



DIVISION OF
MARKET REGULATION

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

January 12, 2000

Alan J. Sinsheimer, Esq.
Sullivan & Cromwell
125 Broad Street
New York, New York 10004-2498

Re: Regulation M - Sovereign Bond Exemption
File No. TP 98-16

Dear Mr. Sinsheimer:

In your letter dated October 8, 1999, as supplemented by conversations with the staff, you request on behalf of Goldman, Sachs & Co. and J.P. Morgan & Co. (collectively, the Firms) an exemption from Regulation M in connection with offerings of certain foreign sovereign debt securities (Sovereign Bonds) issued by non-U.S. sovereign governments. Specifically, you seek an exemption to permit the Firms to act as market makers in Sovereign Bonds while they are distribution participants in offerings of the Sovereign Bonds. We have attached a copy of your letter to avoid reciting the facts that it presents. Unless otherwise noted, each defined term in this letter has the same meaning as in your letter.

Response:

On the basis of your representations and the facts presented, but without necessarily concurring in your analysis, the Commission hereby grants an exemption from Rule 101 of Regulation M (Rule 101) to permit the lead underwriters or dealer-managers of an offering of Sovereign Bonds (collectively, the Dealer-managers), as described below and in your letter, and their market maker affiliates¹ to bid for or purchase Sovereign Bonds and any reference securities during the applicable restricted period for the distribution of the Sovereign Bonds.

The foregoing relief is subject to the following conditions:

¹ For purposes of this letter, the term 'affiliate' means any person that directly or indirectly controls, is controlled by, or is under common control with, a Dealer-manager.

1. The Sovereign Bonds must be debt securities issued or guaranteed by a foreign government or a political subdivision of a foreign government (as those terms are used in Section 7(a) of the Securities Act of 1933, as amended (Securities Act)), or any other entity that has been authorized to file registration statements under Schedule B of the Securities Act (any such foreign government, political subdivision, or other entity, a Sovereign);
2. The Sovereign Bonds must be transferable and payable by their terms or at the option of the holders thereof in U.S. dollars;
3. The Sovereign Bonds must be part of an issue of debt securities having an aggregate principal amount equal to at least US\$500 million;
4. Including the distribution in question, the debt securities of or guaranteed by such Sovereign which are unsecured, transferable, and payable by their terms in U.S. dollars must have an outstanding principal amount of at least US\$1 billion;
5. The Sovereign Bonds must be rated at least Ba3 by Moody's Investors Service, Inc. or BB- by Standard & Poor's or have an equivalent rating from another nationally recognized statistical rating organization (NRSRO);
6. The Dealer-managers and their market maker affiliates in a distribution of Sovereign Bonds must not account for more than 20 percent of the average daily trading volume (ADTV) in the particular Sovereign Bonds being distributed and any reference securities during the time of the otherwise applicable restricted period;
7. There must be at least 10 dealers (exclusive of the Dealer-managers and their affiliates) regularly placing bids and offers for the Sovereign Bonds, of which 5 dealers must be continuous market-makers in the Sovereign Bonds;
8. The Dealer-managers and their market maker affiliates may only bid for or purchase Sovereign Bonds and any reference securities during the otherwise applicable restricted period for the purpose of making a market in the Sovereign Bonds;

9. The bid and ask prices for the Sovereign Bonds must be available on a widely disseminated electronic information service (e.g., Telerate, Reuters, Bloomberg);
10. The Dealer-managers must provide to the Division, upon request, a daily time-sequenced schedule of all transactions by the Dealer-managers and their market maker affiliates in the Sovereign Bonds being distributed covering the period starting five business days prior to the pricing of the Offering, and ending when the distribution in the United States is completed or abandoned, on a transaction by transaction basis. The schedule must include:
 - a. size, broker (if any), time of execution, and price of each transaction;
 - b. the exchange, quotation system, or other facility through which the transaction occurred; and
 - c. whether the transaction was made for a customer account or a proprietary account.

These records must be maintained by the Dealer-managers and their affiliates for a period of at least two years from the date of the termination of the distribution of the Sovereign Bonds; and

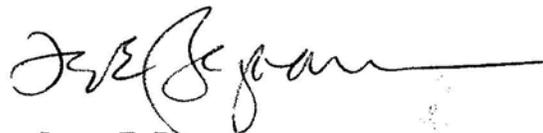
11. The Prospectus for the Offering must disclose that the Dealer-managers and their affiliates have been exempted, consistent with this relief, from the provisions of Rule 101.

The foregoing exemption from Rule 101 is based solely on your representations and the facts presented, and is strictly limited to transactions fulfilling the conditions outlined above. Such transactions should be discontinued, pending presentation of the facts for our consideration, in the event that any material change occurs with respect to any of the facts or representations. This relief is only available to Sovereign Bond distribution participants that are Dealer-managers and their market maker affiliates. Please note that some of the criteria that we use to qualify this exemption differ from the definition of Qualified Sovereign Debt Security in your letter. Although your request is limited to the activities of the Firms, we extend our response to Dealer-managers and their market maker affiliates that meet the conditions set forth in this letter.

Alan J. Sinsheimer, Esq.
Sullivan & Cromwell
January 12, 2000
Page 4

In addition, your attention is directed to the anti-fraud and anti-manipulation provisions of the federal securities laws, including Sections 9(a)(2) and 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the Dealer-managers and their affiliates. We express no view with respect to any other questions that the proposed transactions may raise, including, but not limited to, the adequacy of disclosure concerning, and the applicability of any other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Market
Regulation, pursuant to delegated authority,

A handwritten signature in black ink, appearing to read "Larry E. Bergmann", with a long horizontal line extending to the right.

Larry E. Bergmann
Senior Associate Director

Attachment

Securities Exchange Act of 1934
- Rules 101 and 102 of Regulation M

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October 8, 1999

Office of Risk Management and Control,
Division of Market Regulation,
Securities and Exchange Commission,
450 Fifth Street, N.W.,
Washington, D.C. 20549.

Attention: Larry E. Bergmann
(Associate Director)

Re: Regulation M — Sovereign Debt Exemption

Dear Mr. Bergmann:

We are writing on behalf of Goldman, Sachs & Co. and J.P. Morgan & Co. (collectively, the "Bankers") to request a general exemption from Rule 101 ("Rule 101") and Rule 102 ("Rule 102" and, together with Rule 101, the "Rules") of Regulation M ("Reg. M") under the Securities Exchange Act of 1934, as amended, to allow the persons and entities that would otherwise be subject to the restrictions imposed by the Rules (collectively, "Participants") to bid for or purchase, or attempt to induce other persons to bid for or purchase, Qualified Sovereign Debt Securities in connection with distributions of such Qualified Sovereign Debt Securities.

As used herein, the term "Qualified Sovereign Debt Security" means any debt security which is issued or guaranteed by a foreign government or a political subdivision of a foreign government (as those terms are used in Section 7(a) of the Securities Act of 1933, as amended (the "Securities Act")), or any multilateral organization or other entity that has been authorized to file registration statements under Schedule B of the Securities Act (any such foreign government, political subdivision, multilateral organization or other entity, a "Sovereign"), but only if:

- (a) such debt security is payable by its terms in U.S. dollars;

(b) such debt security is part of an issue of debt securities having an aggregate principal amount equal to at least U.S. \$500 million;

(c) the lead managers of the distribution in question are able to estimate in good faith that their daily purchases and sales of such debt security will not on average account for more than 20% of the average daily trading volume in such debt security;

(d) the debt securities of or guaranteed by such Sovereign which are unsecured, transferable and payable by their terms or at the option of the holders thereof in U.S. dollars aggregate, or will after giving effect to the distribution in question aggregate, at least U.S. \$1 billion in principal amount, and the lead managers of such distribution are able to estimate in good faith that their daily purchases and sales of such debt securities do not on average account for more than 20% of the average daily trading volume in such debt securities; and

(e) the unsecured debt securities of such Sovereign are rated at least B1 (or the then-equivalent rating) by Moody's Investors Service, Inc. (or its successor), B+ (or the then-equivalent rating) by Standard & Poor's (a division of The McGraw-Hill Companies) (or its successor) or a comparable rating of any other nationally recognized statistical rating organization, either actually or implicitly, but are not rated investment grade by any nationally recognized statistical rating organization.*

I. MARKET FOR QUALIFIED SOVEREIGN DEBT SECURITIES

Based on conversations with the Bankers, we understand the following to be true with respect to the market for Qualified Sovereign Debt Securities:

The principal market for trading in Qualified Sovereign Debt Securities, both inside and outside the United States, is the over-the-counter inter-dealer market (the "OTC Market").

More than 10 dealers (excluding the Bankers) regularly place bids and offers for, and more than 5 dealers (excluding the Bankers) are continuous market-makers in, the

* Debt securities which are rated investment grade by a nationally recognized statistical rating organization are already exempt from the Rules as a result of paragraph (c)(2) of Rule 101 and paragraph (d)(2) of Rule 102.

Qualified Sovereign Debt Securities of a typical Sovereign. Bid and ask prices for Qualified Sovereign Debt Securities in the OTC Market are widely available, via display on inter-dealer broker screens, display on Telerate, Reuters and Bloomberg electronic information services and otherwise.

Although Qualified Sovereign Debt Securities are (by definition) not rated investment grade by a nationally recognized statistical rating organization, Qualified Sovereign Debt Securities generally trade primarily on the basis of spreads (or, in the case of floating rate securities, equivalents to spreads) to U.S. treasury securities of comparable duration, in a manner similar to trading in investment grade debt securities and in contrast to trading in many issues of high yield debt securities. Moreover, Qualified Sovereign Debt Securities generally trade with bid-ask spreads which are consistent with bid-ask spreads for investment grade debt securities but narrower than the bid-ask spreads typical for high yield debt securities. Finally, spreads (or spread equivalents) for Qualified Sovereign Debt Securities of any particular Sovereign are, when adjusted for differences in duration, generally closely correlated; this means as a practical matter that purchases of Qualified Sovereign Debt Securities would have a smaller impact on the spreads (or spread equivalents) at which those Qualified Sovereign Debt Securities trade than they would otherwise have, since those spreads would be compared by the market to spreads (or spread equivalents) for other Qualified Sovereign Debt Securities of the same Sovereign.

II. REQUESTED RELIEF AND POLICY BASIS

The Rules are anti-manipulation rules that, subject to certain exceptions, prohibit persons participating in a distribution of securities from bidding for or purchasing, or attempting to induce other persons to bid for or purchase, such securities until they have completed their participation in the distribution.

Based on the facts concerning the market for Qualified Sovereign Debt Securities as we understand them, we believe that the policies and purposes underlying the Rules would not be furthered by applying the Rules to bids for, purchases of and attempts to induce other persons to bid for or purchase Qualified Sovereign Debt Securities. Accordingly we hereby request the Securities and Exchange Commission (the "SEC"), acting pursuant to paragraph (d) of Rule 101 and paragraph (e) of Rule 102, to exempt Participants from the restrictions imposed by the Rules on bidding for, purchasing or attempting to induce other persons to bid for or purchase Qualified Sovereign Debt Securities in connection with distributions of such Qualified Sovereign Debt Securities. The exemption granted in connection with a distribution of a Qualified Sovereign Debt Security for any Participant not otherwise required to do so would be conditioned on that Participant (a) providing to the Division of Market Regulation, upon request, a daily time-sequenced

schedule of all transactions in such Qualified Sovereign Debt Security made during the period commencing on the later of the date of the commencement of offers and sales in such distribution or the date on which such Participant became a participant in such distribution, and ending when such distribution in the United States is completed or abandoned, on a transaction-by-transaction basis, including (i) size, broker (if any), time of execution, and price of transaction, (ii) the exchange, quotation system, or other facility through which the transaction occurred and (iii) whether the transaction was executed for a customer account or a proprietary account, and (b) retaining the records required in order to comply with any such request for a period of not less than two years from the date of the completion or abandonment of such distribution.

Exemption from the restrictions imposed by the Rules in the context of Qualified Sovereign Debt Securities is, in our view, warranted for the following reasons.

(a) The Bankers believe that purchases by Participants of Qualified Sovereign Debt Securities are unlikely to have a significant impact on the price of such Qualified Sovereign Debt Securities, due to (i) the liquidity and depth of the trading market in the Qualified Sovereign Debt Securities of the applicable Sovereign, (ii) the number of dealers regularly placing bids and offers for, or continuously making markets in, the Qualified Sovereign Debt Securities of such Sovereign, (iii) the Bankers' belief that Qualified Sovereign Debt Securities generally trade primarily on the basis of spreads (or, in the case of floating rate securities, equivalents to spreads) to U.S. treasury securities of comparable duration (in a manner similar to trading in investment grade debt securities and in contrast to trading in many issues of high yield debt securities) and (iv) the Bankers' belief that Qualified Sovereign Debt Securities generally trade with narrow bid-ask spreads consistent with those for investment grade debt securities but tighter than those typical for high yield debt securities, all as described in greater detail in the preceding section of this letter.

(b) Although Qualified Sovereign Debt Securities are (by definition) not rated investment grade, the Bankers believe that Qualified Sovereign Debt Securities trade in a manner similar to that of investment grade debt securities (see paragraph (a) above). Accordingly, the same considerations that led to the exemptions for investment grade debt securities contained in paragraph (c)(2) of Rule 101 and paragraph (d)(2) of Rule 102 would apply to Qualified Sovereign Debt Securities as well.

(c) The issuer or guarantor of the Qualified Sovereign Debt Securities which are the subject of a distribution would be a sovereign or other entity whose financial affairs are widely reported on, the distribution of such securities would be

expected to be global in nature and the investor base for the distribution in question would be expected to be highly institutional.

(d) When Argentina, Brazil, Panama and Venezuela conducted global bond offerings recently, the SEC granted exemptions from Rule 101 to allow trading in the global bonds being distributed. The policy reasons underlying the exemptions given in those transactions generally apply to Qualified Sovereign Debt Securities as well.

* * *

Please call the undersigned at (212) 558-3738, William J. Williams, Jr. at (212) 558-3722 or Carlos J. Spinelli-Nosedá at (212) 558-4309 with any questions you may have concerning this request.

Very truly yours,



Alan J. Sinsheimer