



July 22, 2011

David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

**Comment of the Inter-American Development Bank
on the Proposed Rule Entitled Further Definition of “Swap,”
“Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps;
Security-Based Swap Agreement Recordkeeping
(File Number S7-16-11)**

Dear Commissioners:

This comment is submitted by the Inter-American Development Bank (the “IDB”) in respect of implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). Reference is made to the comment, dated July 22, 2011, submitted by the International Bank for Reconstruction and Development (“IBRD”) and the International Finance Corporation (“IFC”) on behalf of all multilateral development institutions (as defined in 22 U.S.C. § 262r(c)) in which the United States is a member, among which include the IDB. We endorse the approaches proposed in the comment submitted by IBRD and IFC and the reasoning set forth therein.

We wish to take this opportunity to provide additional information regarding (i) the IDB’s mission and governance, (ii) the IDB’s privileges and immunities; and (iii) the IDB’s use of derivatives for risk management purposes, for the information and consideration of the Commissioners.

1. The IDB’s mission and governance.

The IDB is an international, intergovernmental organization established, owned, and controlled by 48 sovereign member countries. The mission of the IDB is to contribute to the acceleration of the process of economic and social development of its regional developing member countries in Latin America and the Caribbean, individually and collectively.

The IDB achieves its mission by making loans and guarantees to governments, and to governmental entities, enterprises, and development institutions of its developing member countries, to help meet their development needs. In the case of loans and guarantees to borrowers other than national governments or central banks, the IDB follows the policy of requiring a joint and several guarantee engaging the full faith and credit of the national government. Loans and guarantees may also be made directly to other eligible entities carrying out projects in the territories of developing member countries, including private sector entities or sub-sovereign entities, without a sovereign guarantee and in all sectors, provided they meet the IDB's lending criteria. The IDB also provides financing to borrowing member countries for non-reimbursable and contingent recovery assistance that is aligned with its overall strategy for the region.

The IDB's policies identify five sector priorities to work towards achieving its mission:

- Social policy for equity and productivity;
- Infrastructure for competitiveness and social welfare;
- Institutions for growth and social welfare;
- Competitive regional and global international integration; and
- Protection of the environment, response to climate change, promotion of renewable energy and ensuring food security.

As an international, intergovernmental organization, the IDB is managed on a collective governance basis by its sovereign shareholders. The United States is the largest shareholder of the IDB. All the powers of the IDB are vested in a Board of Governors, which consists of one Governor and Alternate Governor appointed by each member country. The IDB Board of Executive Directors consists of 14 Directors: one appointed by the United States, one appointed by Canada, three elected by the Governors for the non-regional member countries, and the remaining nine elected by the Governors for the regional borrowing member countries. The Board of Executive Directors has been delegated all the powers to oversee the management of the institution except for certain powers reserved to the Governors under the IDB Charter (as defined and referenced below).

2. The IDB's Privileges and Immunities Are Recognized Under U.S. Law.

As with IBRD, IFC and the other multilateral development institutions, the sovereign members of the IDB granted certain privileges and immunities to the IDB in the IDB's constituent treaty, the Agreement Establishing the Inter-American Development Bank (the "IDB Charter").

The IDB Charter includes the following provisions:

- "No action shall be brought against the Bank by members or persons acting for or deriving claims from members." (IDB Charter, Article XI, Section 3);

- “Property and assets of the Bank, wheresoever located and by whomsoever held, shall be considered public international property and shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.” (IDB Charter, Article XI, Section 4);
- “The archives of the Bank shall be inviolable.” (IDB Charter, Article XI, Section 5);
- “To the extent necessary to carry out the purpose and functions of the Bank and to conduct its operations in accordance with this Agreement, all property and other assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature, except as may otherwise be provided in this Agreement.” (IDB Charter, Article XI, Section 6);
- “The Bank, its property, other assets, income, and the operations and transactions it carries out pursuant to this Agreement, shall be immune from all taxation and from all customs duties. The Bank shall also be immune from any obligation relating to the payment, withholding or collection of any tax, or duty.” (IDB Charter, Article XI, Section 9(a))
- “No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held: (i) which discriminates against such obligation or security solely because it is issued by the Bank; or (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.” (IDB Charter, Article XI, Section 9(c)); and
- “No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held: (i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.” (IDB Charter, Article XI, Section 9(d))

In addition to embodying these privileges and immunities in the IDB Charter, the member governments of the IDB agreed to accept and implement these privileges and immunities in domestic law. Article XI, Section 10 of the IDB Charter provides that “[e]ach member, in accordance with its juridical system, shall take such action as is necessary to make effective in its own territories the principles set forth in this article, and shall inform the Bank of the action which it has taken on the matter.”

Under U.S. law, the Inter-American Development Bank Act, codified at 22 U.S.C. § 283g, provides that: “the provisions of . . . article XI, sections 2 to 9, both inclusive, of the agreement, shall have full force and effect in the United States, its Territories and

possessions, and the Commonwealth of Puerto Rico, upon acceptance of membership by the United States in, and the establishment of, the Bank.”

In addition, the United States has adopted the International Organizations and Immunities Act (22 U.S.C. § 288) and the Foreign Sovereign Immunities Act (28 U.S.C. § 1602), both of which grant additional protections to multilateral development institutions, including the IDB.

These statutory enactments reflect the fact that the IDB is an international, intergovernmental organization established and organized under international legal agreements and international law. The IDB is not organized under the laws of the United States or any other country. As with IBRD and IFC, the IDB maintains its headquarters in Washington, but this does not alter its legal character as an international, intergovernmental organization. The IDB is not a United States person or United States resident, and, pursuant to the IDB Charter, its development activities are directed outside the United States. As a primary example, in the United States, the securities of the IDB are “exempted securities” under the Securities Act of 1933 and the Securities Act of 1934 pursuant to 22 U.S.C. § 283h.

3. The IDB Uses Derivatives Solely For Risk Management Purposes.

The IDB uses over-the-counter derivatives to hedge currency, interest rate, and other market risks in lending, borrowing, equity management, and investment operations and does not engage in speculative transactions. These risk management transactions are integral to the development operations of the IDB, and the IDB has well-developed capabilities for managing the risks associated with derivatives, including transaction valuation tools and collateral management operations. Furthermore, the IDB has policies and systems that ensure that appropriate legal agreements are in place prior to trading and risk management operations that monitor commercial counterparty credit exposure. The IDB’s legal and risk management functions are institutionally separate from the IDB’s financial operations.

Moreover, the IDB does not give bonuses or differential compensation arrangements that depend on the financial performance of individual employees. Thus, neither management nor staff of the IDB has any individual financial incentive to undertake undue risk.

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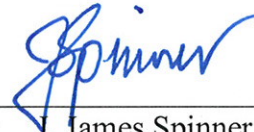
In accordance with the comment submitted by IBRD and IFC and as described in more detail therein, we suggest that the use of derivatives by the IDB should continue to be authorized, monitored, and controlled by its sovereign members on a collective basis, rather than through national legislation and regulation, and that the CFTC should implement the Dodd-Frank Act in a manner that (a) fully respects the privileges and immunities of the IDB, and (b) does not impair the development effectiveness of the IDB.

The IDB would welcome the opportunity to engage in direct consultations about any potential implementation options that the Commissioners or the staff of the Commission believe would be appropriate. Furthermore, we may take the opportunity to supplement this comment with additional analysis and information.

Sincerely yours,



Søren Elbech
Treasurer



J. James Spinner
General Counsel