

CFTC Letter No. 01-42

May 16, 2001

No-Action

Division of Trading and Markets

Michael M. Philipp, Esq.
Katten Muchin Zavis
525 West Monroe Street
Suite 1600
Chicago, Illinois 60661-3693

Re: No-Action Request to Permit the Offer and Sale in the U.S. of the Mini Futures Contract on the MIB 30 Index Traded on the Mercato Italiano dei Derivati Division

Dear Mr. Philipp:

This is in response to letters, attachments, and facsimiles dated from November 2, 2000, through March 19, 2001, requesting that the Office of General Counsel of the Commodity Futures Trading Commission (“Commission” or “CFTC”) issue a “no-action” letter concerning the offer and sale in the United States (“U.S.”) of the mini futures contract based on the MIB 30 Index (“MIB 30” or “Index”) traded on the Mercato Italiano dei Derivati Division (“IDEM”). This Office has previously issued a no-action letter to the Italian Stock Exchange Council (“ISEC”) for its futures contract based on the MIB 30.^{[\[1\]](#)}

We understand the facts to be as follows. The Borsa Italiana, S.p.A. (“Borsa”), the successor entity to the ISEC, requests no-action relief with regard to the mini futures contract on the MIB 30 traded on the IDEM. The mini futures contract on the MIB 30 is known as the “miniFIB,” while the existing futures contract on the MIB 30 is known as the “FIB 30.”

The Borsa is a privately-owned organization responsible for the management and surveillance of the Italian Stock Exchange (“ISE”) and IDEM. The Borsa's fifteen member Board of Directors has taken over all of the duties and responsibilities previously held by the ISEC, which had been responsible for the management and surveillance of ISE and IDEM. Both the ISE and IDEM, as well as the Borsa, are regulated by the Commissione Nazionale per le Società e la Borsa (“Consob”). The Consob is an independent agency responsible for the prevention of market manipulation and has regulatory oversight authority over both the securities and derivatives markets in Italy. The Cassa di Compensazione e Garanzia (“Cassa”) is the clearinghouse for the IDEM. Regulations concerning the organization and functioning of the Cassa were established by the Bank of Italy and Consob on March 16, 1992. The Cassa is subject to the supervisory authority of both the Bank of Italy and Consob.^{[\[2\]](#)}

The MIB 30 is a broad-based, modified capitalization-weighted index, consisting of 30 of the most liquid and highly capitalized stocks currently listed on the ISE. Based on data supplied by the Borsa, the total market capitalization of the MIB 30 was approximately \$585 billion as of January 2, 2001.^[3] The 30 companies included in the MIB 30 accounted for more than 75% of the total market value of all publicly-traded Italian companies, and nearly 75% of total trading volume as of September 18, 2000.^[4] The Borsa selects the stocks to be included in the Index, based primarily on capitalization and trading volume, and reviews the Index semi-annually for revisions.^[5] As of January 2, 2001, no single stock in the Index represented more than 11.98% of the Index, and the five most heavily-weighted stocks in the Index represented 48.97% of the Index.^[6] The stocks comprising the lowest 25% of the Index had a six-month average daily trading volume of approximately \$421 million. The Index is calculated in real time and is disseminated through electronic means to Reuters and other data vendors.

The miniFIB futures contract is identical to the existing FIB 30 futures contract, except that the miniFIB is one-fifth the size of the FIB 30. The miniFIB provides for cash settlement. The notional value for the contract is determined by multiplying the Index by one euro. Prices are quoted in Index points with each Index point equal to one euro per contract. Contract delivery months are the two nearest months in the March quarterly cycle. The last trading day for the contract is the third Friday of the expiration month. Contracts are cash settled on the first business day after the last trading day based on the final settlement price of the MIB 30 on the last trading day. The final settlement price is based on a special quotation of the MIB 30, calculated using the opening prices of each constituent stock in the Index on the last trading day.

The Commodity Exchange Act (“CEA”),^[7] as amended by the Commodity Futures Modernization Act of 2000 (“CFMA”),^[8] provides that the offer or sale in the United States 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,^[9] with the exception of security futures products^[10] over which the Commission shares jurisdiction with the Securities and Exchange Commission (“SEC”).^[11] Thus, the Commission's jurisdiction remains exclusive with regard to futures contracts on a group or index of securities that are broad-based pursuant to CEA Section 1a(25).^[12]

CEA Section 2(a)(1)(C)(iv) generally prohibits any person from offering or selling a futures contract based on a securities index in the United States, except as permitted under CEA Section 2(a)(1)(C)(ii) or CEA Section 2(a)(1)(D).^[13] By its terms, CEA Section 2(a)(1)(C)(iv) applies to futures contracts on securities indices traded on both domestic and foreign boards of trade. CEA Section 2(a)(1)(C)(ii) sets forth three criteria to govern Commission designation of boards of trade as contract markets and registration of derivatives transaction execution facilities (“DTF”) to trade 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 group or index of securities must not constitute a narrow-based securities index.^[14]

While Section 2(a)(1)(C)(ii) provides that no board of trade shall be designated as a contract market (or registered as a DTF) with respect to stock index futures contracts unless it meets the three criteria noted above, it does not explicitly address the standards to be applied to foreign stock index futures contracts traded on foreign boards of trade. This Office has decided to apply 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 stock index futures contracts when those foreign boards of trade do not seek designation as a contract market or registration as a DTF to trade those products.

Accordingly, this Office has examined the MIB 30 and the miniFIB 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, attachments, and facsimiles noted above, we have determined that the MIB 30 and the miniFIB futures contract conform to these requirements.^[15]

In determining whether a foreign futures contract based on a foreign stock index is not readily susceptible to manipulation or to being used to manipulate any underlying security, one preliminary consideration is the requesting exchange's ability to access information regarding the stocks underlying the index. As noted above, all the stocks underlying the MIB 30 are traded on the ISE. Both the ISE and IDEM are managed by the Borsa and regulated by the Consob. Thus, the Borsa and IDEM should have access to information necessary to detect or deter manipulation. In the event that either the Borsa or IDEM is unable to obtain access to adequate surveillance data in this regard, this Office reserves the right to reconsider the position we have taken herein.^[16]

In light of the foregoing, the Office of General Counsel 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 miniFIB traded on IDEM is offered or sold in the U.S. Because this position is based upon facts and representations contained in the letters, attachments and facsimiles 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 IDEM and the Borsa with all regulatory requirements imposed by the Consob and the applicable laws and regulations of Italy. In addition, this position may be affected by any rules that the Commission or SEC may adopt regarding futures contracts based on securities indices.

The offer and sale in the U.S. of IDEM's miniFIB futures contract is, of course, subject to Part 30 of the Commission's regulations which govern the offer and sale of foreign futures and foreign option contracts in the U.S.^[17]

Sincerely,

David R. Merrill
Deputy General Counsel

^[1] See CFTC Letter No. 95-74, [1994-96 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,555 (August 30, 1995).

^[2] See letter from Lawrence M. Gail, Katten Muchin Zavis, to Harold L. Hardman, Assistant General Counsel, CFTC, dated November 2, 2000.

^[3] See letter from Lawrence M. Gail, Katten Muchin Zavis, to David R. Merrill, Deputy General Counsel, CFTC, dated February 1, 2001.

^[4] See letter from Mr. Gail to Mr. Hardman, dated November 2, 2000.

^[5] In the event a stock is delisted (e.g., due to a merger), it may be removed from the Index between semi-annual revisions.

^[6] See letter from Mr. Gail to Mr. Merrill, dated February 1, 2001.

^[7] 7 U.S.C. § 1 *et seq.*

^[8] Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000).

^[9] See CEA Section 2(a)(1)(C)(ii).

^[10] 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).

^[11] See CEA Section 2(a)(1)(D).

^[12] See CEA Section 2(a)(1)(C)(ii).

^[13] Section 2(a)(1)(D) governs the offer and sale of security futures products.

^[14] 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 (“SEA”), 15 U.S.C. § 78a *et seq.*, if it has any one of the following four characteristics: (1) it has 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); SEA Section 3(a)(55)(B)(i)-(iv). *See also* CEA Section 1a(25)(B); SEA Section 3(a)(55)(C). 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).

[\[15\]](#) In making this determination, the staff has concluded that the MIB 30 does not have any of the elements of a narrow-based security index as enumerated in CEA Section 1a(25)(A).

[\[16\]](#) The Borsa has represented that the prevention of market manipulation falls under the jurisdiction of the Consob, and that the Borsa is required to share all market and surveillance information with the Consob, pursuant to Italian law and the rules of the Exchange. *See* letter from Mr. Gail to Mr. Merrill, dated February 1, 2001. The Commission and the Consob entered into a Memorandum on Consultation and Mutual Assistance for the Exchange of Information on June 22, 1995, and a Supplemental Memorandum of Understanding on September 11, 2000. The Borsa represents that both it and the Consob are willing and able to share market and other surveillance information regarding the Italian futures markets, including, without limitation, the MIB 30 and the miniFIB futures contract based thereon, pursuant to the aforementioned memoranda. The Consob previously represented that it is willing and able to share information with regard to the FIB 30 futures contract and the MIB 30. *See* letter from Enzo Berland, Chairman, Consob, to Elisse B. Walter, General Counsel, CFTC, dated August 10, 1995. In addition, the Consob is a signatory to the Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organizations, dated March 15, 1996.

[\[17\]](#) *See* 17 C.F.R. Part 30.