

February 9, 2017

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

International Bank for Reconstruction and Development –
Comment on the Proposed Rule Entitled
“Cross-Border Application of the Registration Thresholds and External Business Conduct Standards
Applicable to Swap Dealers and Major Swap Participants” – RIN 3038-AE54¹

Dear Mr. Kirkpatrick:

The International Bank for Reconstruction and Development (“IBRD”) appreciates the opportunity to submit this comment letter. We commend the Commission’s initiative to begin to codify in regulation the cross-border application of its swap regulatory regime under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Title VII”). In particular, we strongly support the position expressed in the preamble of the Proposed Rule that IBRD and other international financial institutions (with IBRD, “IFIs”)² are not U.S. persons for purposes of the Commission’s Title VII swap regulations. As discussed by the Commission, this position is consistent with principles of international comity and the treatment of IFIs as non-U.S. persons in various of the Commission’s Title VII swap regulations.³

As discussed in more detail below, we urge the Commission to consider two modifications to the Proposed Rule’s treatment of IFIs; these modifications are designed to enhance the clarity and certainty for IFIs regarding their treatment as non-U.S. persons. First, the Commission should include an explicit exclusion from the definition of U.S. person for IFIs in the text of the U.S. person definition under Rule 1.3(aaaaa)(5). Second, the Commission should include within that exclusion pension plans of IFIs, as the Securities and Exchange Commission (“SEC”) has done under its Title VII rules. We believe the Commission’s statements in issuing the Proposed Rule support these modifications and, moreover, that these modifications are warranted to ensure that the Commission’s treatment of IFIs is more closely aligned with that of the SEC.

¹ 81 Fed. Reg. 71,946 (October 18, 2016) (the “Proposed Rule”).

² The Commission lists in footnote 33 of the Proposed Rule those institutions that it would consider within the definition of IFI for these purposes. Proposed Rule at 71949. This list includes, among others, the members of the World Bank Group and the International Monetary Fund. *Id.*

³ E.g., Clearing Requirement Determination Under Section 2(h) of the CEA, 77 Fed. Reg. 74,284 at 74,315 (Dec. 13, 2012), referring to the discussion of international financial institutions in the End-User Exception to the Clearing Requirement for Swaps, 77 Fed. Reg. 42,560 at 42,562 (July 19, 2012); Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 Fed. Reg. 45,292 at 45,353 (July 26, 2013), note 531, *id.* at 45,360, notes 595 and 598; and Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant”, 77 Fed. Reg. 30,596 at 30,693 (May 23, 2012).

Non-U.S. person status of IFIs should be included as an exemption from the U.S. person definition in the rule text.

We strongly agree with the Commission's recognition in the preamble to the Proposed Rule that IBRD and other IFIs are non-U.S. persons.⁴ As the Commission seeks to provide certainty to swap market participants by codifying the cross-border application of its regulations implementing Title VII, including through the Proposed Rule, we strongly encourage the Commission to adopt an explicit exclusion for IFIs from the definition of U.S. person in the text of that definition in CFTC Rule 1.3(aaaa)(5). While we appreciate the statements in the preamble text that IFIs would not be U.S. persons, including an exemption in the rule text would provide greater clarity and certainty for IFIs and their swap counterparties as they seek to comply with the Commission's rules. In addition, this approach would better align the Commission's rules with the U.S. person definition adopted by the SEC under Title VII, which includes an exclusion for IFIs and their pension plans and agencies in the text of its U.S. person definition.⁵

Pension plans of IFIs should be excluded from the U.S. person definition.

In proposing its U.S. person definition, the Commission sought public comment on whether any aspects of the Proposed Rule should be further aligned with the SEC's Title VII U.S. person definition in Rule 3a71-3(a)(4).⁶ We believe that the Commission should further align its U.S. person definition with that of the SEC's by including pension plans of IFIs in the exclusion from the definition of U.S. person available to IFIs.

IBRD and other IFIs sponsor employee benefit plans, including pension plans, for their employees. While some of the pension plans sponsored by IBRD are organized as trusts for which IBRD acts as Trustee, the plans cannot be seen as separate from IBRD but must be considered as a mere instrumentality or organ of IBRD. Indeed, IBRD holds legal title to the assets of the plans; the plans are covered by the privileges and immunities of IBRD in all respects; without staff and all matters related thereto, including remuneration and pension arrangements, none of IBRD's operations and transactions authorized by the IBRD's Articles of Agreement would be achievable; trusts are closely linked to the Bank with respect to its function, purpose and management control; and the operations and activities of the plans are integrated with and part of the operations and activities of the IBRD itself. The pension plans' only purpose is to provide a safe mechanism for funding employee pensions, out of reach of IBRD's creditors, and free from state interference.

⁴ Proposed Rule at 71,949; *id.* at 71,965 note 144; and *id.* at 71,970 note 170.

⁵ 17 C.F.R. 240.3a71-3(a)(4)(iii).

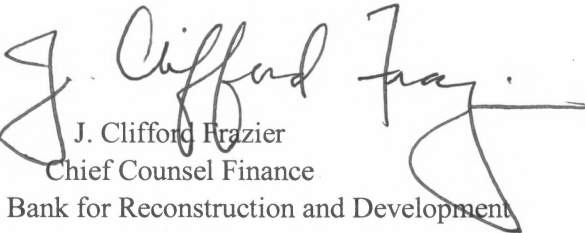
⁶ Proposed Rule at 71,950.

We believe, therefore, that it is appropriate to treat these pension plans as part of the IFI to which they relate for purposes of the Commission's Title VII U.S. person definition. This treatment would further align the Commission's U.S. person definition with that of the SEC and ensure consistent treatment across the Title VII swap and security-based swap regulatory regimes.

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We appreciate the Commission's consideration of these comments. Please contact me at cfrazier@worldbank.org if you would like to discuss these points in more detail.

Sincerely,



J. Clifford Frazier
Chief Counsel Finance
International Bank for Reconstruction and Development

