).

[31] 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.

determined that the KLCI, and Bursa Malaysia's futures contract based thereon, conform to these requirements.[32]

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 KLCI are listed and traded on Bursa Malaysia's Main Board, which is its main securities market. Based on section 21 of the CMSA, Bursa Malaysia, as an exchange holding company, is required to ensure a fair and orderly market in relation to securities and futures contracts traded on the market. The surveillance functions of both the futures and securities markets owned by Bursa Malaysia are integrated and undertaken by Bursa Malaysia. Accordingly, Bursa Malaysia should have access to information necessary to detect and deter manipulation. The requesting letter also pledges that both Bursa Malaysia and Bursa Derivatives will cooperate with the CFTC when it makes requests for information relating to trading of the KLCI futures contract or the KLCI Index "where the CFTC is investigating misconduct or breach of US laws, rules and regulations by its brokers and clients or investigating developments in Malaysian markets that may affect [market conditions] in the U.S."[33] In the event that Bursa Malaysia or Bursa Derivatives is unable to share such information with the CFTC, this Office reserves the right to reconsider the position taken herein.[34]

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 Bursa Malaysia's futures contract based on the KLCI 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

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[32] In making this determination, Commission staff has concluded that the KLCI 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.

[33] *Id*.

[34] Bursa Malaysia's and Bursa Derivatives' regulator, the Securities Commission, is a signatory to the IOSCO multilateral MOU and the Boca Declaration, *See* http://www.iosco.org/library/index.cfm?section=mou_siglist and http://www.iosco.org/library/declarations/pdf/boca_declaration.pdf, respectively. In addition, Bursa Malaysia Derivatives Clearing Berhad (formerly Malaysian Derivatives Clearing House Bhd), a subsidiary of Bursa Derivatives as of November 30, 2009, is a signatory to the Boca Memorandum. Bursa Malaysia also has in place an information sharing MOU with the Tokyo Stock Exchange regarding an underlying stock of the KLCI that is listed on both the Tokyo Stock Exchange and Bursa Securities, namely, YTL Power International. This MOU, entered on February 10, 1996, provides for the exchange of information concerning securities listed on both exchanges and market surveillance information of dual-listed securities. *See* Philipp letter at 9-10.

facts or conditions might require a different conclusion. This position also is contingent on the continued compliance by Bursa Malaysia with all regulatory requirements imposed by the Securities Commission, and the applicable laws and regulations of Malaysia. 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 Bursa Malaysia's futures contract based on the KLCI 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.[35]

Sincerely,

Dan M. Berkovitz
General Counsel

[35] *See* 17 C.F.R. Part 30.