14 CFR Part 75

[Airspace Docket No. 87-AWA-5]

Alteration of Jet Routes; Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the description of Jet Route J-152 as published in the **Federal Register** on September 23, 1987. The description of J-152 as published was not technically correct with respect to the route alignment around Harrisburg, PA.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 87-21850, which was published on September 23, 1987, altered the description of Jet Route J-152 located in the vicinity of Harrisburg, PA (52 FR 35694). The radial "099°" was inadvertently used in the description instead of the current radial of "102°." This action corrects the error to avoid confusion.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, the final rule published on page 35694 in the **Federal Register** on September 23, 1987, is corrected to read as follows:

PART 75—[AMENDED]

§ 75.100 [Corrected]

J-152 [Amended]

By removing the words "Harrisburg, PA; to INT Harrisburg 102° and Westminster, MD, 058° radials." and substituting the words "to Harrisburg, PA."

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.)

Issued in Washington, DC, on October 26, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-25480 Filed 11-3-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 86-AWP-34]

Alteration of Jet Route J-6; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action postpones the effective date of an amendment to Jet Route J-6 located in the vicinity of Palmdale, CA. The date of implementation for Jet Route J-6 has been postponed from November 19, 1987, to January 14, 1988. This action is taken for the purposes of internal administration and for coordination of this amendment with other related airspace actions on the west coast.

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

A final rule Airspace Docket No. 86-AWP-34 published in the **Federal Register** on September 18, 1987 (52 FR 35235) with an effective date of November 19, 1987, implemented modifications to Jet Route J-6. However, due to internal administrative considerations, and in order to permit sufficient time for coordination of this amendment with other related airspace actions, the effective date has been changed to January 14, 1988.

Issued in Washington, DC, on October 26, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-25481 Filed 11-3-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 70504-7233]

Annual Survey of U.S. Direct Investment Abroad (BE-11)

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: These rules amend 15 CFR Part 806 by changing the reporting requirements for the BE-11, Annual Survey of U.S. Direct Investment Abroad, conducted by the Bureau of Economic Analysis, U.S. Department of Commerce, under authority of the International Investment and Trade in Services Survey Act. Specifically, the rules change the reporting requirements on Form BE-11C of the survey to: (1) Require filing of a complete BE-11C report for nonbank foreign affiliates owned at least 20 percent, but less than 25 percent, by the U.S. Reporter and for which total assets, sales, or net income exceed $10 million, and (2) *for fiscal year 1987 only*, require filing of a partial BE-11C report for nonbank foreign affiliates owned at least 10 percent, but less than 20 percent, by the U.S. Reporter and for which total assets, sales, or net income exceed $100 million. Previously, all foreign affiliates owned less than 25 percent were exempt from being reported in the BE-11 survey.

EFFECTIVE DATE: These rules will be effective December 4, 1987, commencing with the reports covering fiscal year 1987.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Acting Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0659.

SUPPLEMENTARY INFORMATION: In the September 14, 1987 **Federal Register**, Volume 52, No. 177 (52 FR 34685), BEA published a notice of proposed rulemaking to change the reporting requirements for the BE-11, Annual Survey of U.S. Direct Investment Abroad. No comments on the proposed rulemaking were received. Thus, the final rule changes are the same as the proposed rule changes.

The annual survey is a mandatory survey, conducted pursuant to the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended by section 306 of Pub. L. 98-573). It provides annual time series on important aspects of the operations of U.S. multinational companies, including data on their services activities and international services transactions. The survey covers a sample of nonbank U.S. parent companies and their nonbank foreign affiliates; the sample data are used to generate universe estimates of data for parents and affiliates for years in which benchmark surveys, or censuses, of U.S. direct investment abroad are not conducted.

The BE-11 survey contains three forms—the BE-11A, which covers the U.S. Reporter; the BE-11B, which covers majority-owned foreign affiliates; and the BE-11C, which covers minority-owned foreign affiliates. This rule alters the reporting requirements for the BE-11C form.

Previously, on the BE-11 survey, reporting on form BE-11C was limited to those minority-owned nonbank foreign affiliates owned 25 percent or more, directly or indirectly, by the U.S. Reporter, but not more than 50 percent by all U.S. Reporters of the affiliate combined, and whose assets, sales, or net income exceeded $10 million. U.S. direct investment abroad, however, is defined to include all foreign business enterprises owned *10* (not 25) percent or more, directly or indirectly, by a U.S. person. These final rules alter the reporting requirements on the BE-11C to (1) require filing of a complete BE-11C report for nonbank affiliates owned at least 20 percent, but less than 25 percent, directly or indirectly, by the U.S. Reporter and for which any one of the exemption level items (i.e., total assets, sales or gross operating revenues, or net income) exceeds $10 million, positive or negative, and (2) *for fiscal year 1987 only*, require filing of a partial BE-11C report for nonbank affiliates owned at least 10 percent, but less than 20 percent, directly or indirectly, by the U.S. Reporter and for which any one of the three exemption level items exceeds $100 million, positive or negative. For the former affiliates, all seven data items on the form must be completed each year; for the latter, only three items—assets, sales, and net income—must be completed, and only for fiscal year 1987. The new rules are effective with the BE-11 survey covering 1987.

Collection of the information for 10-to-25 percent-owned affiliates on the BE-11C form will enable the Bureau to provide more reliable estimates for the universe of all foreign affiliates of U.S. companies.

Executive Order 12291

BEA has determined that this rule is not "major" as defined in E.O. 12291 because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The collection of information requirement in this final rule has been approved by OMB (OMB No. 0608-0053).

Regulatory Flexibility Act

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this rule will not have a significant economic impact on a substantial number of small entities. The $10 million exemption level below which reporting of 20-to-25 percent-owned affiliates is not required on the BE-11C form, and the $100 million level below which reporting of 10-to-20 percent-owned affiliates is not required for fiscal year 1987, exclude small businesses from being reported.

List of Subjects in 15 CFR Part 806

Economic statistics, U.S. investment abroad, Penalties, Reporting and recordkeeping requirements.

Dated: October 14, 1987.

Allan H. Young,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, 15 CFR Part 806 is amended as follows:

PART 806—[AMENDED]

1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101-3108, and E.O. 11961, as amended.

2. In § 806.14, paragraphs (f)(3)(iii) and (f)(3)(iv)(B) are revised; paragraphs (f)(3)(iv) (C) and (D) are redesignated (f)(3)(iv) (D) and (E), respectively; and new paragraphs (f)(3)(iv)(C) and (F)(3)(v) are added to read as follows:

§ 806.14 U.S. direct investment abroad.

* * * * *

(f) * * *

(3) * * *

(iii) A complete Form BE-11C (Report for Minority-owned Foreign Affiliate), including all seven data items on the form, must be filed for each minority-owned nonbank foreign affiliate that is owned at least 20 percent, directly or indirectly, by the U.S. Reporter but not more than 50 percent by all U.S. Reporters of the affiliate combined, and for which any *one* of the exemption level items exceeds $10 million. In addition, *for the report covering fiscal year 1987 only*, a partial BE-11C, including only three data items (that is, total assets, sales or gross operating revenues, and net income), must be filed for each minority-owned nonbank foreign affiliate that is owned at least 10 percent, but less than 20 percent, directly or indirectly, by the U.S. Reporter and for which *any* one of the exemption level items exceeds $100 million.

(iv) * * *

(B) *For fiscal year 1987 only*, it is less than 20 percent owned, directly or indirectly, by the U.S. person and none of its exemption level items exceeds $100 million.

(C) For fiscal years other than 1987, it is less than 20 percent owned, directly or indirectly, by the U.S. person.

* * * * *

(v) Notwithstanding the above, an affiliate holding an equity interest in another affiliate that must be reported on Form BE-11B or C must also be reported on Form BE-11B (if majority owned) or C (if minority owned), regardless of the value of its assets, sales, or net income. That is, all affiliates upward in the chain of ownership must be reported.

[FR Doc. 87-25528 Filed 11-3-87; 8:45 am]

BILLING CODE 3510-06-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-25072, File No. S7-16-87]

Exemption of Certain Foreign Government Securities Under the Securities Exchange Act of 1934 for Purposes of Futures Trading

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission amends Rule 3a12-8 under the Securities Exchange Act of 1934 to designate government debt securities issued by Australia, France, and New Zealand as "exempted securities" for purposes of the marketing and trading in the United States of futures contracts on those securities. Rule 3a12-8 currently grants such an exemption to British, Canadian, and Japanese government debt securities underlying foreign futures contracts that meet certain conditions set forth in the Rule. The amendment will extend the exemption to government securities issued by Australia, France, and New Zealand, thereby removing such securities from those on which futures trading in prohibited by the Commodity Exchange Act. Trading the underlying securities, absent compliance with applicable registration and other requirements, will remain prohibited to the same extent as under current federal securities law.

EFFECTIVE DATE: November 4, 1987.

FOR FURTHER INFORMATION CONTACT: David L. Underhill, Esq., 202/272-2375, Division of Market Regulation, Securities and Exchange Commission, Room 5186 (Mail Stop 5-1), 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act ("CEA"), futures trading on individual securities is prohibited unless the underlying security is an exempted security under the Securities Act of 1933 ("Securities Act") or the Securities Exchange Act of 1934 ("Exchange Act"). The Securities and Exchange Commission ("SEC" or "Commission") adopted and later amended Rule 3a12-8 ("Rule") under the Exchange Act to designate British, Canadian, and Japanese government debt obligations ("designated foreign government securities") as "exempted securities" under the Exchange Act solely for purposes of marketing and trading futures on those securities in the United States. In effect, the designation of those securities as exempted securities removes the CEA's prohibition against marketing and trading futures on those securities in the United States, so long as the other terms of the Rule are satisfied. The Commission today adopts an amendment to the Rule. The amendment adds the debt securities of Australia, France, and New Zealand to the list of designated foreign government securities exempted by the Rule. To qualify for the exemption, futures contracts on securities issued by Australia, France, and New Zealand will have to meet all the other existing requirements of the Rule.

II. Background

The CEA, as amended by the Futures Trading Act of 1982,[1] prohibits the trading of futures contracts on individual securities unless those securities qualify as exempted securities under section 3 of the Securities Act or section 3(a)(12) of the Exchange Act.[2] Because foreign government securities are not exempted securities under either of these sections, the CEA prohibition against trading futures on individual securities prevents the marketing and trading of futures on such foreign government securities in this country. Section 3(a)(12) of the Exchange Act, however, provides that the term "exempted security" includes

> Such other securities * * * as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an "exempted security" or to "exempted securities."

In March 1984, pursuant to section 3(a)(12) under the Exchange Act, the Commission promulgated Rule 3a12-8.[3] The Rule, as amended,[4] designates British, Canadian and Japanese government securities that meet certain conditions as "exempted securities" under the Exchange Act. The purpose of the Rule is to permit certain foreign, exchange-traded futures contracts on the designated foreign government securities to be marketed and traded in the United States.[5] Under the Rule, British, Canadian and Japanese government debt securities are considered exempted securities under the Exchange Act only with respect to futures trading on those securities and provided that: (1) The securities are not registered in the United States; (2) the futures contracts require delivery outside the United States; and (3) the futures contracts are traded on a board of trade.[6]

Rule 3a12-8 was promulgated in response to Congress' understanding, in approving the 1982 amendments to the CEA, that neither the SEC nor the Commodity Futures Trading Commission ("CFTC") had intended to bar British government bond futures [7] and that administrative action would be taken to allow the sale of these futures contracts in this country.[8] In promulgating the Rule, the Commission implemented Congress' intent without abandoning its longstanding policy of subjecting foreign government securities, for most purposes, to the requirements of the federal securities laws. Accordingly, the conditions set forth in the Rule are designed to ensure that a domestic market in unregistered foreign government securities does not develop and that futures markets in these instruments are not used to avoid the registration and other provisions of the federal securities laws.

At the time the Commission originally proposed Rule 3a12-8, it recognized that, should the securities of additional governments become subject to futures trading, it would become necessary to amend the Rule to include those

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[1] Pub. L. No. 97-444, 96 Stat. 2294, 7 U.S.C. 1 *et seq.* (1982)

[2] Section 2(a)(1)(B)(v) of the CEA, 7 U.S.C. 2a(v) (1984), provides that "[n]o person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under section 3 of the Securities Act * * * or section 3(a)(12) of the * * * Exchange Act * * *."

[3] *See* Securities Exchange Act Release Nos. 20708, March 2, 1984, 49 FR 8595 ("Adopting Release"), and 19811, May 25, 1983, 48 FR 24725 ("1983 Proposal Release").

[4] The Rule was amended last year to include Japanese government securities. Securities Exchange Act Release No. 23423, July 11, 1986, 51 FR 25996. As originally adopted, the Rule applied only to British and Canadian government securities. *See* Adopting Release, *supra* note 3.

[5] As discussed above, without this designation the trading of futures on these securities in the United States would be prohibited by section 2(a)(1)(B) of the CEA.

[6] A requirement that the board of trade be located in the country that issued the underlying debt security recently was eliminated. *See* Securities Exchange Act Release No. 24209, March 12, 1987, 52 FR 8875.

[7] *See* 1983 Proposal Release, *supra* note 3, 48 FR at 24725 [citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)].

[8] In extending the exemption to futures on Canadian government bonds and bills and then to futures on Japanese yen bonds, the Commission noted that there did not appear to be any legal or regulatory reason for treating them differently from British gilt futures.

securities.[9] Subsequently, the Commission amended the Rule to include Japanese government debt. Currently, the Sydney Futures Exchange ("SFE") is trading futures on Australian government bonds, the Marche a Terme d'Instruments Financiers ("MATIF")[10] is trading futures on French government bonds and bills and New Zealand government bond futures are being traded on the New Zealand Futures Exchange ("NZFE"). The Commission staff has been informed that United States citizens are interested in trading these new products and has received requests that Rule 3a12–8 be amended to allow such trading.[11] As a result, on May 5, 1987, the Commission issued a release ("1987 Proposal Release") proposing two alternative amendments to the Rule.[12] One amendment would add debt securities issued by Australia, France and New Zealand to the Rule's list of designated foreign government securities. The other amendment would add to the Rule's list of designated foreign government securities the unregistered debt obligations of any government with long-term, external sovereign debt outstanding which is rated in one of the two highest rating categories of at least two nationally recognized statistical rating organizations.

III. Discussion

Based on the comment letters received and for the additional reasons discussed below, the Commission has determined that Rule 3a12–8 should be amended to include the debt obligations of Australia, France and New Zealand. The Commission received nine comment letters in response to the 1987 Proposal Release.[13] Seven of the commentators responded to the Commission's request in the 1987 Proposal Release for comments on the desirability of adding debt securities issued by Australia, France and New Zealand to the Rule's list of designated foreign government securities. Each of these seven letters endorsed amending the Rule to add, at a minimum, Australia, France or New Zealand to the list of countries covered by the Rule.[14] Six commentators responded to the Commission's request for comments on the feasibility of a rating standard. Reaction to the rating standard proposal was mixed.[15]

The Commission also solicited comment in its 1987 Proposal Release on whether under either proposal the information available in English regarding newly-eligible futures contracts and underlying sovereign debt would be adequate to permit U.S. investors to make informed investment decisions. While this issue was not addressed specifically by any of the commentators, all of the petitioners that requested that Rule 3a12–8 be expanded to cover the debt securities of Australia, France and New Zealand noted in their petitions that United States investors should have sufficient access to information in English concerning the relevant futures markets and underlying debt instruments.[16]

Finally, the Commission solicited comment on whether there are any legal or policy reasons for determining that debt securities issued by Australia, France and New Zealand or any other country that would qualify under the generic rating standard should not be accorded the same treatment for purposes of futures trading in the United States as are British, Canadian and Japanese debt securities. Each of the two commentators that addressed this issue stated that there did not appear to be any valid legal or policy reasons for denying United States investors the ability to trade futures on debt issued by Australia, France or New Zealand.[17] Indeed, three commentators noted that the expansion of Rule 3a12–8 would represent a positive step forward in the trend toward globalization of the world's securities markets.[18]

The Commission agrees that there are no valid legal or policy reasons for denying United States investors the ability to trade futures on debt securities issued by Australia, France and New Zealand and that the availability of these new hedging vehicles will allow investors to take advantage of the growing globalization of the securities markets. Due in large part to this trend toward internationalization, U.S. investors should have ready access to information in English concerning the markets and government securities of Australia, France and New Zealand. It

[9] *See* 1983 Proposal Release, *supra* note 3, 48 FR at 24726–27.

[10] The MATIF is a financial futures exchange established in Paris in February 1986.

[11] *See* letters from Philip McBride Johnson, Skadden, Arps, Slate, Meagher & Flom, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated August 20, 1986 (Australia) ("Petition I"), October 1, 1986 (New Zeland) ("Petition II"), and February 26, 1987 (France) ("Petition III"); and letter from Eugene W. Boehringer, Managing Director, First Boston Corporation, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated October 1, 1986 (France) ("Petition IV").

[12] *See* Securities Exchange Act Release No. 24428, May 5, 1987, 52 FR 18237.

[13] Letters were received from the following: Neil H. Sherman, First Vice President and Associate General Counsel, Shearson Lehman Brothers, dated June 4, 1987 ("Shearson Letter"); Stephen R. Greene, Vice President, First Boston, dated June 12, 1987 ("First Boston Letter"); J.A. Fraser, Minister (Economic), Embassy of Australia, dated June 15, 1987; Thomas R. Donovan, President, Chicago Board of Trade ("CBT"), dated June 15, 1987; Erkki Liikanen, Minister of Finance, and Kalevi Pykala, Acting Cabinet Counsellor, Ministry of Finance, Finland, dated June 15, 1987 ("Finland Letter"); Jorgen Wagner-Knudsen, General Manager, Morgan & Cie, dated June 15, 1987; Ross Tanner, Counsellor (Economic), New Zealand Embassy, dated June 15, 1987 ("New Zeland Letter"); Kurt D. Steele, Senior Vice President and General Counsel, Standard & Poor's Corp. ("S&P"), dated June 15, 1987 ("S&P Letter"); and Mats Ringborg, Embassy of Sweden, undated ("Sweden Letter"). The Sweden Letter addressed only the trading of futures on Swedish government securities.

[14] Australia and Morgan & Cie only addressed, and were in favor of adding, Australian and French debt securities respectively to those exempted by the Rule. Finland favored the adoption of a rating standard over the addition of Australia, France and New Zealand, because the rating standard would exempt the securities of a greater number of countries, while New Zealand, citing problems that could arise if a country's debt rating were to fall below the two highest rating categories, favored the specific addition of Australia, France and New Zealand. The CBT urged the Commission to amend the Rule to specifically include debt issued by all the countries that would qualify under the proposed rating standard, while Shearson suggested that the Commission adopt both amendments, so as to avoid the possibility that the government securities of Australia, France or New Zealand later would become "disqualified" under the rating standard. Finally, First Boston favored the rating standard over the specific addition of Australia, France and New Zealand, but suggested that the Commission consider exempting *all* sovereign debt for purposes of futures trading.

[15] In addition to the CBT, Finland, First Boston, New Zealand, and Shearson comments described at note 14, *supra*, S&P also addressed the rating standard proposal. While the commentators for the most part favored the addition of debt securities of as many countries as possible to the Rule's list of designated foreign government securities, they raised concerns as to the practicability of a rating standard. In general, these concerns related to the proper functioning of the Rule in the event that a government issuer's rating were to fall below the two highest rating categories and the validity of relying on rating standards as a measure of the depth and liquidity of the secondary market for the government issuer's securities.

[16] *See* Petition I, *supra* note 11, at 6; Petition II, *supra* note 11, at 6; Petition III, *supra* note 11, at 7; Petition IV, *supra* note 11, at 2.

In adopting Rule 3a12–8 the Commission decided not to require, as a condition to the exemption, that such information be available. *See* Adopting Release, *supra* note 3, 49 FR 8597–98. At the time Rule 3a12–8 was adopted both the United Kingdom and Canada had government debt issues registered in the United States. As a result, although those particular issues were not the subject of futures trading, United States investors had relevant disclosure materials concerning the issuers, i.e., the governments of Canada and the United Kingdom. The Japanese government, however, had not registered any securities in the United States when it was added to the Rule's list of eligible issuers. Of the new countries that would become eligible under the current proposal, only New Zealand currently has government debt securities registered in the U.S.

[17] *See* First Boston Letter, *supra* note 13, at 3; Shearson Letter, *supra* note 13, at 2.

[18] *See* Finland Letter, *supra* note 13, at 1; First Boston Letter, *supra* note 13, at 1; New Zealand Letter, *supra* note 13, at 1.

also is important to note that the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the U.S., that the futures contracts require delivery outside the U.S.,[19] and that the contracts be traded on a board of trade) will apply to futures contracts on debt securities issued by Australia, France and New Zealand. This should ensure that the federal securities laws will not be subverted by the marketing and trading of futures on additional government securities in this country.[20]

In light of the comments received and the fact that the Commission has received petitions on behalf of futures exchanges in Australia, France and New Zealand to add debt securities issued by those three countries to the Rule's list of designated foreign government securities, the Commission has determined that the best course is to proceed without delay to amend the Rule to include debt securities issued by Australia, France and New Zealand. Due to the varied comment the Commission received with respect to a proposed amendment to the Rule that would incorporate a generic rating standard and thus expand the Rule to cover the debt securities of countries in addition to Australia, France and New Zealand, the Commission is not taking any action on that proposed amendment. The Commission will continue to assess the feasibility of such an amendment or other alternatives in light of the comments received.

IV. Cost/Benefit Analysis

In connection with the 1987 Proposal Release, the Commission noted that there do not appear to be any costs associated with the amendment adopted today. The amendment is designed to protect U.S. investors by preventing unregistered Australian, French and New Zealand government bonds from entering the country and by requiring that futures on those bonds be traded on boards of trade. In addition, the amendment imposes no recordkeeping or compliance burden in itself and merely provides an exemption under the federal securities laws. The principal benefit associated with the amendment is that it will allow U.S. boards of trade and investors to trade a greater range of futures contracts on foreign government debt. The Commission received no comments on the costs and benefits of the amendment to Rule 3a12–8.

V. Regulatory Flexibility Act Certification

The Chairman of the Commission certified in connection with the 1987 Proposal Release that the amendment to Rule 3a12–8, if adopted, would not have a significant economic impact on a substantial number of small entities. The Commission received no comments on this certification.

VI. Effects on Competition and Other Findings

Section 23(a)(2) of the Exchange Act [21] requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the amendment to Rule 3a12–8 in light of the standards cited in section 23(a)(2) and believes that adoption of the amendment will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act. As stated above, the amendment is designed to assure the lawful availability in this country of Australian, French and New Zealand government debt futures that otherwise would not be permitted to be marketed under the terms of the CEA. The amendment thus serves to expand the range of financial products available in the United States and enhances competition in financial markets. Insofar as the Rule contains limitations, they are designed to promote the purposes of the Exchange Act by ensuring that futures trading on government securities of Australia, France and New Zealand is consistent with the goals and purposes of the federal securities laws by minimizing the impact of the Rule on securities trading and distribution in the United States.

The Commission finds, in accordance with the Administrative Procedure Act,[22] that the amendment to Rule 3a12–8 is exemptive in nature. Accordingly, the Commission has determined to make the foregoing action effective immediately upon publication in the **Federal Register.**

VII. Statutory Basis

The amendment to Rule 3a12–8 is being adopted pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 3(a)(12), 15 U.S.C. 78c(a)(12) and 23(a), 15 U.S.C. 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VIII. Text of the Adopted Amendment

The Commission is amending Part 240 of Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 901, as amended; 5 U.S.C. 78w. * * * § 240.3a12–8 also issued under 15 U.S.C. 78a *et seq.*, particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12), and 23(a), 15 U.S.C. 78w(a).

2. Section 240.3a12–8 is amended by removing the word "or" from (a)(1)(ii), removing the period and adding a semi-colon to (a)(1)(iii), and adding paragraphs (a)(1) (iv) through (vi) as follows:

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[19] The Commission notes that the Australian government bond futures traded on the SFE and the New Zealand government bond futures traded on the NZFE are settled by the delivery of cash, rather than by delivery of the underlying sovereign debt securities. Petition I, *supra* note 11, at 2; Petition II, *supra* note 11, at 2. The proposed domestic trading and marketing of these contracts, which would be the first cash-settled futures to qualify for the exemption afforded by Rule 3a12–8, raises the issue of whether a cash-settled product would satisfy the Rule's delivery requirement. The CFTC also has raised this issue, and suggested that cash settlement would be consistent with the Rule. *See* letters from Virginia F. Crisman, Deputy General Counsel, CFTC, to David Underhill, Attorney, Division of Market Regulation, SEC, dated April 13 and April 16, 1987. The Commission agrees that cash settlement would be consistent with the Rule's requirement that delivery occur outside the U.S. In originally adopting the Rule, the Commission stated that requiring delivery of the underlying, unregistered securities outside the U.S. was designed to "inhibit the development of domestic trading in these unregistered securities." *See* Adopting Release, *supra* note 3, 49 FR at 8598. This concern does not arise in connection with cash settlement, as there is no security required to be delivered. Accordingly, the Commission will not object to the domestic trading and marketing of foreign futures that are cash-settled (whether cash settlement occurs abroad or in the U.S.), assuming the futures satisfy all the Rule's other requirements.

[20] The marketing and trading of foreign futures contracts also 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, while Rule 30.02 (17 CFR 30.02), promulgated under section 2(a)(1)(A) of the CEA, is intended to prohibit fraud in connection with the offer and sale of futures contracts executed on foreign exchanges. In addition, the CFTC recently adopted a series of regulations governing the domestic offer and sale of futures and options contracts traded on foreign boards of trade. The rules, which become effective on January 4, 1988, require, among other things, that the domestic offer and sale of foreign futures be effected through CFTC registrants or comparably regulated entities under a regulatory framework similar to that governing domestic futures contracts. *See* 52 FR 28980 (August 5, 1987).

[21] 15 U.S.C. 78w(a)(2) (1982).

[22] 15 U.S.C. 553 (1982).

§ 240.3a12-8 Exemption for designated foreign government securities for purposes of futures trading

(a) * * *

(1) * * *

(iv) Australia;

(v) France; or

(vi) New Zealand.

* * * * *

By the Commission.

Dated: October 29, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-25506 Filed 11-3-87; 8:45 am]

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17 CFR Parts 270 and 274

[Release No. IC-16093; File No. S7-22-86]

Exemption From the Investment Company Act of 1940 for the Offer or Sale of Debt Securities and Non-Voting Preferred Stock by Foreign Banks or Foreign Bank Finance Subsidiaries

AGENCY: Securities and Exchange Commission.

ACTION: Final rule and form.

SUMMARY: The Commission today announced the adoption of rule 6c-9 and a related form under the Investment Company Act of 1940. A foreign bank or the bank's finance subsidiary may rely on the rule to offer or sell its own debt securities or non-voting preferred stock in the United States without registering as an investment company, provided that certain conditions are met. In this connection, the rule eliminates the need for such an entity to obtain an exemptive order.

EFFECTIVE DATE: December 4, 1987.

FOR FURTHER INFORMATION CONTACT: Brian M. Kaplowitz, Chief, (202) 272-2048, or Ann M. Glickman, Special Counsel, (202) 272-3042, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting rule 6c-9 under the Investment Company Act of 1940 (the "Act"), which will permit a foreign bank or the bank's finance subsidiary to offer or sell its own debt securities or non-voting preferred stock in the United States. The rule would be available to any such entity that might otherwise apply for an order under section 6(c) of the Act [15 U.S.C. 80a-6(c)] granting an exemption from all provisions of the Act.[1]

The Commission is also adopting a new form, form N-6C9, which is to be filed with the Commission by foreign entities relying on thé rule and, in the case of finance subsidiaries, by their parent companies. The filing of the form will appoint an agent for service of process in the United States.

The Commission proposed rule 6c-9 and form N-6C9 in Investment Company Act Release No. 15314 (September 17, 1986) [51 FR 34221] (the "Proposing Release"). The Commission received several letters of comment in response to the proposals. The rule and form, as adopted, have been modified in some respects to address commentators' concerns.

The background and substance of the proposals are discussed fully in the Proposing Release. This release will, therefore, discuss only briefly the status of foreign banks and their finance subsidiaries under the Act and summarize the proposals. Thereafter, the release will discuss the comments received and describe the provisions of rule 6c-9 and form N-6C9 in their final form.

Background

A. Status of Foreign Banks Under the Act

A bank may be considered an investment company to the extent that it is involved in owning, holding, trading, investing or reinvesting in securities.[2] Institutions that are banks within the definition in section 2(a)(5) of the Act[3] are expressly excepted from the definition of investment company by section 3(c)(3) of the Act [15 U.S.C. 80a-3(c)(3)]. In addition, some foreign banks have been granted exemptions under section 6(c) of the Act permitting them to sell their own equity[4] and debt securities in the United States.[5]

B. Status of Foreign Bank Finance Subsidiaries Under the Act

Foreign banks often form wholly-owned United States subsidiaries to assist them in raising capital. Such a subsidiary sells its own securities and then loans the offering proceeds to the bank or to a company controlled by the bank. As consideration for these loans, the subsidiary receives evidences of indebtedness, such as promissory notes, from the parent or controlled company. The evidences of indebtedness may be considered investment securities under the Act,[6] and if those securities amount to more than 40% of its total assets, the finance subsidiary is considered an investment company under section 3(a)(3) of the Act, unless excepted or exempted by some other section.[7]

A foreign bank finance subsidiary that comes within the definition of investment company must, before offering or selling its own securities in the United States, either register as such with the Commission or apply for an order under section 6(c) for an exemption from the Act. Consequently, many finance subsidiaries have requested and received exemptive orders.[8]

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[1] Section 6(c) provides that the Commission may, by rules and regulations upon its own motion, or by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class of persons, securities, or transactions, from any provision or provisions of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes intended by the policy and the provisions of the Act.

[2] "Investment company" is defined in section 3(a)(1) of the Act [15 U.S.C. 80a-3(a)(1)] as any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily in the business of investing, reinvesting, or trading in securities.

"Investment company" is defined in section 3(a)(3) of the Act [15 U.S.C. 80a-3(a)(3)] as any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of the issuer's total assets (exclusive of Governmént securities and cash items) on an unconsolidated basis.

"Investment securities" are defined in section 3(a)(3) to include all securities except (A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which are not investment companies.

[3] "Bank" is defined in section 2(a)(5) of the Act [15 U.S.C. 80a-2(a)(5)] to include (A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, or (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of the Act.

[4] *See infra* at note 18.

[5] *See* Proposing Release at note 9 and accompanying text.

[6] Section 2(a)(36) of the Act [15 U.S.C. 80a-2(a)(36)] defines "security" to include, *inter alia*, any note or evidence of indebtedness. Such an instrument would be considered an "investment security" under section 3(a)(3). *See supra* note. 2.

[7] *See supra* note 2. Rule 3a-5 [17 CFR 270.3a-5] exempts from the definition of investment company the finance subsidiaries of parent companies that are not investment companies under section 3(a) of the Act or that have been excepted or exempted from that definition by Commission order by section 3(b) or by the rules and regulations under section 3(a). Rule 3a-5 is not available to the finance subsidiaries of foreign banks, however, because foreign banks are considered investment companies under the Act and are traditionally exempted by order under section 6(c).

[8] *See* Proposing Release at notes 18 and 19, and accompanying text.