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**COMMODITY FUTURES TRADING COMMISSION**

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-46009)**

**Joint Order Excluding from the Definition of Narrow-Based Security Index those Security Indexes that Qualified for the Exclusion from that Definition under Section 1a(25)(B)(v) of the Commodity Exchange Act and Section 3(a)(55)(C)(v) of the Securities Exchange Act of 1934**

**AGENCIES:** Commodity Futures Trading Commission and Securities and Exchange Commission

**ACTION:** Joint Order

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**SUMMARY:** The Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Commission ("SEC") (collectively "Commissions") by joint order under the Commodity Exchange Act ("CEA") and the Securities Exchange Act of 1934 ("Exchange Act") are excluding certain security indexes from the definition of "narrow-based security index." Specifically, the Commissions are excluding from the definition of the term "narrow-based security index" those security indexes that qualified for the exclusion from that definition under Section 1a(25)(B)(v) of the CEA and Section 3(a)(55)(C)(v) of the Exchange Act, pursuant to authority under Section 1a(25)(B)(vi) of the CEA and Section 3(a)(55)(C)(vi) of the Exchange Act.

**EFFECTIVE DATE:** June 21, 2002

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** The Commodity Futures Modernization Act  
("CFMA"),<sup>1</sup> which became law on December 21, 2000, establishes a framework for the joint  
regulation of the trading of futures contracts on single securities and on narrow-based security  
indexes (collectively, "security futures") by the CFTC and the SEC. Previously, these products  
generally were statutorily prohibited from trading in the United States. Under the CFMA,  
designated contract markets and registered derivatives transaction execution facilities ("DTEFs")  
may trade security futures if they register with the SEC and comply with certain other  
requirements of the Exchange Act.<sup>2</sup> Likewise, national securities exchanges and national  
securities associations registered under Section 15A(a) of the Exchange Act<sup>3</sup> may trade security  
futures if they register with the CFTC and comply with certain other requirements of the CEA.<sup>4</sup>

To distinguish between security futures on narrow-based security indexes, which are  
jointly regulated by the Commissions, and futures contracts on broad-based security indexes,  
which are under the exclusive jurisdiction of the CFTC, the CFMA also amended the CEA and  
the Exchange Act by adding an objective definition of "narrow-based security index."<sup>5</sup>

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<sup>1</sup> Pub. L. No. 106-554, 114 Stat. 2763 (2000).

<sup>2</sup> 15 U.S.C. 78a *et seq.*

<sup>3</sup> 15 U.S.C. 78o-3(a).

<sup>4</sup> 7 U.S.C. 1 *et seq.*

<sup>5</sup> Section 1a(25) of the CEA, 7 U.S.C. 1a(25), and Section 3(a)(55) of the Exchange Act, 15 U.S.C. 78c(a)(55).

This definition excludes from its scope certain security indexes that satisfy specified criteria. A futures contract on an index that meets the criteria of any of the six exclusions from the definition of narrow-based security index is not a security future under the securities laws, and thus is subject solely to the jurisdiction of the CFTC.

One such exclusion was enacted by Congress essentially as a temporary “grandfather” provision, permitting the offer and sale in the United States of security index futures traded on or subject to the rules of foreign boards of trade that were authorized by the CFTC before the CFMA was enacted.<sup>6</sup> Specifically, this exclusion provides that, until June 21, 2002, a security index is not a narrow-based security index if: (1) it is traded on or subject to the rules of a foreign board of trade; (2) the offer and sale in the United States of a futures contract on the index was authorized before the date of enactment of the CFMA; and (3) the conditions of such authorization continue to be met.<sup>7</sup>

Because the Commissions’ staffs previously determined that such foreign index futures were not readily susceptible to manipulation, such index futures commenced trading under the regulatory framework in place prior to enactment of the CFMA. Therefore, to prevent disruption to participants who trade futures contracts on security indexes that are currently excluded from the definition of a narrow-based security index under this provision, the Commissions believe it is appropriate to extend this exclusion beyond June 21, 2002. In this regard, the Commissions believe it is appropriate to establish, under Section 1a(25)(B)(vi) of the CEA and Section 3(a)(55)(C)(vi) of the Exchange Act, that each such index continue to be

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<sup>6</sup> Prior to the effective date of the CFMA, these futures contracts were offered to U.S. customers pursuant to no-action letters issued by the CFTC and its staff, to which the SEC did not object. See *infra* note 8.

<sup>7</sup> Section 1a(25)(B)(v) of the CEA and Section 3(a)(55)(C)(v) of the Exchange Act.

excluded from the definition of a narrow-based security index, provided that it continues to be traded on or subject to the rules of a foreign board of trade and that the conditions under which the offer and sale of a futures contract on the index in the United States was authorized continue to be met.<sup>8</sup>

Accordingly,

IT IS ORDERED, pursuant to Section 1a(25)(B)(vi) of the CEA and Section 3(a)(55)(C)(vi) of the Exchange Act, that an index is not a narrow-based security index if: (1) it is traded on or subject to the rules of a foreign board of trade; (2) the offer and sale in the United States of a contract of sale for future delivery on the index was authorized before the date of the enactment of the CFMA; and (3) the conditions of such authorization continue to be met.

By the Commodity Futures Trading Commission.

Jean Webb  
Secretary

May 31, 2002

By the Securities and Exchange Commission.

Margaret H. McFarland  
Deputy Secretary

May 31, 2002

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<sup>8</sup> For a list of security indexes underlying futures contracts that have received no-action relief prior to the enactment of the CFMA, see the CFTC's Backgrounder on its website at <http://www.cftc.gov/opa/backgrounder/opapart30.htm>.