



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5120
Facsimile: (202) 418-5524

96-42
COMMODITY FUTURES
TRADING COMMISSION
RECEIVED FOR
PUBLIC RECORD

MAY 20 9 19 AM '96

OFFICE OF
GENERAL COUNSEL

May 14, 1996

Mr. R. F. Sandelowsky
General Manager
Financiële Termijnmarkt Amsterdam, N.V.
Rokin 65
1012 KK
Amsterdam, Netherlands

Re: Eurotop 100 Index Futures Contract

Dear Mr. Sandelowsky:

This is in response to letters and facsimiles dated from April 23, 1992 through April 25, 1996 requesting a no-action letter allowing the Financiële Termijnmarkt Amsterdam N.V. ("FTA") futures contract based on the Eurotop 100 Index ("Eurotop 100" or "Index") to be offered or sold in the United States.

We understand the facts to be as follows. The FTA is the only official board of trade for trading futures contracts in the Netherlands and is located in Amsterdam. The FTA has provided futures trading facilities since June, 1987 and has traded the Eurotop 100 futures contract since June 6, 1991.

The FTA and the EOE-Optiebeurs NV, the official board of trade for trading of financial options in the Netherlands, are both wholly-owned by the Vereniging European Options Exchange ("EOE"), which is a self-regulatory organization. FTA futures contracts are settled and cleared by the European Futures Clearing Corporation B.V. which is 70 percent owned by the European Options Clearing Corporation B.V. which itself is a wholly owned subsidiary of the EOE.

Futures trading in the Netherlands is governed under the Act on the Supervision of Securities Trade (Wet toezicht effectenverkeer or "WTE") and the Decree on the Supervision of Securities Trade (Besluit toezicht effectenverkeer or "BTE"). The Securities Board of the Netherlands (Stichting toezicht Effectenverkeer or "STE") administers the WTE and BTE and supervises all securities and futures transactions.

The Eurotop 100 was developed by and is maintained by the EOE. The Eurotop 100 is an index of 100 of the most actively traded and highly capitalized stocks on the major stock exchanges of nine

European countries.^{1/} The Eurotop 100 represents a broad cross-section of industry stocks, including industrial, transportation, utility and financial stocks. As of January 24, 1996, the highest capitalization-weighted stock, Royal Dutch Shell, constituted no more than 4.69 percent of the total capitalization of the Eurotop 100. The ten highest capitalization-weighted stocks as of that same date accounted for 28.33 percent of the total capitalization of the Eurotop 100. The total market capitalization of the stocks in the Eurotop 100 as of January 24, 1996 was about \$1.5 trillion dollars.^{2/}

The Eurotop 100 is calculated under a complex method weighing each component equity's share price by a number of shares that is representative of each equity's liquidity and capitalization when grouped by country. Thus, the Index is neither price-weighted nor capitalization-weighted.

The Eurotop 100 is calculated continuously using the last sale price for each component stock in the Index. The Index is disseminated by major quote vendors every fifteen seconds throughout the trading day.

The value of the Eurotop 100 futures contract traded on the FTA is determined by multiplying the Index by 50 European Currency Units ("ECU"). The futures contract provides for cash settlement. The final settlement price of the Eurotop 100 futures contract is calculated on the last day of trading of the contract month on the basis of the average of seven prices quoted for the Eurotop 100 at five minute intervals between and including 12:30 p.m. and 1:00 p.m. Central European time.

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),

^{1/} The countries included in the Index are the United Kingdom, Germany, France, Switzerland, Spain, the Netherlands, Sweden, Italy, and Belgium.

^{2/} Market capitalization figures are from the Bloomberg wire service.

^{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
(continued...)

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 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), 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 in a group or index of securities:

- (1) the contract must provide for cash settlement;
- (2) the proposed 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 FTA does not seek designation as a contract market. However, Congress understood that a foreign exchange might lawfully offer futures contracts on stock indices absent designation. Thus, 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 Commission has not established criteria for certification of foreign futures contracts. However, the House Committee on Agriculture explained that a foreign exchange seeking certification for a futures contract based upon an index of American securities must demonstrate that the proposed futures

^{3/} (...continued)

obtain such registration, unless such person is exempt from such registration" 17 C.F.R. § 30.11 (1995).

^{4/} In this regard, pursuant to the authority in, among other provisions, Section 4(b) of the Act, 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 (1995).

contract meets the requirements set forth in Section 2(a)(1)(B)(ii). Id.

We understand that the securities in the Eurotop 100 are issued by European 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 innovative financial instruments "while at the same time [assuring] that futures trading is limited to 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. As a result, we would recommend that the Commission use the criteria set forth in Section 2(a)(1)(B)(ii) in establishing any certification procedures for the Eurotop 100 futures contract. Accordingly, the staff has examined the FTA Eurotop 100 futures contract in light of these criteria.^{5/}

Based on the information set forth above, this Office will not recommend any enforcement action to the Commission based on Sections 2(a)(1)(B)(v), 4(a), or 12(e) of the Commodity Exchange Act, as amended, if the Eurotop 100 futures contract traded on the FTA is offered and sold in the United States. Because this position is based upon facts and representations contained in the above-noted letters, facsimiles, and attachments, it should be noted that any different, omitted or changed facts or conditions might require a different conclusion.^{6/} This position also is

^{5/} We also have sought the opinion of the staff of the Securities and Exchange Commission ("SEC") which informs us that they would have no objection to the offer and sale of this futures contract in the United States. In its letter dated April 15, 1996, the SEC reserves the right to reevaluate the conclusions reached in its no-objection letter if there were a country accounting for 20 percent or more of the Index that was not covered by a comprehensive surveillance sharing agreement (or two countries accounting for 33 percent).

^{6/} The FTA has represented that it is both able and willing to cooperate through information sharing and other means in any Commission inquiry into the Eurotop 100 futures contract on the FTA. See letter dated April 20, 1992 from R. F. Sandelowsky, General Manager, FTA, to Joanne T. Medero. Further, the Netherlands has executed a Memorandum of Understanding with the Commission for the sharing of information. See Agreement Between the Government of the United States of America and the Government of the Kingdom of the Netherlands on Mutual Administrative Assistance in the Exchange of Information in Futures Matters dated April 29, 1993. The STE has confirmed that it is willing and able

(continued...)

contingent on the continued compliance by the FTA with all regulatory requirements imposed by the STE and the Ministry of Finance and the applicable statutes of the Netherlands.

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 17 C.F.R. Part 30. The offer and sale in the United States of the FTA Eurotop 100 futures contract is, of course, governed by these regulations.

Sincerely,



Pat G. Nicolette
Acting General Counsel

cc: Richard Lindsey
Director
Division of Market Regulation
Securities and Exchange Commission

6/ (...continued)

to share information with the Commission regarding the FTA Eurotop 100 futures contract. See facsimiles dated April 18 and April 25, 1996 from Paul Mulder, Secretary of Legal Affairs, STE, to Pat Nicolette, Acting General Counsel, Commodity Futures Trading Commission.

In evaluating requests for no-action relief with regard to foreign futures contracts based on foreign stock indices, this Office generally examines whether a surveillance sharing arrangement exists between the futures exchange and the securities exchange on which the underlying stocks are traded. We understand that the STE has entered into a surveillance agreement with the French Commission des Opérations de Bourse and that the EOE has entered into surveillance agreements with the United Kingdom Securities and Futures Authority, Limited and the Amsterdam Stock Exchange for the sharing of information on the stocks included in the Eurotop 100 which are traded on the equity markets respectively of France, the United Kingdom, and the Netherlands. See letter dated March 13, 1995 from Annette C. Otten, Legal Department, EOE, to Joanne Medero and letter dated January 18, 1996 from Annette C. Otten, Legal Department, EOE, to Harold Hardman.