

Chicago Mercantile Exchange ("CME"), Euro Brokers Investment Corporation ("Euro Brokers"), Sakura Dellsheer, Inc. ("SDI"), and Centre Financial Products Limited ("Centre Financial"), submitted letters supporting the proposal.⁴

The Commission is adopting this amendment to the Rule, adding Mexico to the list of countries whose debt obligations are exempted by Rule 3a12-8. In order to qualify for the exemption, futures contracts on debt obligations of Mexico would have to meet all the other requirements of the Rule.

II. Background

Rule 3a12-8 was adopted in 1984⁵ pursuant to the exemptive authority in Section 3(a)(12) of the Exchange Act in order to provide limited relief from the CEA's prohibition on the trading of futures overlying individual securities.⁶ As originally adopted, the Rule provided that debt obligations of the United Kingdom and Canada would be deemed to be exempted securities, solely for the purpose of permitting the offer, sale, and confirmation of "qualifying foreign futures contracts" on such securities, so long as the securities in question were neither registered under the Securities Act nor the subject of any American depositary receipt so registered. A futures contract on such a debt obligation is deemed under the Rule to be a "qualifying foreign futures contract" if delivery under the contract is settled outside the United States and is traded on a board of trade.⁷

⁴ See Letter from William J. Brodsky, President and Chief Executive Officer, CME to Jonathan G. Katz, Secretary, Commission, dated October 18, 1995; letter from Donald R.A. Marshall, President, Euro Brokers to Jonathan G. Katz, Secretary, Commission, dated October 18, 1995; letter from Leo Melamed, Chairman and Chief Executive Officer, SDI to Jonathan G. Katz, Secretary, Commission, dated October 18, 1995; and letter from Richard L. Sandor, Ph.D., Chairman and Chief Executive Officer, Centre Financial to Jonathan G. Katz, Secretary, Commission, dated October 19, 1995.

⁵ Securities Exchange Act Release Nos. 20708 ("Original Adopting Release") (March 2, 1984), 49 FR 8595 (March 8, 1984) and 19811 ("Original Proposing Release") (May 25, 1983), 48 FR 24725 (June 2, 1983).

⁶ In enacting the Futures Trading Act of 1982, Congress expressed its understanding that neither the SEC nor the Commodity Futures Trading Commission ("CFTC") had intended to bar the sale of futures contracts on debt obligations of the United Kingdom of Great Britain and Northern Ireland ("United Kingdom") to U.S. persons, and its expectation that administrative action would be taken to allow the sale of such futures contracts in the United States. See Original Proposing Release, *supra* note 5, 48 FR at 24725 [citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)].

⁷ As originally adopted, the Rule required that the board of trade be located in the country that issued the underlying securities. This requirement was eliminated in 1987. See Securities Exchange Act

The conditions imposed by the Rule were intended to facilitate the trading of futures contracts on foreign government securities in the United States while requiring offerings of foreign government securities to comply with the federal securities laws. Accordingly, the conditions set forth in the Rule were designed to ensure that, absent registration, a domestic market in foreign government securities would not develop, and that markets for futures on these instruments would not be used to avoid the securities law registration requirements.

Subsequently, the Commission amended the Rule to include the debt securities issued by Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, Ireland, Italy, and Spain.⁸

The CME has informed the Commission that U.S. citizens may be interested in futures products based on the debt obligations of Mexico, and has requested that Rule 3a12-8 be amended to facilitate such trading.⁹ The CME has represented that it intends to develop a contract market in Mexican Certificados de la Tesoreria de la Federacion ("Cetes"), which are short-term Mexican government securities, and in Mexican Brady bonds, a class of longer term sovereign Mexican debt issues.¹⁰

Release No. 24209 (March 12, 1987), 52 FR 8875 (March 20, 1987).

⁸ As originally adopted, the Rule applied only to British and Canadian government debt securities. See Original Adopting Release, *supra* note 5. In 1986, the Rule was amended to include Japanese government debt securities. See Securities Exchange Act Release No. 23423 (July 11, 1986), 51 FR 25996 (July 18, 1986). In 1987, the Rule was amended to include debt securities issued by Australia, France and New Zealand. See Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987). In 1988, the Rule was amended to include debt securities issued by Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany. See Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43860 (October 31, 1988). In 1992 the Rule was again amended to (1) include debt securities offered by the Republic of Ireland and Italy, (2) change the country designation of "West Germany" to the "Federal Republic of Germany," and (3) replace all references to the informal names of the countries listed in the Rule with references to their official names. See Securities Exchange Act Release No. 30166 (January 6, 1992), 57 FR 1375 (January 14, 1992). Finally, the Rule was amended to include debt securities issued by the Kingdom of Spain. See Securities Exchange Act Release No. 34908 (October 27, 1994), 59 FR 54812 (November 2, 1994).

⁹ See Letter from William J. Brodsky, President and Chief Executive Officer, CME, to Arthur Levitt, Jr., Chairman, Commission, dated May 3, 1995.

¹⁰ The marketing and trading of foreign futures contracts is subject to regulation by the CFTC. In particular, Section 4b of the CEA authorizes the CFTC to regulate the offer and sale of foreign futures contracts to U.S. residents, and Rule 9 (17 CFR 30.9), promulgated under Section 2(a)(1)(A) of the CEA, is intended to prohibit fraud in connection

Mexican Brady bonds were issued pursuant to the Brady plan, which allows developing countries to restructure their commercial bank debt by issuing long-term dollar denominated bonds.¹¹ The Commission understands that Mexican Brady bonds are currently traded primarily in the over-the-counter market in the United States.

The Commission is amending Rule 3a12-8 to add Mexico to the list of countries whose debt obligations are deemed to be "exempted securities" under the terms of the Rule. Under this amendment, the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the United States,¹² that the futures contracts require delivery outside the United States,¹³ and that the contracts be traded on a board of trade) would continue to apply.

III. Discussion

A. Comment Letters

As noted above, the Commission received four comment letters, all in support of the proposal.¹⁴ The CME additionally recommended that the Commission eliminate its practice of granting exemptions under the Rule on

with the offer and sale to U.S. persons of futures contracts executed on foreign exchanges. Additional rules promulgated under 2(a)(1)(A) of the CEA govern the domestic offer and sale of futures and options contracts traded on foreign boards of trade. These rules require, among other things, that the domestic offer and sale of foreign futures be effected through the CFTC registrants or through entities subject to a foreign regulatory framework comparable to that governing domestic futures trading. See 17 CFR 30.3, 30.4, and 30.5 (1991).

¹¹ There are several types of Brady bonds, but "Par Bradys" and "Discount Bradys" represent the great majority of issues in the Brady bond market. In general, both Par Bradys and Discount Bradys are secured as to principal at maturity by U.S. Treasury zero-coupon bonds. Additionally, usually 12 to 18 months of interest payments are also secured in the form of a cash collateral account, which is maintained to pay interest in the event that the sovereign debtor misses an interest payment.

¹² The Commission notes that neither Mexican Cetes nor Mexican Brady bonds are currently registered in the United States. The Commission is aware, however, that certain Mexican sovereign debt is registered in the United States and that the trading of futures on these debt issues would not be exempted under Rule 3a12-8 from the CEA's prohibition on the trading of futures overlying individual securities that are not exempted securities.

¹³ The CME's proposed futures contracts will be cash-settled (*i.e.*, settlement of the futures contracts will not entail delivery of the underlying securities). The Commission has recognized that a cash-settled futures contract is consistent with the requirement of the Rule that delivery must be made outside the United States. See Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987).

¹⁴ See *supra* note 4.