



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5260  
Facsimile: (202) 418-5527

Division of  
Market Oversight

September 24, 2012

### MEMORANDUM

TO: The Files

FROM: The Division of Market Oversight *RW*

SUBJECT: Request by the Bolsa de Valores, Mercadorias e Futuros ("BVMF" or "Exchange")  
for expedited certification review of the BVMF S&P 500 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 Commission Guideline No. 1 (17 C.F.R. Part 40, Appendix A). 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.

STAFF CONTACTS: Chris Goodman 418-5616 *CSG*  
Phil Colling 418-5287 *PC*  
Thomas Leahy 418-5278 *TL*

### Introduction

In correspondence dated August 6, 2012<sup>1</sup> (attached), the Bolsa de Valores, Mercadorias e Futuros (BVMF) requested certification that the BVMF S&P 500 futures contract meets the requirements of section 2(a)(1)(C)(ii) of the Commodity Exchange Act and thus may be offered or sold in the U.S. 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 dated August 6, 2012. The 45-day expedited review period ends on September 24, 2012.

<sup>1</sup> The request from the BVMF is dated August 6, 2012, but was received by the Commission on August 9, 2012. The 45-day review period therefore began on August 9, 2012.

## Summary and Analysis

### S&P 500 Futures Contract

The BVMF listed its S&P 500 futures contract as the result of a partnership with the CME Group. The BVMF S&P 500 futures contract is denominated in U.S. Dollars and settles to the same value of the underlying S&P 500 Index which is used to settle the CME's S&P 500 Index futures contract. The BVMF S&P 500 futures contract does not reference the daily or final settlement price of any S&P 500 futures contract listed for trading by the Chicago Mercantile Exchange (CME). Therefore, the BVMF S&P 500 futures contract is not a "linked contract" as defined by Part 48.2(d) of the Commission's Regulations.<sup>2</sup> Though the contract is denominated in U.S. Dollars, it is settled in Brazilian Reals.

The BVMF, in its August 6, 2012 certification request, included all of the information required by Part 30.13 of the Commission's regulations for Commission Certification of the BVMF S&P 500 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 Commission Guide No. 1 (17 C.F.R. Part 40, Appendix A).

### Requirements of Part 30.13 Regarding Commission Certification

Part 30.13 Requirement	Exchange Action / Statement	Comment / Analysis
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 August 6, 2012.	Acceptable.
30.13(a)(2)(i): Terms and Conditions, relevant rules of the FBOT, rules of the underlying securities exchange.	Described in Attachment 1 of the August 6, 2012 certification request.	Acceptable.
30.13(a)(2)(ii): Surveillance agreements between the FBOT and the exchanges(s) on which	The BVMF noted on page 3 of the August 6, 2012 certification request that the	Acceptable.

<sup>2</sup> Part 48.2(d): *Linked Contract*: Linked contract means a futures, option or swap contract that is made available for trading by direct access by a registered foreign board of trade that settles against any price (including the daily or final settlement price) of one or more contracts listed for trading on a registered entity as defined in section 1a(40) of the Act.

<p>the underlying securities are traded.</p>	<p>listing of the S&amp;P 500 futures contract is the result of agreements with both Standard and Poor's and the CME Group. The S&amp;P 500 is one of the indexes owned by Standard &amp; Poor's, which is a subsidiary of the McGraw-Hill Company. The CME Group and the BVMF surveillance departments have agreements on sharing information regarding their respective S&amp;P 500 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 August 6, 2012 certification request that it is willing and able to provide information directly to the Commission regarding the S&amp;P 500 futures contract.</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 August 6, 2012 certification request that Brazil has a bank secrecy law that could limit information access on banking flows. However, the BVMF notes on page 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 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</p>	<p>Acceptable.</p>

	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.	
<b>30.13(a)(v): Information and data denoted in U.S dollars where appropriate (and the conversion date and rate used)) relating to:</b>		
30.13(a)(v)(A): The method of computation, availability, and timeliness of the index.	Described generally on pages 5 and 6 of the August 6, 2012 certification request. The BVMF provided a link to the Standard & Poor’s website which contains detailed information on the method of computation for the S&P 500 Index. DMO staff downloaded the document.	Acceptable.
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 index as well as the combined weighting of the five highest-weighted stocks in the index.	Described generally on page 5 and 6 of the August 6, 2012 certification request. The Commission previously determined that the S&P 500 is not readily susceptible to manipulation. Moreover, given the nature of the S&P 500, Division staff believes it continues to be not readily susceptible to manipulation. Therefore, staff does not believe filing of index data is necessary.	Acceptable.
30.13(a)(v)(C): Procedures and criteria for selection of	The BVMF provided an internet link in the August 6,	Acceptable.

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.	2012 certification request to the Standard & Poor's website which contains detailed information on the procedures and criteria for reviewing the S&P 500 Index, and adding and removing securities from the index. DMO staff downloaded the document.	
30.13(a)(v)(D): Method of calculation of the final settlement price and the timing of its release.	Described on page 6 of the August 6, 2012 certification request.	Acceptable.
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 the past six calendar months...	The Commission previously determined that the S&P 500 is composed of highly liquid stocks. Moreover, given the nature of the S&P 500, Division staff believes it continues to be not readily susceptible to manipulation. Therefore, staff does not believe filing of index data is necessary.	Acceptable.
<b>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:</b>		
30.13(a)(vi)(A): A statement that the contract is cash-settled.	Stated on pages 2 and 7 of the August 6, 2012 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.	The Commission previously determined that the S&P 500 is not readily susceptible to manipulation. Moreover, given the nature of the S&P 500, Division staff believes it continues to be not readily susceptible to manipulation.	Acceptable.
30.13(a)(vi)(C): A statement that the index is not a narrow-based security index as defined in section 1a(35) of	Stated on page 7 of the August 6, 2012 certification request. The CME's S&P 500 Index futures contract was approved	Acceptable.

<p>the Act and the analysis supporting that statement.</p>	<p>by the Commission prior to the enactment of the CFMA. Therefore, the S&amp;P 500 is not a narrow-based security index pursuant to Section 1a(35)(B)(ii) of the Act.</p>	
<p>30.13(a)(vii): A written representation that the FBOT will notify the Commission of any material changes in any of the above information.</p>	<p>The BVMF stated on page 7 of the August 6, 2012 certification request that the Exchange will notify the Commission of any material changes to any information provided in the request.</p>	<p>Acceptable.</p>
<p>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.</p>	<p>Requested on page 7 of the August 6, 2012 certification request in accordance with the BVMF's September 26, 2008 no-action letter from the Commission.</p>	<p>Not applicable.</p>
<p>30.13(a)(ix): An explanation of the means by which U.S.</p>	<p>Explained on page 7 of the August 6, 2012 certification</p>	<p>Acceptable.</p>

persons may access these products on the foreign board of trade.	request. The BVMF requested 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 August 6, 2012.
2. Letter from DMO to the BVMF dated September 25, 2012.