



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

March 11, 2013

MEMORANDUM

TO: The Files

FROM: The Division of Market Oversight *Ral*

SUBJECT: Request by the Bolsa de Valores, Mercadorias e Futuros ("BVMF" or "Exchange") for expedited certification review of the BVMF FTSE/JSE TOP 40 Index futures contract

CONCLUSION: The futures contract meets the economic requirements of Section 2(a)(1)(C)(ii) of the Commodity Exchange Act and applicable requirements under Appendix C to Part 38 (17 C.F.R. Part 38, Appendix C). Expedited review is appropriate because the BVMF previously requested and received at least one no-action letter from the Office of the General Counsel regarding a non-narrow-based security index futures contract and represented that BVMF remains fully compliant with those letters. A certification letter to the BVMF is attached.

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Introduction

In correspondence dated December 14, 2013¹ (attached), the Bolsa de Valores, Mercadorias e Futuros (BVMF) requested certification that the BVMF FTSE/JSE TOP 40 Index futures contract meets the requirements of section 2(a)(1)(C)(ii) of the Commodity Exchange Act

¹ The request from the BVMF is dated December 14, 2012, but was received by the Commission on January 25, 2013. The 45-day review period therefore began on January 25, 2013.

and thus may be offered or sold in the U.S.² The BVMF requested the 45-day expedited Commission review pursuant to Commission Regulation 30.13(e). The Division's review was based on information provided in the letter received on January 25, 2013. The 45-day expedited review period ended on March 11, 2013.

Summary and Analysis

FTSE/JSE TOP 40 Index Futures Contract

The BVMF, in its January 25, 2013 certification request, included all of the information required by Part 30.13 of the Commission's regulations for Commission Certification of the BVMF FTSE/JSE TOP 40 Index futures contract. The Division notes that the subject contract meets the economic requirements of Section 2(a)(1)(C)(ii) of the Commodity Exchange Act and applicable requirements under Appendix C to Part 38 (17 C.F.R. Part 38, Appendix C).

Requirements of Part 30.13 Regarding Commission Certification

| Part 30.13 Requirement | Exchange Action / Statement | Comment / Analysis |
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| 30.13(a) and 30.13(a)(1): Request for certification filed electronically with the Secretary of the Commission. | The request was filed electronically with the Secretary on January 25, 2013. | Acceptable. |
| 30.13(a)(2)(i): Terms and Conditions, relevant rules of the FBOT, rules of the underlying securities exchange. | Terms and conditions of the contract were described in Attachment 1 of the January 25, 2013 certification request. | Acceptable. |
| 30.13(a)(2)(ii): Surveillance agreements between the FBOT and the exchanges(s) on which the underlying securities are traded. | The BVMF noted on pages 3 and 4 of the January 25, 2013 certification request that the listing of the FTSE/JSE TOP 40 Index futures contract is the result of an agreement the BVMF entered into with the Johannesburg Stock Exchange ("JSE") to make use of the JSE settlement price. | Acceptable. |

² On June 28, 2002, the Office of the General Counsel issued a no-action letter to the JSE Securities Exchange of South Africa allowing that exchange to offer for sale to U.S. persons futures contracts on the subject Index.

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| | <p>The BVMF further noted on pages 3 and 4 of the aforementioned request that the JSE and the BVMF surveillance departments have agreements on sharing information regarding their respective FTSE/JSE TOP 40 Index contracts.</p> | |
| <p>30.13(a)(2)(iii): Assurances from the FBOT of its ability and willingness to share information with the Commission.</p> | <p>The BVMF stated on page 4 of the January 25, 2013 certification request that it is willing and able to provide information on prices, volumes, orders and trades related to the FTSE/JSE TOP 40 futures contract directly to the Commission. Information on individual market participants will be provided by the BVMF to the Brazilian Securities and Exchange Commission (“CVM”). The Commission has an information sharing agreement with the CVM.</p> | <p>Acceptable.</p> |
| <p>30.13(a)(2)(iv): When applicable, information regarding foreign blocking statutes and their impact on the ability of United States government agencies to obtain information concerning trading of such contracts.</p> | <p>The BVMF stated on page 4 of the January 25, 2013 certification request that Brazil has a bank secrecy law that could limit information access on banking flows. However, the BVMF noted on pages 4 and 5 of the certification request that in light of the Brazilian bank secrecy law, the Commission and the Brazilian Securities and Exchange Commission (CVM) have a MOU concerning mutual assistance and the exchange of information. In the BVMF’s 2008 No-Action Request, CVM confirmed that: “(1) the</p> | <p>Acceptable.</p> |

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| | <p>current bi-lateral MOU and associated information-sharing arrangements would apply in the context of the foreign electronic access no-action letter; and (2) it was willing to share information with the Commission relevant to the BVMF transactions entered into under such a foreign electronic access no-action letter on an ‘as needed’ basis under the provisions of the bi-lateral MOU.” Furthermore, the CVM is a signatory to the International Organization of Securities Commissions Multilateral Memorandum of Understanding Concerning Consultation and Cooperation of the Exchange of Information.</p> | |
| <p>30.13(a)(v): Information and data denoted in U.S dollars where appropriate (and the conversion date and rate used)) relating to:</p> | | |
| <p>30.13(a)(v)(A): The method of computation, availability, and timeliness of the index.</p> | <p>Described generally on pages 5 and 6 of the January 25, 2013 certification request. The BVMF provided an internet link to an FTSE.com website which describes in detail the methods used in the design and calculation of the index. DMO staff downloaded and reviewed the document.</p> | <p>Acceptable.</p> |
| <p>30.13(a)(v)(B): The total capitalization, number of stocks (including the number of unaffiliated issuers if different from the number of stocks), and weighting of the stocks by capitalization and, if applicable, by price of the</p> | <p>The BVMF submitted these data in Attachment 2 of their January 25, 2013 certification request. Attachment 2 contains information on the total capitalization, number of stocks, and weighting of the stocks by capitalization. From</p> | <p>Acceptable.</p> |

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| <p>index as well as the combined weighting of the five highest-weighted stocks in the index.</p> | <p>Attachment 2, DMO staff were able to calculate the combined weight of the five highest stocks. Moreover, the Commission previously determined that the FTSE/JSE TOP 40 Index is not readily susceptible to manipulation.</p> | |
| <p>30.13(a)(v)(C): Procedures and criteria for selection of individual securities for inclusion in, or removal from, the index, how often the index is regularly reviewed, and any procedures for changes in the index between regularly scheduled reviews.</p> | <p>Described generally on pages 5 and 6 of the January 25, 2013 certification request.</p> <p>The BVMF provided an internet link to an FTSE.com website in the January 25, 2013 certification request that detailed information on the procedures and criteria for reviewing the FTSE/JSE TOP 40 Index, and adding and removing securities from the index. DMO staff downloaded and reviewed the document.</p> | <p>Acceptable.</p> |
| <p>30.13(a)(v)(D): Method of calculation of the final settlement price and the timing of its release.</p> | <p>Described in Attachment 1 of the January 25, 2013 certification request.</p> <p>In response to a DMO request for greater detail on trading times, the BVMF provided a follow up email stating the trading times for the contract. DMO staff reviewed the email response.</p> | <p>Acceptable.</p> |
| <p>30.13(a)(v)(E): Average daily volume of trading, measured by share turnover and dollar value, in each of the underlying securities for a six-month period of time and, separately, the dollar value of the average daily trading volume of the securities comprising the lowest weighted 25% of the index for</p> | <p>Data are provided in Attachment 2 of the January 25, 2013 certification request (electronic spreadsheet).</p> <p>In response to a DMO follow up, the Exchange provided additional information on average daily trading volume for each of the underlying securities for the past 6</p> | <p>Acceptable.</p> |

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| the past six calendar months. | calendar months. Moreover, the Commission previously determined that the FTSE/JSE TOP 40 Index is composed of highly liquid stocks. | |
| 30.13(a)(vi): A written statement that the contract conforms to the criteria enumerated in section 2(a)(1)(C)(ii) of the Act, including: | | |
| 30.13(a)(vi)(A): A statement that the contract is cash-settled. | Stated on pages 3 and 7 of the January 25, 2013 certification request. | Acceptable. |
| 30.13(a)(vi)(B): An explanation of why the contract is not readily susceptible to manipulation or to be used to manipulation the underlying security. | <p>The Commission previously determined that a futures contract on the FTSE/JSE TOP 40 Index is not readily susceptible to manipulation.</p> <p>The Division staff believes that the subject futures contract remains not readily susceptible to manipulation or distortion for the following reasons.</p> <p>It is generally recognized that stocks with active and deep markets are more difficult to manipulate than stocks with less active and deep markets. . Over the six-month period of ending December 31, 2012, all of the stocks in the subject index had an average daily trading volume of at least 30,000, a level that the Division has used in the past as a benchmark implying an acceptable degree of liquidity. Furthermore, over that same period, all of the stocks in the subject index had a value of average daily trading volume of at least US\$1,500,000. Moreover, the Index has a large market capitalization.</p> | Acceptable. |

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| | <p>The Index has a very large market capitalization and a large number of constituent stocks. Moreover, the Index is not dominated by any one stock or small group of stocks. As of April 10, 2012, the top security in the FTSE/JSE TOP 40 Index comprised 12.65% of the Index weight, and the top 5 securities in the aggregate comprised 45.02% of the Index weight. Thus, an attempt to distort the Index likely would involve artificially changing the price of many securities. The Division also notes that because FTSE/JSE weights the constituent stocks in each index by free-float adjusted market capitalization, prices of stocks with greater index weight may be more difficult to distort than stocks with lesser index weight.</p> <p>The potential for distortion of the final cash settlement price is further limited because the subject futures contract is cash-settled based on a value of the Index that is based on the closing prices of the constituent stocks on the third Thursday of the contract month (or the preceding trading day in the event the third Thursday falls on a non-trading day). The close is an active time of the trading day.</p> | |
| <p>30.13(a)(vi)(C): A statement that the index is not a narrow-based security index as defined in section 1a(35) of the Act and the analysis supporting that statement.</p> | <p>Stated on page 7 of the January 25, 2013 certification request. The BVMF submitted data on the composition and individual weights of the stocks composing the FTSE/JSE TOP 40 Index, as well as the value of average daily trading volume of the bottom quartile, in Attachment 2. The Division staff reviewed the</p> | <p>Acceptable.</p> |

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| | data and determined that the Index is not a narrow-based security index pursuant to Section 1a(35)(B)(ii) of the Act. | |
| 30.13(a)(vii): A written representation that the FBOT will notify the Commission of any material changes in any of the above information. | The BVMF stated on page 8 of the January 25, 2013 certification request that the Exchange will notify the Commission of any material changes to any information provided in the request. | Acceptable. |
| 30.13(a)(viii): When applicable, a request to make the futures contract available for trading in accordance with the terms and conditions of, and through the electronic trading devices identified in, a Commission staff no-action letter stating, subject to compliance with certain conditions, that it will not recommend that the Commission take enforcement action if the foreign board of trade provides its members or participants in the U.S. access to its electronic trading system without seeking designation as a designated contract market (“Foreign Board of Trade No-Action Letter”), or pursuant to any foreign board of trade registration order issued by the Commission (“Foreign Board of Trade Registration Order”), and certification from the foreign board of trade that is in compliance with the terms and conditions of that no-action letter or Foreign Board of Trade Registration Order. | Requested on page 8 of the January 25, 2013 certification request in accordance with the BVMF’s September 26, 2008 no-action letter from the Commission. | Not applicable. |
| 30.13(a)(ix): An explanation of the means by which U.S. persons may access these | Explained on page 8 of the January 25, 2013 certification request. The BVMF requested | Acceptable. |

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| products on the foreign board of trade. | that the contract be made available via direct access terminals in the United States under its September 26, 2008 no-action letter (CFTC Letter No. 08-18) on page 1 of the certification request. | |
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Conclusion and Recommendation

The Division concludes that the subject futures contract meets the economic requirements of Section 2(a)(1)(C)(ii) of the Commodity Exchange Act, applicable requirements under Commission Guideline No. 1 (17 C.F.R. Part 40, Appendix A) and Part 30.13 of the Commission Regulations. The Division intends to issue the attached letter to the BVMF.

Attachments

1. Certification request from the BVMF dated December 14, 2012 and received on January 25, 2013.
2. Follow-up information provided by the BVMF in emails dated February 19, 2013 and February 25, 2013.
3. Letter from DMO to the BVMF dated March 12, 2013.