



DIVISION OF  
MARKET REGULATION

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

Act	Securities Exchange Act of 1934
Section	6, 15, 17A
Rule	
Public	
Availability	Oct. 26, 1998
October 26, 1998	

Jane Kang Thorpe, Esq.  
Orrick, Herrington & Sutcliffe  
3050 K Street, NW  
Washington, DC 20007

Re: MONEP SA--Options on the Dow Jones STOXX 50 Index and the Dow Jones EURO STOXX 50 Index

Dear Ms. Thorpe:

In your letter, dated October 7, 1998, on behalf of MONEP SA, the French corporation responsible for the management and surveillance of the French equity derivatives market known as the MONEP, you request advice that the Division of Market Regulation ("Division") will not recommend enforcement action to the Securities and Exchange Commission ("Commission") against (1) MONEP SA, any officer, director, or member thereof under Section 6 of the Securities Exchange Act of 1934 ("Exchange Act") by reason of the MONEP not registering under the Exchange Act as a securities exchange; (2) MONEP SA or MONEP Members,<sup>1</sup> under Section 15 of the Exchange Act, by reason of MONEP SA and MONEP Members not registering under the Exchange Act as broker-dealers; and (3) against MONEP SA or the *Societe de Compensation des Bourses Francaises--Paris Bourse* ("SBF")<sup>2</sup> under Section 17A of the Exchange Act, by reason of their not registering under the Exchange Act as a clearing agency, if MONEP SA and MONEP Members act as described below to familiarize certain registered broker-dealers and large financial institutions in the United States with the MONEP and with the Dow Jones STOXX 50 Index options and Dow Jones EURO STOXX 50 Index options traded on the MONEP.

<sup>1</sup> A person may become a MONEP Member by executing an agreement with MONEP SA whereby such person agrees to comply with the rules and regulations of the MONEP established by MONEP SA.

<sup>2</sup> The SBF clears all equity derivatives transactions on the MONEP. MONEP SA is a wholly-owned subsidiary of SBF.

The no-action relief you request is identical to the relief the Division granted to the *Societe de Compensation des Marches Conditionnels* ("SCMC"),<sup>3</sup> MONEP Members, and the SBF in a letter dated June 17, 1996,<sup>4</sup> which allowed the MONEP and MONEP Members to undertake the actions described in the June 1996 Letter to familiarize certain registered broker-dealers and large financial institutions with the equity options and CAC-40 Index options traded on the MONEP. You represent that MONEP SA has implemented and complied with the terms and conditions of relief set forth in the June 1996 Letter, and that MONEP SA will continue to comply with the terms and conditions of the June 1996 Letter with respect to both the option contracts that are the subject of the June 1996 Letter and with respect to the Dow Jones STOXX 50 Index options and the Dow Jones EURO STOXX 50 Index options.

Under the terms of the June 1996 Letter, the SCMC agreed, among other things, to require MONEP Members to provide Eligible Broker-Dealers and Eligible Institutions (as defined in the June 1996 Letter and as described more fully below) with a copy of the MONEP disclosure document, which provides an overview of the MONEP and the equity options and CAC-40 Index options traded on the MONEP, prior to effecting a transaction with or for the Eligible Broker-Dealer or Eligible Institution in those options. In addition, the SCMC agreed to provide the Division with a copy of any amendment made to the MONEP disclosure document at least 30 days prior to the date definitive copies are furnished to Eligible Broker-Dealers or Eligible Institutions. Pursuant to this condition of the June 1996 Letter, MONEP SA has provided the Division with a copy of the updated MONEP disclosure document ("Updated MONEP Disclosure Document"), which has been revised to provide information concerning various market and regulatory changes in France since June 1996, as well as information concerning the Dow Jones STOXX 50 Index options and the Dow Jones EURO STOXX 50 Index options.

We understand the facts to be as follows:

The MONEP was organized in 1987 under the laws of the Republic of France as the equity options market of Paris, and is an integral part of the French securities markets. All exchange-traded equity derivative products in France currently trade on

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<sup>3</sup> Prior to January 1, 1997, the SCMC was the French corporation responsible for the management and surveillance of the MONEP. On January 1, 1997, the name of the entity responsible for the management and surveillance of the MONEP changed from the SCMC to MONEP SA.

<sup>4</sup> See Letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, U.S. Securities and Exchange Commission, to Richard Truesdell, Jr., Davis Polk & Wardwell, dated June 17, 1996 ("June 1996 Letter").

the MONEP and are cleared by the SBF.<sup>5</sup> The MONEP was recognized officially as a regulated market in derivative financial instruments pursuant to the Financial Activities Modernization Act of 1996 ("Financial Modernization Act").<sup>6</sup>

The MONEP is subject to the supervisory authority of the *Conseil des Marchés Financiers* ("CMF") and the *Commission des Opérations de Bourse* ("COB"). The CMF is a professional authority comprised of 16 members appointed by France's Minister for Economic Affairs and Finance. The CMF's primary functions include the surveillance of regulated markets and the supervision of market intermediaries. Among other things, the CMF: (1) recommends to the French Minister for Economic Affairs and Finance that a market be recognized as "regulated;" (2) approves the rules of regulated markets; (3) monitors the operations of regulated markets; and (4) approves the program of activities of firms wishing to provide investment services. All firms must obtain the approval of the CMF prior to applying for MONEP membership.

The COB is an independent administrative authority comprised of nine members designated by different French authorities and a chairman designated by the French Minister for Economic Affairs and Finance. The COB's primary function is to ensure the protection of investors. Among other things, the COB issues an opinion concerning the recognition of a market as "regulated," has the power to veto a new financial instrument on a regulated market, and may act for the state in any court except a criminal court.

MONEP SA, a wholly-owned subsidiary of the SBF, operates and manages the MONEP and handles the day-to-day administration of the MONEP. MONEP SA ensures the regular operation of trading on the MONEP and, to this end, establishes organizational and operating rules in conformity with French law and the CMF's general regulations. The MONEP's rules include: (1) requirements for market access and admission to listing; (2) provisions governing the organization of trading; (3) conditions for halting trading in one or more financial instruments; and (4) rules governing the registration and publication of trades. Under French law, only members authorized by the competent French authority may have direct access to a market "recognized" under French law, such as the MONEP; thus, only MONEP Members may have direct access to the MONEP.

The SBF is the clearing house for the MONEP. The SBF delegates certain technical aspects of clearing to MONEP SA. Specifically, MONEP SA is responsible

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<sup>5</sup> As of July 10, 1997, the CAC-40 Index futures which had traded on the *Marché à Terme International de France* ("MATIF") and cleared on the MATIF's clearing house, MATIF SA, began to trade on the MONEP and to be cleared by the SBF.

<sup>6</sup> Recognition by the French Minister for Economic Affairs and Finance as a "regulated" market is a condition for a market to operate in France.

for the settlement process and for general administration, such as the calculation of clearing members' daily margin requirements.

With shareholders' equity (which, by definition, does not include the deposits of MONEP clearing members) in excess of FF 1.4 billion as of December 31, 1997, the SBF is the guarantor of all trades registered by MONEP SA and cleared between MONEP clearing members. Thus, the SBF guarantees each clearing member, as necessary, full payment of deficits resulting from another clearing member's default. As a credit institution under French law, the SBF also benefits from certain institutional procedures designed to ensure the financial security of the French financial community. These procedures provide that the Bank of France may intervene to provide support to certain financial institutions, including the SBF.

Three basic types of products trade on the MONEP: (1) options on individual stocks that are listed and traded on the Paris Bourse; (2) stock index options, including Dow Jones STOXX 50 Index options and Dow Jones EURO STOXX 50 Index options; and (3) stock index futures.

You represent that the Dow Jones STOXX 50 Index is a capitalization-weighted index comprised of 50 blue-chip stocks quoted on European exchanges. The Dow Jones EURO STOXX 50 Index is a capitalization-weighted index comprised of 50 European blue-chip stocks that are quoted on the stock exchanges of countries that have adopted the European single currency, the Euro. STOXX Ltd., a Swiss company that is a joint venture of the SBF, Dow Jones & Company, Inc., Deutsche Borse ("DB") and Schweizer Borse ("SB"), developed and manages the Dow Jones STOXX 50 Index and the Dow Jones EURO STOXX 50 Index.

We understand that on June 22, 1998, futures and options on the Dow Jones STOXX 50 Index and the Dow Jones EURO STOXX 50 Index commenced trading on the MONEP, DB, and SB. Neither the SBF nor the MONEP have instituted a trading or a clearing link with DB or SB, and MONEP SA will immediately inform the Division if a link or similar arrangement is proposed in the future. The MONEP's contracts on the Dow Jones STOXX 50 Index and the Dow Jones EURO STOXX 50 Index will trade and clear as MONEP products, and the terms and conditions of the MONEP's Dow Jones STOXX 50 Index and Dow Jones EURO STOXX 50 Index contracts will not be fungible or interchangeable with the contracts traded on SB or DB. Thus, any MONEP position registered with MONEP SA by a clearing member can be closed only on the MONEP or exercised by a clearing member giving an exercise notice to MONEP SA. In addition, you represent that MONEP SA will ensure that Dow Jones STOXX 50 Index options and Dow Jones EURO STOXX 50 Index options will not be accessible from GLOBEX or similar successor terminals located in the U.S. absent express approval from the Commission.<sup>7</sup>

<sup>7</sup> The GLOBEX agreement between the MATIF and the Chicago Mercantile Exchange ("CME"), which will be amended to include the MONEP, allows members of each exchange to access the

Each MONEP clearing member is required to deposit and maintain margin with the SBF for positions held in each category of account. Such margin is calculated by MONEP SA, but collected and wholly owned by the SBF. The margin represents the amount necessary to cover the theoretical cost of liquidation of positions in options and futures registered for clearing in the clearing member's name. Margin deposit requirements are adjusted at a minimum on a daily basis, and are calculated separately for each global account kept by the clearing member on the basis of the overall portfolio risk. MONEP SA may require a clearing member to deposit higher margin in excess of the minimum cover requirements in the event MONEP SA deems such action necessary and appropriate to protect the interests of other clearing members, the MONEP, the SBF, or the public.

Currently, the equity options, CAC-40 Index options, and CAC-40 Index futures traded on the MONEP are quoted and valued in French francs; the Dow Jones STOXX 50 Index options and futures and Dow Jones EURO STOXX 50 Index options and futures traded on the MONEP are quoted and valued in ecu. Transactions are settled in French francs. Beginning on January 4, 1999, all MONEP derivative financial instruments will be quoted and valued in Euro, and payments between MONEP members and MONEP SA, among MONEP members, and between MONEP members and their clients will be in Euro.

All transactions creating or closing positions are executed and settled by members of the MONEP. The options and futures are dematerialized (paperless) and transactions and positions are evidenced by statements from MONEP SA to clearing members and statements from clearing members to clients.

The MONEP's settlement procedures are designed so that for every outstanding option there will be a writer, and a clearing member that is, or that represents, the writer, of an option of the same series who has undertaken to perform the writer's obligations in the event that an exercise is assigned to that writer. As a result, irrespective of how many options of a given series may be outstanding at any time, there always will be a group of writers of options of the same series who, in the aggregate, have undertaken to perform the writer's obligations with respect to such options. Once an exercise of an option is allocated by a clearing member to a particular writer, that writer is contractually obligated to its broker to perform in accordance with the terms of the option. These contractual obligations are secured by the securities or other margin which the client is required to deposit with its broker.

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products of the other exchange through the CME's GLOBEX terminals. CAC-40 Index futures contracts currently trade on this link between the CME and the MATIF/MONEP. By the end of 1998, the SBF's NSC computerized trading system will replace the CME's GLOBEX system as the mechanism for effecting the agreement between the CME and the MATIF/MONEP.

Options on the Dow Jones STOXX 50 Index and on the Dow Jones EURO STOXX 50 Index are European-style (*i.e.*, exercisable only at expiration) and are settled in cash. Exercise of options on the Dow Jones STOXX 50 Index and the Dow Jones EURO STOXX 50 Index results in cash settlement between clearing members through the SBF. Exercise settlement amounts are transferred in cash from the account of the assigned clearing member to the exercising clearing member's account with the SBF. Client settlement occurs on the business day following the day of exercise.

MONEP SA wishes to familiarize certain registered broker-dealers and large financial institutions in the United States with the Dow Jones STOXX 50 Index options and Dow Jones EURO STOXX 50 Index options traded on the MONEP, and thus proposes to take the limited steps described below with respect only to "Eligible Broker-Dealers" and "Eligible Institutions." To be Eligible, each such entity must meet the following standards:

(a) it must be a "qualified institutional buyer" as defined in Rule 144A(a)(1) under the Securities Act of 1933 ("Rule 144A" and the "Securities Act," respectively), or an international organization excluded from the definition of "U.S. person" in Rule 902(k)(2)(vi) of Regulation S under the Securities Act, and

(b) it must have had prior actual experience with traded options in the United States options market (and, therefore, would have received the disclosure document for U.S. standardized options called for by Rule 9b-1 under the Exchange Act).

Consistent with the terms of the June 1996 Letter, MONEP SA will require MONEP Members to take reasonable steps to assure themselves, before effecting any transaction in Dow Jones STOXX 50 Index options or Dow Jones EURO STOXX 50 Index options for or with a customer located in the United States, that: (1) the customer is an Eligible Broker-Dealer or an Eligible Institution; (2) the customer is acting for its own account or the account of another Eligible Broker-Dealer or Eligible Institution or the managed account of a non-U.S. person (within the meaning of Rule 902(k)(2)(vi) of Regulation S under the Securities Act); and (3) the customer has received the Updated MONEP Disclosure Document described below. In accordance with the terms of the June 1996 Letter, MONEP SA has advised MONEP Members, and will continue to advise MONEP Members, that it has been advised that, under U.S. law, MONEP Members which are not U.S. registered broker-dealers may deal with Eligible Institutions only in accordance with Rule 15a-6 under the Exchange Act, principally through U.S. registered broker-dealers as provided in such Rule.

You represent that MONEP SA has adopted rules that will require MONEP Members to furnish Eligible Broker-Dealers and Eligible Institutions with an Updated MONEP Disclosure Document before accepting an order from that Eligible Broker-

Dealer or Eligible Institution to purchase or sell Dow Jones STOXX 50 Index options or Dow Jones EURO STOXX 50 Index options. The MONEP's rules also will require that MONEP Members obtain written representations from any Eligible Broker-Dealer or Eligible Institution, to the following effect:

1. it is an Eligible Broker-Dealer or Eligible Institution, and as such it (i) owns and invests on a discretionary basis a specified amount of eligible securities sufficient for it to be a qualified institutional buyer under Rule 144A under the Securities Act (and if a bank, S&L, or other thrift institution, has net worth meeting the requirements of Rule 144A under the Securities Act), and (ii) has had prior actual experience in the U.S. standardized options markets and as a result thereof has received the options disclosure document entitled "Characteristics and Risks of Standardized Options," ("Options Disclosure Document," or "ODD") that is prepared by the Options Clearing Corporation and the U.S. options exchanges;

2. it has received the Updated MONEP Disclosure Document;

3. its transactions in Dow Jones STOXX 50 Index options and Dow Jones EURO STOXX 50 Index options will be for its own account or for the account of another Eligible Broker-Dealer or Eligible Institution or for the managed account of a non-U.S. person within the meaning of Rule 902(k)(2)(vi) of Regulation S under the Securities Act;

4. it will not transfer any interest or participation in a Dow Jones STOXX 50 Index option or Dow Jones EURO STOXX 50 Index option it has purchased or written to any other U.S. person, or to any person in the United States, that is not an Eligible Broker-Dealer or Eligible Institution;

5. it will cause any disposition of a Dow Jones STOXX 50 Index option or Dow Jones EURO STOXX 50 Index option it has purchased or written to be effected only on the MONEP and to be settled on the MONEP in Paris, and it understands that any required payments for premium settlement, exercise or closing of any Dow Jones STOXX 50 Index option or Dow Jones EURO STOXX 50 Index option with respect to which it has a contract with the MONEP Member must be made in Paris and in French francs.<sup>8</sup> It also understands that, if in relation to a Dow Jones STOXX 50 Index option or Dow Jones EURO STOXX 50 Index option it has a contract as a writer with the MONEP Member, margin must be provided to the MONEP Member, and maintained, measured and deposited in French francs<sup>9</sup> or other collateral approved by the SBF;<sup>10</sup>

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<sup>8</sup> As noted above, beginning on January 4, 1999, payments will be made in Euro rather than in French francs. Beginning on January 4, 1999, the MONEP and all French financial markets will use the Euro as their currency.

<sup>9</sup> See note 8, *supra*.

6. if it is an Eligible Broker-Dealer or Eligible Institution acting on behalf of another Eligible Broker-Dealer or Eligible Institution that is not a managed account, it has obtained from the other a written representation to the same effect as set forth in (1) through (5) above and will provide it to the MONEP Member upon demand; and

7. it will notify the MONEP Member of any change in the foregoing representations prior to placing any future order, and the foregoing representations will be deemed to be made with respect to each order it gives to the MONEP Member.

An Updated MONEP Disclosure Document, in the form submitted to and reviewed by the Division, will be provided only to Eligible Broker-Dealers and Eligible Institutions. The Updated MONEP Disclosure Document provides an overview of the MONEP, information concerning various market and regulatory changes in France since June 1996, and information concerning Dow Jones STOXX 50 Index options and Dow Jones EURO STOXX 50 Index options, with attention to significant differences from standardized options in the U.S. domestic options market. In addition, the Updated MONEP Disclosure Document sets forth special factors relevant to U.S. entities transacting in Dow Jones STOXX 50 Index options and Dow Jones EURO STOXX 50 Index options. You represent that none of the changes in the regulatory or market structure or other technical changes described in the Updated MONEP Disclosure Document constitute a material change in the facts or circumstances pursuant to which the June 1996 Letter was issued, or otherwise affect the ability of MONEP SA, MONEP Members or the SBF to comply with the terms of the June 1996 Letter with respect to Dow Jones STOXX 50 Index options and Dow Jones EURO STOXX 50 Index options.

In accordance with the June 1996 Letter, and applicable here, MONEP SA will not engage in any general advertisement concerning Dow Jones STOXX 50 Index options or Dow Jones EURO STOXX 50 Index options.

Under the terms of the June 1996 Letter, which apply here, MONEP SA has appointed certain officers located in Paris to act as the MONEP's representatives in the United States ("MONEP Representatives"). MONEP Representatives are available to respond to inquiries concerning the MONEP from Eligible Broker-Dealers and Eligible Institutions. Any MONEP Representative may make personal calls on and correspond or otherwise communicate with entities whom such representative reasonably believes to be Eligible Broker-Dealers and Eligible Institutions to familiarize them with the existence and operations of the MONEP. Any Eligible Broker-Dealer or Eligible Institution will be provided with the Updated MONEP Disclosure Document upon its

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<sup>10</sup> The assets currently eligible to serve as collateral include cash, French Treasury securities, shares underlying options or included in the CAC-40 Index, the Dow Jones STOXX 50 Index, or the Dow Jones EURO STOXX 50 Index, shares in certain mutual funds, German Bunds and U.S. Treasury bills.

first visit, communication or inquiry.<sup>11</sup> MONEP Representatives located in Paris will maintain a reasonable supply of that document, and of the most recently published annual reports of MONEP SA and the SBF, to respond to requests therefor from Eligible Broker-Dealers and Eligible Institutions. MONEP Representatives also may participate in programs and seminars in the United States. MONEP Representatives are prohibited from: (1) giving investment advice and making any recommendations with respect to specific MONEP options, including Dow Jones STOXX 50 Index options and Dow Jones EURO STOXX 50 Index options; (2) soliciting, taking, or directing orders; and (3) recommending or referring particular MONEP Members. If requested by an Eligible Broker-Dealer or Eligible Institution, a MONEP Representative may make available to the requester a list of all MONEP Members and any registered U.S. broker-dealer affiliates of such MONEP Members.

You represent that the MONEP will continue to be an organized exchange operating and regulated under the laws of France, and that making MONEP equity and index option products, including Dow Jones STOXX 50 Index options and Dow Jones EURO STOXX 50 Index options, known to a particular, sophisticated segment of the U.S. financial community will not alter this fact. You also represent that MONEP SA has established careful limitations to assure compliance with applicable U.S. securities laws, and that MONEP SA will continue, as necessary, to establish limitations to assure continued compliance with applicable U.S. securities laws. You further represent that the formation of the European Union and the introduction of the Euro in 1999 have created the need for a new index concept that provides a more comprehensive analysis of financial movements and industry trends across Europe and the Euro zone (*i.e.*, those countries that form the Euro currency zone). You believe that the Euro will diminish the significance of regional/country-based marketing analysis and will create the need for a benchmark tool that transcends the limits of individual country indexing.

Finally, you also ask the Division to confirm (1) that the furnishing of the Updated MONEP Disclosure Document by a MONEP Representative, by a MONEP Member or by an Eligible Broker-Dealer, in each case, to an Eligible Broker-Dealer or Eligible Institution will satisfy the obligation under Rule 9b-1(d) of the Exchange Act to furnish an options disclosure document before accepting an order from a customer to purchase or sell a Dow Jones STOXX 50 Index option or a Dow Jones EURO STOXX 50 Index option, and (2) that neither the MONEP Representative's furnishing of the Updated MONEP Disclosure Document to an Eligible Broker-Dealer or Eligible Institution, nor a MONEP Member's furnishing of an Updated MONEP Disclosure Document to an Eligible Broker-Dealer or, in response to an unsolicited inquiry to an Eligible Institution, will constitute either solicitation or the provision of a research report as those terms are used in Rule 15a-6(a) under the Exchange Act.

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<sup>11</sup> If the first communication is by telephone, the Updated MONEP Disclosure Document will be provided within one business day of the communication.

**Response:**

Based on the facts and representations set forth above, the Division will not recommend enforcement action to the Commission against MONEP SA or MONEP Members under Section 15(a) of the Exchange Act if MONEP SA or MONEP Members act as you describe to familiarize Eligible Broker-Dealers and Eligible Institutions in the United States with Dow Jones STOXX 50 Index options and Dow Jones EURO STOXX 50 Index options without MONEP SA or MONEP Members registering with the Commission as broker-dealers under Section 15(b) of the Exchange Act. Also, the Division will not recommend enforcement action to the Commission against MONEP SA or MONEP Members under Section 15(a) of the Exchange Act if, solely in connection with the satisfaction of obligations under Exchange Act Rule 9b-1(d) and under the limited circumstances set forth above, (1) a MONEP Representative, MONEP Member or Eligible Broker-Dealer provides the Updated MONEP Disclosure Document to an Eligible Broker-Dealer and the MONEP Member effects transactions in Dow Jones STOXX 50 Index options or Dow Jones EURO STOXX 50 Index options with or for that Eligible Broker-Dealer pursuant to Rule 15a-6(a)(4) under the Exchange Act, or (2) a MONEP Representative furnishes an Updated MONEP Disclosure Document to an Eligible Institution, or a MONEP Member furnishes an Updated MONEP Disclosure Document to an Eligible Institution in response to an otherwise unsolicited inquiry concerning Dow Jones STOXX 50 Index options or Dow Jones EURO STOXX 50 Index options, and the MONEP Member effects transactions in Dow Jones STOXX 50 Index options or Dow Jones EURO STOXX 50 Index options with or for that Eligible Institution pursuant to Rule 15a-6(a)(1) under the Exchange Act.

Based on the foregoing, the Division also will not recommend that the Commission take enforcement action against either MONEP SA or the SBF under Section 17A of the Exchange Act if they operate solely in the manner described above for Dow Jones STOXX 50 Index options and Dow Jones EURO STOXX 50 Index options without registering with the Commission as a clearing agency. In addition, the Division will not recommend that the Commission take enforcement action against MONEP SA under Section 5 of the Exchange Act if the MONEP operates solely in the manner described above with respect to Dow Jones STOXX 50 Index options and Dow Jones EURO STOXX 50 Index options without registering with the Commission as a national securities exchange under Section 6 of the Exchange Act.

Finally, the Division has reviewed the Updated MONEP Disclosure Document, which has been revised to reflect market and regulatory changes in France since June 1996, when the Division reviewed the original MONEP disclosure document. In addition to describing market and regulatory changes in France since 1996, the Updated MONEP Disclosure Document also provides information concerning Dow Jones STOXX 50 Index options and Dow Jones EURO STOXX 50 Index options. Based on

our review of the Updated MONEP Disclosure Document, the Division wishes to advise you that it will not recommend that the Commission take enforcement action against an Eligible Broker-Dealer, MONEP Representative, or MONEP Member pursuant to Rule 9b-1(d) under the Exchange Act if the Eligible Broker-Dealer, MONEP Representative or MONEP Member furnishes the Updated MONEP Disclosure Document to an Eligible Broker-Dealer or Eligible Institution before the Eligible Broker-Dealer or Eligible Institution effects a transaction in Dow Jones STOXX 50 Index options or Dow Jones EURO STOXX 50 Index options, subject to the following conditions:

- (1) the Eligible Broker-Dealer or Eligible Institution previously has received the ODD;
- (2) MONEP SA requires that MONEP Members, before effecting a transaction with or for an Eligible Broker-Dealer or Eligible Institution in Dow Jones STOXX 50 Index options or Dow Jones EURO STOXX 50 Index options, determine as described above, and in the June 1996 Letter, that the Eligible Broker-Dealer or Eligible Institution has received the ODD and the Updated MONEP Disclosure Document and maintains a record of that determination; and
- (3) MONEP SA furnishes the Division, at least 30 days prior to the date definitive copies are furnished to Eligible Broker-Dealers or Eligible Institutions, with a copy of any amendment made to the Updated MONEP Disclosure Document because the information contained in that document becomes or will become materially inaccurate or incomplete, or because there is or will be an omission of material information necessary to ensure that the document is not misleading.

These positions of the Division concern enforcement action only and do not represent conclusions on the applicability of statutory or regulatory provisions of the federal securities laws. The Division has taken these positions based, in part, on the fact that the Commission has entered into a Memorandum of Understanding with the COB regarding the sharing of investigative information,<sup>12</sup> and that foreign broker-dealers, including MONEP Members, electing to deal with U.S. institutional investors pursuant to Rule 15a-6(a)(3) under the Exchange Act are required to provide directly to the Commission, upon request, information, documents, testimony, and assistance in taking evidence of persons that relate to transactions pursuant to Rule 15a-6(a)(3) under the Exchange Act. Moreover, these positions are based on the understanding that under French law only members authorized by the competent French authority may

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<sup>12</sup> Understanding Regarding the Establishment of a Framework for Consultations Between the Securities and Exchange Commission and the *Commission des Operations de Bourse* (December 14, 1989).

Jane Kang Thorpe

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have direct access to a market "recognized" under French law, such as the MONEP, and, therefore, only MONEP Members may have direct access to the MONEP.

The positions of the Division in this letter are based on the representations that you have made; any different facts or conditions might require a different response, and these positions are subject to modification or revocation if the facts and representations set forth above are altered.

Sincerely,

A handwritten signature in cursive script that reads "Robert Colby". The signature is written in dark ink and is positioned to the right of the typed name.

Robert L.D. Colby  
Deputy Director

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**O**RRICK, HERRINGTON  
& SUTCLIFFE LLP

October 7, 1998

Exchange Act: Sections 6, 15 and 17

Mr. Paul Andrews  
Senior Special Counsel  
Division of Market Regulation  
Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549

Re: MONEP SA – Options on Dow Jones STOXX® 50 and Dow Jones  
EURO STOXX® 50

Dear Mr. Andrews:

On behalf of MONEP SA,<sup>1</sup> the French corporation responsible for the management and surveillance of the French equity derivatives market MONEP, and any officer, director or member thereof, we request that the Division of Market Regulation (“Division”) of the Securities and Exchange Commission (“Commission”) confirm that it will not recommend that the Commission take enforcement action if, as described below, and subject to the terms and conditions set forth herein, with respect to option contracts on the Dow Jones STOXX® 50 and the Dow Jones EURO STOXX® 50 indexes (“Option Contracts”):

- a. MONEP SA or MONEP Members<sup>2</sup> act to familiarize Eligible Broker-Dealers and Eligible Institutions<sup>3</sup> in the United States with the Option Contracts without

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<sup>1</sup> On January 1, 1997, the name of the entity responsible for the management and surveillance of the French equity derivatives market known as MONEP changed from the Societe de Compensation des Marches Conditionnels (“SCMC”) to MONEP SA. For purposes of this no-action request, in referring to the operator of MONEP, only the term MONEP SA is used. MONEP SA is a wholly owned subsidiary of Societe des Bourses Francaises – Paris Bourse (“SBF”). SBF clears all equity derivatives transactions on MONEP.

<sup>2</sup> A person may become a MONEP Member by executing an agreement with MONEP SA whereby such person agrees to comply with the rules and regulations of MONEP established by MONEP SA. Under French law, only members authorized by the competent French authority may have direct access to a market “recognized” under French law such as MONEP.

<sup>3</sup> To be Eligible, each such entity must meet the following standards:

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registering with the Commission as broker-dealers under Section 15 of the Securities Exchange Act of 1934 ("Exchange Act");

- b. MONEP SA or MONEP Members do the following, solely in connection with the satisfaction of obligations under Exchange Act Rule 9b-1(d), without registering with the Commission as broker-dealers under Section 15 of the Exchange Act:
  - i. A MONEP Representative,<sup>4</sup> MONEP Member, or Eligible Broker-Dealer provides the enclosed updated MONEP Disclosure Document ("Updated Disclosure Document")<sup>5</sup> to an Eligible Broker-Dealer when the MONEP Member effects transactions in the Option Contracts with or for that Eligible Broker-Dealer pursuant to Rule 15a-6(a)(4) under the Exchange Act;
  - ii. A MONEP Representative furnishes an Updated Disclosure Document to an Eligible Institution, or a MONEP Member furnishes an Updated Disclosure Document to an Eligible Institution in response to an otherwise

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- a. It must be a "qualified institutional buyer" as defined in Rule 144A(a)(1) under the Securities Act of 1933 ("Rule 144A" and the "Securities Act," respectively), or an international organization excluded from the definition of "U.S. person" in Rule 902(k)(2)(vi) of Regulation S under the Securities Act, and
  - b. It must have had prior actual experience with traded options in the United States options market (and, therefore, would have received the disclosure document for U.S. standardized options called for by Rule 9b-1 under the Exchange Act, i.e., the Options Disclosure Document ("ODD")).

<sup>4</sup> These are officers appointed by MONEP SA to act as MONEP's representative in the US and who are permitted to engage in the activities specified in a June 17, 1996 no-action letter of the Division ("June 17, 1996 No-Action Letter") granting similar relief to MONEP SA and which is incorporated herein by reference. (Copy enclosed.) Among other things, they may engage in certain limited direct contacts in the US with persons they reasonably believe to be Eligible Broker-Dealers and Eligible Institutions.

<sup>5</sup> The Updated Disclosure Document updates relevant information in the June 17, 1996 MONEP Disclosure Document that was reviewed in connection with issuance of the June 17, 1996 No-Action Letter.

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unsolicited inquiry concerning the Option Contracts when the MONEP Member effects transactions in the Option Contracts with or for that Eligible Institution pursuant to Rule 15a-6(a)(1) under the Exchange Act;

- c. MONEP SA or the SBF does not register with the Commission as a clearing agency under Section 17A of the Exchange Act;
- d. MONEP SA does not register with the Commission as a national securities exchange under Section 6 of the Exchange Act; and
- e. Eligible Broker-Dealers, MONEP Representatives or MONEP Members furnish the Updated Disclosure Document to an Eligible Broker-Dealer or Eligible Institution before such persons effect a transaction in the Option Contracts subject to continuing compliance with the following terms and conditions of the June 17, 1996 No-Action Letter except in respect of the Updated Disclosure Document as set forth below:
  - i. the Eligible Broker-Dealer or Eligible Institution previously has received the ODD;
  - ii. MONEP SA requires that MONEP Members, before effecting a transaction with or for an Eligible Broker-Dealer or Eligible Institution in the Option Contracts, determine as described in the June 17, 1996 No-Action Letter that the Eligible Broker-Dealer or Eligible Institution has received the ODD and the Updated Disclosure Document and maintains a record of that determination; and
  - iii. MONEP SA furnishes the Division, at least 30 days prior to the date definitive copies are furnished to Eligible Broker-Dealers or Eligible Institutions, with a copy of any amendment made to the Updated Disclosure Document because the information contained in that document becomes or will become materially inaccurate or incomplete, or because there is or will be an omission of material information necessary to ensure that the document is not misleading.

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Finally, MONEP SA requests confirmation that (1) the furnishing of the Updated Disclosure Document by a MONEP Representative, by a MONEP Member or by an Eligible Broker-Dealer, in each case, to an Eligible Broker-Dealer or Eligible Institution will satisfy the obligation under Rule 9b-1 of the Exchange Act to furnish an ODD before accepting an order from a customer to purchase or sell the Option Contracts, and (2) neither the MONEP Representative's furnishing of the Updated Disclosure Document to an Eligible Broker-Dealer or Eligible Institution, nor a MONEP Member's furnishing of the Updated Disclosure Document to an Eligible Broker-Dealer or, in response to an unsolicited inquiry to an Eligible Institution, will constitute either solicitation or the provision of a research report as those terms are used in Rule 15a-6 under the Exchange Act.

The request made herein is analogous to one granted by the Division in the June 17, 1996 No-Action Letter which permitted the activities specified above with respect to certain other option contracts traded on MONEP.<sup>6</sup> As a condition of issuance of the no-action letter requested herein, MONEP SA agrees to comply with the conditions of relief set forth below.

### Background

The formation of the European Union and the introduction of the Euro in 1999 have created the need for a new index concept that provides a more comprehensive analysis of financial movements and industry trends across Europe and the Euro zone, *i.e.*, those countries that form the Euro currency zone. Specifically, the Euro will gradually diminish the significance of regional/country-based marketing analysis, creating the need for a benchmark tool that transcends the limits of individual country indexing.

On February 26, 1998, SBF, which wholly owns MONEP SA, entered into a joint venture with Deutsche Borse ("DB"), Dow Jones and the Schweizer Borse ("SB") to form a Swiss company named STOXX® Limited to develop a new group of indexes which currently include:

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<sup>6</sup> On June 5, 1998, a separate application was made to the Office of General Counsel of the Commodity Futures Trading Commission ("CFTC") for the issuance of a no-action letter stating that it will not recommend that the CFTC take any enforcement action based on Sections 2(a)(1)(B), 4(a) and 12(e) of the Commodity Exchange Act ("CEA") if MONEP futures contracts based on the Dow Jones STOXX® 50 and Dow Jones EURO STOXX® 50 are offered or sold in the United States.

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Dow Jones STOXX®, a broad European index (which duplicates the Dow Jones Global Indexes Europe Index),

Dow Jones STOXX® 50, the European blue-chip index (a 50 stock index derived from Dow Jones STOXX®),

Dow Jones EURO STOXX, the EURO broad index (Dow Jones STOXX® excluding those countries not in the European Monetary Union),

Dow Jones EURO STOXX® 50, the EURO blue-chip index (a 50-stock index derived from the Dow Jones EURO STOXX®), and

Sector indexes (19 sector indexes derived from Dow Jones STOXX® and Dow Jones EURO STOXX®).

Options (and futures) on Dow Jones STOXX® 50 and Dow Jones EURO STOXX® 50 commenced trading on MONEP on June 22, 1998.<sup>7</sup> These blue-chip indexes, which are based on the Dow Jones STOXX® index and the Dow Jones EURO STOXX® index, respectively, are designed to satisfy the hedging and arbitrage needs of the trading community. The Dow Jones STOXX® index is a broad-based benchmark tracking the performance of the major players in the European economy, consisting of over 650 companies from 16 countries. Dow Jones EURO STOXX® is a subset thereof and tracks the market performance of more than 320 companies from 10 countries in the Euro zone. For your information, we enclose information on the composition of the Dow Jones STOXX® 50 and Dow Jones EURO

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<sup>7</sup> These option contracts as well as the futures on the indexes commenced trading on the DB and SB also on June 22, 1998. However, neither SBF nor MONEP have instituted a trading or a clearing link with either of the other two exchanges for Dow Jones STOXX® products or any other products. MONEP's contracts on Dow Jones STOXX® 50 and Dow Jones EURO STOXX® 50 will trade and clear as a MONEP product. The terms and conditions of MONEP's Dow Jones STOXX® 50 and Dow Jones EURO STOXX® 50 contracts will not be fungible or interchangeable with the contracts traded on these other exchanges. Essentially, although each partner in STOXX® Limited has the ability to develop a derivative contract on the relevant index, the derivative contract will have terms and conditions unique to each exchange. If a link or similar arrangement is proposed in the future, MONEP SA will immediately inform the Division.

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STOXX®50 indexes<sup>8</sup> and additional information on the Dow Jones STOXX® indexes published by STOXX® Limited.

**Disclosure Document Updated**

Enclosed with this request for no-action relief is the Updated Disclosure Document that provides information on the market and regulatory changes in France as well as other technical amendments since the June 17, 1996 Disclosure Document was reviewed by the Division. We refer you to the Updated Disclosure Statement for a discussion of such changes and amendments. Counsel and MONEP SA confirm that none of the changes in regulatory or market structure or other technical changes described therein constitute a material change in the facts or circumstances pursuant to which the June 17, 1996 No-Action Letter was issued, or otherwise affect the ability of MONEP SA, MONEP Members or SBF to comply with the terms of such No-Action Letter with respect to options on Dow Jones STOXX® 50 and Dow Jones EURO STOXX® 50.

We also informed you that effective July 10, 1997, futures contracts on the CAC40 stock index which previously traded on the Marche a Terme International de France ("MATIF") and cleared on MATIF's clearing house, MATIF SA, now trade on MONEP and are cleared by SBF. Specifically, all exchange-traded equity derivative products in France trade on MONEP and are cleared by SBF. Counsel and MONEP SA confirm, however, that there has been no diminution of legal protections, or material changes to the rules, regulations and procedures, governing the trading of such contracts resulting from the transfer of trading of futures contracts on the CAC40 index from MATIF to MONEP.<sup>9</sup>

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<sup>8</sup> The information on Dow Jones STOXX® 50 and Dow Jones EURO STOXX® 50 are provided by MONEP SA and are current as of April 30, 1998.

<sup>9</sup> For good orders sake, the French COB is notifying the CFTC of the addition of MONEP SA and MONEP to the list of French markets recognized under the "Mutual Recognition Memorandum of Understanding" entered into between the CFTC and COB on June 6, 1990. See 55 Fed. Reg. 23902 (June 13, 1990). Further, the agreement between the Chicago Mercantile Exchange ("CME") and MATIF will be amended to include MONEP, which now trades futures contracts on CAC40, as a party to the agreement.

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In this connection, as you know, futures contracts on the CAC40 trade on the link between the CME and MATIF on the CME's GLOBEX terminals. In this regard, the GLOBEX agreement between the MATIF and CME provides for the side-by-side trading of MATIF and CME products pursuant to which both exchanges' products may be accessed through such terminals, including terminals located in the US. In addition, a program implementing cross-exchange access permits members of each exchange to access the products of the other exchange based on supervision by the member-firm's home market. As you may be aware, effective by the end of 1998, SBF's NSC computerized trading system will replace the CME's GLOBEX system as the mechanism for effecting the agreement between the CME and MATIF/MONEP.<sup>10</sup>

MONEP SA confirms in this regard, however, that options on MONEP products are not currently accessible through the arrangement described above. Moreover, as a condition of the issuance of the supplemental no-action letter requested herein, MONEP SA represents that it will ensure that options on the Dow Jones STOXX® 50 and Dow Jones EURO STOXX® 50 (or any other options on equities) may not be accessed from NSC terminals located in the US absent express approval from the Commission.<sup>11</sup>

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<sup>10</sup> CLEARING 21® is the clearing system developed by the CME and the New York Mercantile Exchange. The SBF GROUP entered into a software swap agreement with the CME in July 1997, according to which the CME was granted the use of the SBF trading system NSC, and the SBF the use of the clearing system CLEARING 21®.

CLEARING 21® clears trades in all types of markets (e.g., cash, commodities, derivatives), utilizes SPAN® and can integrate other risk management methods.

CLEARING 21® will be used in Paris for all the markets of the SBF Group, including the SBF cash market and the MATIF and MONEP derivatives markets.

<sup>11</sup> See no-action letter issued by staff of the CFTC to the Deutsche Terminbörse ("DTB") pursuant to which, subject to the terms and conditions set forth therein, the staff stated it would not recommend enforcement action against the DTB for not being designated as a contract market pursuant to Section 5 of the CEA in connection with the installation and use of DTB terminals in the US for the execution of certain DTB futures and options on futures contracts. CFTC Staff Interpretative Letter No. 96-28, Comm. Fut. L. Rep. (CCH) ¶26,669 (Feb. 29, 1996).

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MONEP will continue to be an organized exchange operating and regulated under the laws of France, and the fact that MONEP futures contracts can be accessed on electronic trade executions terminals located in the US, or that MONEP and MONEP Members make MONEP equity and index option products known to a particular, sophisticated segment of the US financial community will not alter this fact.

### **Surveillance Sharing Arrangements**

We further understand that among the significant factors the Division will consider in reviewing the request herein is MONEP's ability to conduct surveillance over trading in the option contracts and the underlying indexes and, therefore, the existence of appropriate surveillance sharing arrangements.

The stocks in the two indexes currently are traded on the primary securities markets of nine European countries:

- a. In the case of Dow Jones STOXX® 50, those countries are: United Kingdom (eleven stocks with market capitalization equal to 24.16% of the index); Germany (nine stocks, 18.01%); Netherlands (eight stocks, 16.71%); Switzerland (five stocks, 14.04%); France (eight stocks, 11.82%); Italy (three stocks, 5.73%); Spain (three stocks, 4.74%); Sweden (two stocks, 3.44%); Finland (one stock, 1.36%).
- b. In the case of Dow Jones EURO STOXX® 50, those countries are: Germany (eleven stocks, 27.20%); Netherlands (ten stocks, 26.55%); France (fourteen stocks, 23.28%); Italy (five stocks, 10.20%); Spain (four stocks, 7.91%); Belgium (three stocks, 2.35%); Finland (one stock, 1.95%); Portugal (one stock, 0.68%); Ireland (one stock, 0.78%).

Prior to the enactment on July 2, 1996 by the French Parliament of the "Financial Activity Modernization Act" ("1996 Act"),<sup>12</sup> only the French Commission des Operations de Bourse ("COB"), an independent administrative authority, was authorized to share information with foreign regulatory authorities, subject to the condition of reciprocity. The 1996 Act in Title

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<sup>12</sup> Official Journal of the French Republic, July 4, 1996, p. 10063.

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V, Article 80 provides that subject to reciprocity, all French market authorities, which includes the Conseil des Marchés Financiers ("CMF"),<sup>13</sup> SBF and MONEP SA are authorized to provide to their foreign counterparts, information necessary for the discharge of their respective duties. In the case of markets and clearing houses, such information would include data on the positions and the margins on deposit, of their members. The French market authority must ensure, however, that its counterpart is subject to confidentiality provisions regarding the treatment of such information similar to that in effect in France.<sup>14</sup>

Consequently, until very recently, market authorities in France such as MONEP SA and SBF did not have the legal capacity to enter into information sharing arrangements with market authorities in other jurisdictions. The French COB, however, has entered into reciprocal arrangements with its counterparts to obtain necessary surveillance and other information. With respect to the Dow Jones STOXX® 50 Index, this includes arrangements with five of the eight countries (excluding France) whose stocks collectively comprise nearly 70% of the capitalization of the Dow Jones STOXX® 50 index (over 80% if French stocks are included), including the United Kingdom, the only jurisdiction whose stocks comprise more than 20% of the capitalization of the Index.<sup>15</sup>

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<sup>13</sup> The CMF resulted from the merger of two pre-existing French self-regulatory authorities, the Conseil du Marché à Terme (the French Futures Market Council) and the Conseil des Bourses de Valeurs (French Stock Market Council). A more detailed description is provided in Section 1 of the Updated Disclosure Document.

<sup>14</sup> Prior to entering into any information sharing arrangement, the COB assesses whether the foreign market authority's ability to keep information confidential is similar to that in effect under French law. Accordingly, this provision of the 1996 Act does not affect any information sharing arrangement to which the COB is a party, including the COB's existing arrangements with the SEC referred to herein.

<sup>15</sup> COB has arrangements in place with the United Kingdom (HM Treasury, July 13, 1994), Netherlands (Srichting Toezicht Effectenverkeer, September 21, 1994), Germany (Bundesaufsichtamt für der Wertpapierhandel, September 10, 1996), Italy (Commissione Nazionale per le Società e la Borsa, January 27, 1994), Spain (Comision Nacional del Mercado de Valores, September 27, 1993), Belgium (Commission Bancaire et Financiere, July 26, 1993) and Portugal (Comissao do Mercado de Valores Mobiliarios, April 19, 1996).

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In the case of Dow Jones EURO STOXX® 50, this includes arrangements with six of the eight countries (excluding France) whose stocks collectively comprise over 74% of the capitalization of the Dow Jones EURO STOXX® 50 index (approximately 98% if French stocks are included), including the ability to access information from all jurisdictions whose stocks comprise over 20% of the Dow Jones EURO STOXX® 50 index.<sup>16</sup>

Moreover, with the new authority provided by the 1996 Act, SBF and/or MONEP SA as a condition of the issuance of the no-action letter requested herein will undertake to commence discussions with relevant counterparts in each of the eight jurisdictions on comprehensive market-to-market surveillance sharing arrangements.

Finally, we note that the Commission and COB have executed arrangements to cooperate and share information as reflected in "Understanding Regarding the Establishment of a Framework for Consultations Between the Securities and Exchange Commission and the Commission des Operations de Bourse," signed on December 14, 1989 and the "Administrative Agreement" signed on the same date. In this regard, MONEP SA is aware of no developments, including the implementation of the Data Protection Directive of the European Union, that would impact on COB's ability to share information under such arrangements. In addition, both the SBF and MONEP SA are able and willing to cooperate through information sharing and other means in any Commission inquiry into options on the Dow Jones STOXX® 50 and Dow Jones EURO STOXX® 50 traded on MONEP.

#### Conditions of Relief

As conditions for the issuance by the Division of the no-action position requested herein, MONEP SA confirms the following:

- a. It has implemented and complied with the terms and conditions of relief set forth in the June 17, 1996 No-Action letter and, except as superseded herein in connection with the Updated Disclosure Document, which will be provided rather than the June 17, 1996 MONEP Disclosure Document, undertakes to continue to comply with such terms and conditions with respect to the contracts that are the subject of that letter as well as the Option Contracts. Among other things, MONEP SA has established

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<sup>16</sup> These jurisdictions are Germany, Netherlands and France.

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careful limitations to assure compliance with applicable U.S. securities laws and MONEP SA will continue, as necessary, to establish further limitations to assure continued compliance with such laws.

- b. As set forth herein, MONEP SA further confirms and/or undertakes to comply with the following:
  - i. MONEP SA represents that it will ensure that options on the Dow Jones STOXX® 50 and Dow Jones EURO STOXX® 50 (or any other options on equities) may not be accessed from NSC computerized trading terminals located in the US absent express approval from the Commission;
  - ii. SBF and/or MONEP SA will commence discussions with relevant counterparts in each of the eight jurisdictions on comprehensive market-to-market surveillance sharing arrangements; and
  - iii. MONEP SA is able and willing to cooperate through information sharing and other means in any Commission inquiry into options on the Dow Jones STOXX® 50 and Dow Jones EURO STOXX® 50 traded on MONEP.

### **Conclusion**

Dow Jones STOXX® 50 and Dow Jones EURO STOXX® 50 option contracts will be important new tools for customers in the United States to manage their exposure to global markets. For this reason, based on the facts and circumstances set forth herein and in the enclosed Updated Disclosure Document, and subject to continuing compliance with the terms and conditions of the June 17, 1996 No-Action Letter, except that the Updated Disclosure Document rather than the June 17, 1996 MONEP Disclosure Document will be provided, and the additional undertakings set forth herein, we request that the Division confirm that it will not recommend enforcement action to the Commission as set forth above.

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We very much appreciate your prompt consideration of this matter. If you have any questions concerning this matter, please do not hesitate to contact me at (202) 339-8494.

Very truly yours,

  
Jane Kang Thorpe

Enclosures:

- I. Draft MONEP Disclosure Document: clean version and redlined version
- II. Information on Composition of Indexes
- III. Information on Dow Jones STOXX® Indexes and STOXX® Limited
- IV. SBF: Annual Report 1996
- V. MONEP: Annual Report 1997
- VI. MATIF: Annual Report 1996
- VII. June 17, 1996 No-Action Letter

cc: Mr. Patrick Stephan, SBF