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Secretariat

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

COMMENT

Comment of the Inter-American Development Bank on the Proposed Rule Entitled “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants”¹

Dear Mr. Stawick and Commissioners:

This comment is submitted by the Inter-American Development Bank (“IDB”) in respect of the 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 September 14, 2012 (the “IBRD and IFC Comments”) submitted by the International Bank for Reconstruction and Development (“IBRD”) and the International Finance Corporation (“IFC”), on their own behalf, and on behalf of other multilateral development institutions in which the United States is a member, among which the IDB is included (collectively, the “MDBs”). As provided in the IBRD and IFC Comments, we request that the Commission ensure that the above-referenced Proposed Rule is implemented in a manner that does not impair the ability of MDBs, including the IDB, to continue to engage in non-cleared swaps with swap dealers and major swap participants on a mutually agreed and bilaterally negotiated basis.

The IDB filed a comment on the proposed rule entitled “Further Definition of ‘Swap,’ ‘Security-Based Swap,’ and ‘Security-Based Swap Agreement’; Mixed Swaps; Security-Based Swap Agreement Recordkeeping” on July 22, 2011. In that comment, the IDB provided information on the following: (i) the IDB’s mission and governance; (ii) the IDB’s privileges and immunities and the recognition of the same under U.S. law; and (iii) the IDB’s use of derivatives solely for risk management purposes.² We wish to express our appreciation for the Commission’s decision as reflected in the final rules that foreign governments, foreign central banks, and international financial institutions should neither be required to register as swap dealers or major swap participants nor be subject to the mandatory clearing requirement under Section 2(h)(1) of the Commodity Exchange Act.³ We welcome the Commission’s acknowledgement of the importance of the privileges and immunities accorded to international financial institutions.

We take this opportunity to express our support for the IBRD and IFC Comments, particularly with respect to their petition that MDBs should be excluded from the application of the Proposed Rule and from the scope of the terms “financial entity” and “U.S. person”. We further wish to note for the Commission’s consideration certain information specific to the IDB: (i) the potential conflict between the Proposed Rule and the IDB’s privileges and immunities; and (ii) confirmation of previous views expressed by the Commission that IBRD and by extension MDBs, including the IDB, are not U.S. persons, are maintained under, and in connection with, the implementation of the Dodd-Frank Act. Further discussion on these points follows.

1. Proposed Margin Requirements will conflict with the IDB’s Privileges and Immunities

As provided in the IBRD and IFC Comments, regulation of non-cleared swap transactions between MDBs and swap dealers or major swap participants will effectively amount to regulation of MDBs, and this

¹ 76 Fed. Reg. 23732.

² A copy of this comment is attached as Attachment 1.

³ “Further Definition of ‘Swap Dealer,’ ‘Security-Based Swap Dealer,’ ‘Major Swap Participant,’ ‘Major Security-Based Swap Participant’ – 77 Fed. Reg. 30596 and ‘Eligible Contract Participant’ and “End-User Exception to the Clearing Requirement for Swaps” – 77 Fed. Reg. 42559.

regulation will be inconsistent with the privileges and immunities of MDBs. In the case of the IDB, these privileges and immunities are granted under the IDB's constituent treaty, the Agreement Establishing the Inter-American Development Bank (the "IDB Charter").

The IDB Charter provides the following provisions, *inter alia*, with respect to the IDB's privileges and immunities:

- "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]; and
- "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 imposition of Proposed Rule on the IDB would require that the IDB allow restrictions, regulations and controls on its property and assets for a purpose, namely adherence with the Proposed Rule, which is outside the scope of the IDB's operations under the IDB Charter.

2. The IDB is not a U.S. person

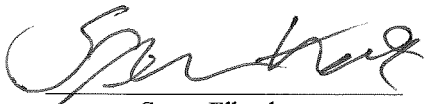
The Commission has taken the view that IBRD is not a U.S. person and we request that the IDB be recognized in the same regard.⁴ As such we further request that the IDB be excluded from the interpretation of the term U.S. person as provided in the "Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act"⁵.

Further, a specific exclusion from the definition of the term U.S. person would be consistent with Regulation S of the Securities Act of 1933, as amended. For purposes of Regulation S, the definition of U.S. person specifically excludes for its scope the IDB along with other MDBs. We firmly believe that a similar exclusion from the definition of U.S. person is warranted in connection with the implementation of the Dodd-Frank Act.

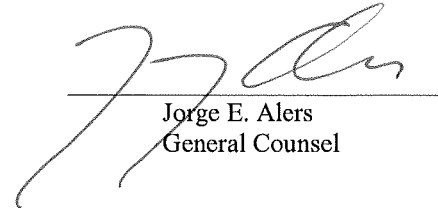
The IBRD and IFC Comments weigh similar considerations with reference to the regulations and experiences that govern their own institutions. The IDB fully shares these principles as another MDB, as prescribed in the IBRD and IFC Comments. As we endorse the conclusions of the IBRD and IFC Comments, we believe that the IDB should be permitted to continue to undertake its operations without regard to particular obligations under the Proposed Rule.

In conclusion, we appreciate the fact that the Commission has recognized the special status of the IDB and other MDBs in its decisions to date in respect of the implementation of Title VII of the Dodd-Frank Act, and respectfully request a similar resolution of the Proposed Rule and the definitional issues discussed above.

Sincerely yours,



Søren Elbech
Treasurer



Jorge E. Alers
General Counsel

⁴ CFTC Interpretative Letter regarding World Bank Group, Oct. 30, 1991, cited in the Clearing Release at footnote 16 ("Based on the unique attributes and status of the World Bank Group as a multinational member agency, . . . the CFTC believes that the World Bank Group need not be treated as a U.S. person for purposes of application of the CFTC's Part 30 rules.").

⁵ 77 Fed. Reg. 41213.



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.

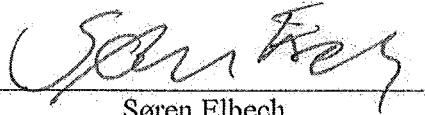
- “Property and assets of the Bank, wheresoever located and by whomsoever held, shall be considered public international property and shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.” (IDB Charter, Article 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

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