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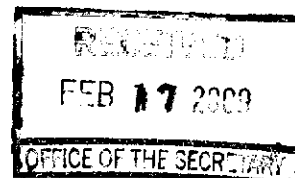
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February 15, 2009

4-578

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington D.C. 20549-6628



RE: Petition for Rulemaking

Dear Ms. Murphy:

Pursuant to the Commission's Rule of Practice 192,<sup>1</sup> petition is hereby made to adopt a new rule identical to Commission Rule 3a12-8 ("Rule")<sup>2</sup> under the Securities Exchange Act of 1934 (the "Act")<sup>3</sup> in light of the fact that the Commission has failed to employ that Rule, despite one or more requests to do so, since enactment of the Commodity Futures Modernization Act of 2000 (the "CFMA") (P. L. 106-554, 114 Stat. 2763 (2000))<sup>4</sup> on the ground that the CFMA no longer allows the Rule to be used for the purpose of exempting from Commission registration under section 3(a)(12) of the Act any futures contract on the sovereign debt of a foreign government so that it may lawfully be offered to United States persons pursuant to section 2(a)(1)(C)(iv) of the Commodity Exchange Act.<sup>5</sup> In the

<sup>1</sup> 17 C.F.R. § 201.192.

<sup>2</sup> *Id.* at. § 240.3a12-8.

<sup>3</sup> 15 U.S.C. § 78a *et seq.*

<sup>4</sup> 7 U.S.C. §§ 1 *et seq.*

<sup>5</sup> *Id.* at §2(a)(1)(C)(iv).

alternative, request is hereby made to reactivate the Rule and to pass upon all pending requests thereunder.

**Historical background.** As part of the Commodity Futures Trading Commission ("CFTC") reauthorization legislation in 1982,<sup>6</sup> an arrangement made earlier between the CFTC and the SEC with respect to the jurisdictional treatment of certain futures contracts related to securities (the "Shad-Johnson Accord") was enacted into law. As a result, futures contracts on broad-based stock indexes and on securities exempted by the Commission under section 3(a)(12) of the Act<sup>7</sup> were assigned to the jurisdiction of the CFTC. The CFMA has not altered that assignment, as discussed below.

Section 3(a)(12) of the Act, however, does not expressly address the exemption of sovereign debt of foreign governments. However, the Commission adopted the Rule which extends the exemptions to certain qualified foreign government securities upon application. Until adoption of the CFMA, the sovereign debt of twenty-one (21) nations was admitted to this exemption, allowing futures contracts on those securities to be acquired and sold by United States persons if certain terms and conditions were met.

As noted above, that relief has been withheld by the Commission ever since enactment of the CFMA despite one or more requests for inclusion in the Rule's coverage.

**Analysis.** The CFMA created a system of co-regulation between the Commission and the CFTC with respect to a statutorily defined "security future." Conforming amendments were made as a result to the enabling statutes of both the Commission and the CFTC. In both the Act and the Commodity Exchange Act, that definition explicitly states that a futures contract on "an exempted security under section 3(a)(12) of the Securities Exchange Act of 1934" is *not* a security future.<sup>8</sup> Accordingly, it is clear that the Congress sought by its creation of a limited system of co-regulation *not* to affect the pre-existing program under the Rule for futures on foreign government securities.

Moreover, the same definition is used in the Act and the Commodity Exchange Act when discussing possible adoption by the agencies of joint regulations

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<sup>6</sup> Futures Trading Act of 1982, P.L. 97-444, 96 Stat. 2294 (1983).

<sup>7</sup> 15 U.S.C. § 78c(a)(12).

<sup>8</sup> 15 U.S.C. § 78c(a)(55) and 7 U.S.C. § 1a(31).

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"to permit the offer and sale of a security futures product traded on or subject to the rules of a foreign board of trade to United States persons."<sup>9</sup> While no such regulations have yet been adopted, securities that can be exempted under section 3(a)(12) of the Act are explicitly excluded from the definition of "security future" so that any joint rulemaking on this subject simply would not apply and thus this rulemaking provision cannot be seen as having revoked or superseded the prior exemptive regime.

If necessary, request is hereby made to adopt a *new* Rule identical to the old Rule so that the exemptive program for sovereign foreign securities can resume or, more practicably, to re-activate the original Rule so that pending requests may be processed.

Sincerely,



Philip McBride Johnson

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<sup>9</sup> 15 U.S.C. § 78f(k)(1) and 7 U.S.C. § 2(a)(1)(E)(i).