



July 13, 2020

**VIA CFTC COMMENTS PORTAL**

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

Re: **Asian Infrastructure Investment Bank Comments on Notice of Proposed Rulemaking Regarding Swap Clearing Requirement Exemptions; RIN 3038-AE33**

Dear Mr. Kirkpatrick:

This letter is submitted by the Asian Infrastructure Investment Bank (“AIIB” or the “Bank”) in response to the Notice of Proposed Rulemaking (the “Proposed Rule”) published in the *Federal Register* by the U.S. Commodity Futures Trading Commission (“CFTC”) on May 12, 2020 regarding proposed amendments to the CFTC’s regulations under 17 C.F.R. Part 50 governing exemptions from the clearing requirement set forth under Section 2(h)(1) of the Commodity Exchange Act (the “CEA”), 7 U.S.C. § 2(h)(1)(A).<sup>1</sup> AIIB appreciates the opportunity to present its views on the Proposed Rule.

AIIB is a multilateral development bank (“MDB”) that commenced its operations on January 16, 2016. The Bank is an international organization, with its principal office located in Beijing, People’s Republic of China. AIIB has no offices located in the United States or its territories. AIIB was established under and operates pursuant to its Articles of Agreement (the “Agreement”), an international treaty to which governments are parties and which entered into force on December 25, 2015.<sup>2</sup> Under the Agreement, the purpose of the Bank, which is not a private institution and does not have private shareholders, is to (i) foster sustainable economic development, create wealth and improve infrastructure connectivity in Asia by investing in infrastructure and other productive sectors and (ii) promote regional cooperation and partnership in addressing development challenges by working in close collaboration with other multilateral and bilateral development

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<sup>1</sup> Swap Clearing Requirement Exemptions, 85 Fed. Reg. 27,955 (May 12, 2020) (hereinafter the “Proposing Release”).

<sup>2</sup> See AIIB, Articles of Agreement, available at <https://www.aiib.org/en/about-aiib/basic-documents/articles-of-agreement/index.html>.

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institutions. At present, AIIB has 82 regional and non-regional members and 20 prospective members including, but not limited to, the following countries: Australia, Austria, Azerbaijan, Bangladesh, Brunei Darussalam, Cambodia, Canada, China, Denmark, Egypt, Finland, France, Georgia, Germany, Iceland, India, Indonesia, Israel, Italy, Jordan, Kazakhstan, Republic of Korea, Luxembourg, Kyrgyz Republic, Lao People's Democratic Republic, Malaysia, Maldives, Malta, Mongolia, Myanmar, Nepal, Netherlands, New Zealand, Norway, Oman, Pakistan, Philippines, Poland, Portugal, Qatar, Russia, Saudi Arabia, Singapore, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Thailand, Turkey, United Arab Emirates, United Kingdom, Uzbekistan and Vietnam.<sup>3</sup>

#### **I. AIIB Supports an Exemption from the CEA Clearing Requirement for Central Banks, Foreign Governments and International Financial Institutions**

Section 2(h)(1)(A) of the CEA, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), establishes that it is unlawful for any person to engage in certain classes of swaps unless that person submits such swaps for clearing to a "derivatives clearing organization," as that term is defined under the CEA, that is registered with the CFTC (unless exempt from registration).<sup>4</sup> The Proposed Rule would establish a new Subpart D to Part 50 of the CFTC's regulations, pursuant to which swaps entered with a "central bank," "sovereign entity," or an "international financial institution" ("IFI"), as those terms are defined and described under the Proposed Rule, would be exempt from the clearing requirement of the CEA.<sup>5</sup>

The Proposed Rule would codify the CFTC's earlier determination in the preamble to the CFTC's 2012 final rule implementing the "end-user exception" to the CEA clearing requirement set forth under Section 2(h)(7) thereof (the "End-User Exception Rule") that central banks, foreign governments and IFIs should be exempt from the central clearing requirement.<sup>6</sup> The CFTC explained the rationale for the exemption in the preamble to the End-User Exception Rule, and restated it in the Proposed Rule, as follows.

First, because the U.S. Federal Reserve Banks and the U.S. Government are not subject to the clearing requirement under the Dodd-Frank Act, the CFTC expected, and correctly anticipated, that if any part of the Federal Government, Federal Reserve Banks, or IFIs of which the United States is a member were to engage in swap transactions

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<sup>3</sup> See AIIB, Members and Prospective Members of the Bank, <https://www.aiib.org/en/about-aiib/governance/members-of-bank/index.html> (last visited July 6, 2020). Prospective members denote those jurisdictions whose membership application has already been approved by AIIB's Board of Governors, but that have not yet become members.

<sup>4</sup> 7 U.S.C. § 2(h)(1)(A); see also 17 C.F.R. § 50.2. The CFTC has determined that four classes of interest rate swaps and two classes of credit default swaps are required to be cleared. See 17 C.F.R. § 50.4; Clearing Requirement Determination Under Section 2(h) of the CEA, 77 Fed. Reg. 74,284 (Dec. 13, 2012).

<sup>5</sup> See Proposing Release at 27,960–61 & 27,973. The exemption would be conditioned on the requirement that IFIs report exempt swaps to a swap data repository pursuant to 17 C.F.R. §§ 45.3 and 45.4.

<sup>6</sup> End-User Exception to the Clearing Requirement for Swaps, 77 Fed. Reg. 42,560 (July 19, 2012).

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in a foreign jurisdiction, the actions of those entities with respect to those transactions would not be subject to foreign regulation. Thus, it was appropriate to accord similar treatment under U.S. law for non-U.S. sovereigns *and the entities in which they are members*. Second, the CFTC stated that “canons of statutory construction ‘assume that legislators take account of the legitimate sovereign interests of other nations when they write American laws.’” In addition, the CFTC noted that IFIs operate with the benefit of certain privileges and immunities under U.S. law indicating that such entities may be treated similarly under certain circumstances. The CFTC emphasized that there is nothing in the text or legislative history of the swap-related provisions of the Dodd-Frank Act to establish that Congress intended to deviate from the traditions of the international system by subjecting foreign governments, foreign central banks, or IFIs to the clearing requirement set forth in Section 2(h)(1) of the CEA.<sup>7</sup>

AIIB commends the CFTC for recognizing that considerations of comity and the proper functioning of the international system demand that central banks, foreign sovereigns and international organizations in which governments are members be exempt from the U.S regime of mandatory central clearing. The rationale for the exemption set forth by the CFTC strongly supports a broad exemption for MDBs, including AIIB.

## **II. AIIB Should Be Treated Like Other MDBs and Exempt from the CEA Clearing Requirement**

Under proposed new Regulation 50.76, the term “international financial institution” would include (i) institutions identified by the CFTC as such in the End-User Exception Rule; (ii) entities to which the CFTC’s Division of Clearing and Risk issued No-Action Letters in 2013 and 2017;<sup>8</sup> (iii) the Islamic Development Bank; and (iv) “any other entity that provides financing for national or regional development in which the U.S. government is a shareholder or contributing member.”<sup>9</sup> The Proposed Rule enumerates 22 specific entities that would qualify as IFIs for purposes of the clearing exemption for such institutions.

At the outset, we would like to make two observations regarding the proposed framework for determining IFI status under new Regulation 50.76. First, the Proposing Release states that the criteria set forth in the Proposed Rule for determining whether an entity is viewed as an IFI are designed to align with the framework established in the

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<sup>7</sup> Proposing Release at 27,957 (internal citations omitted); *see also* 77 Fed. Reg. at 42,562.

<sup>8</sup> We note that, on May 9, 2018, AIIB submitted a request to the CFTC’s Division of Clearing and Risk for No-Action relief from the CEA clearing requirement based principally on the same factors discussed in this letter. The CFTC staff has not yet acted on AIIB’s request, based on broader preferences to act through rulemaking. AIIB respectfully requests that it should be exempted from the CEA clearing requirement through the current rulemaking process.

<sup>9</sup> Proposing Release at 27,960.

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preamble to the End-User Exception Rule for determining the same.<sup>10</sup> The End-User Exception Rule was finalized in 2012 prior to the formation and commencement of AIIB's operations. Accordingly, the list of IFIs enumerated in that Rule, which was based in part on the list of institutions recognized as MDBs under the European Market Infrastructure Regulation ("EMIR"), could not have included AIIB.<sup>11</sup> As discussed further below, AIIB is now recognized as an MDB under EMIR and therefore is exempt from central clearing requirements thereunder.<sup>12</sup> Inclusion of AIIB in the list of exempted IFIs would thus encourage international comity and promote cross-border cooperation with authorities abroad, particularly with EU authorities. Second, in respect of (b)(23) of proposed new Regulation 50.76, there is no requirement under the CEA or the Dodd-Frank Act that the U.S. government be a shareholder or contributing member of a foreign institution in order for that institution to qualify for an exemption from the CEA's clearing requirement. Indeed, the U.S. government is not a shareholder or contributing member of ten of the 22 institutions proposed for exemption, namely, Banco Centroamericano de Integración Económica (CABEI), Bank for Economic Cooperation in the Middle East and North Africa, Caribbean Development Bank, Corporación Andina de Fomento, Council of Europe Development Bank, European Investment Bank, European Investment Fund, European Stability Mechanism, Islamic Development Bank, and Nordic Investment Bank, each of which nevertheless is deemed to be an IFI under the Proposed Rule. This approach is consistent with the rationale in the Proposing Release concerning the treatment to be accorded non-U.S. sovereigns *and the entities in which they [but not necessarily the United States] are members.*

With respect to the substantive qualities of IFIs, the CFTC states its view in the Proposing Release that an entity may be viewed as an IFI for purposes of an exemption from the CEA clearing requirement if it has the following qualities:

A significant proportion of the entity's shareholders are limited to sovereign governments or other [IFIs/MDBs]; the entity has been granted legal privileges and immunities that are typical of those enjoyed by other [IFIs/MDBs]; the entity is governed by representatives from the public sector; the entity is a not-for-profit entity whose mission is to foster and promote economic development in developing areas; the entity's financing is used to support activities that are in the public interest, *i.e.*, socioeconomic development projects; the entity uses swaps only to hedge credit, interest rate, or currency risk incurred during financing activities in support of their public interest missions; swaps are not used for speculative purposes; and the entity satisfies other

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<sup>10</sup> See *id.* at 27,959.

<sup>11</sup> See 77 Fed. Reg. at 42,561, discussion at note 14.

<sup>12</sup> See *infra* discussion under Part IV and note 22.

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considerations deemed important by the [CFTC], including the public interest. The [CFTC] believes these qualities appropriately describe [IFIs] for purposes of an exemption from the clearing requirement.<sup>13</sup>

The Proposing Release contains a request for comments on whether any other entity meeting these criteria should be added to the list of enumerated entities deemed to be IFIs under the Proposed Rule. As described in greater detail below, we believe that AIIB meets the stated criteria in the Proposing Release to qualify as an IFI for the purposes of an exemption from the CEA clearing requirement. The mission, function and organizational structure of AIIB are comparable to those of other IFIs currently included in the Proposed Rule. In sum, there is no principled basis for excluding AIIB from the definition of IFI to be established in the CFTC's final rule.

### **III. The Structure and Operations of AIIB**

The notable aspects of AIIB's organizational structure and purpose, membership, administration and governance, capital structure, legal status and privileges and immunities and swaps activities are summarized below. As discussed in Part IV of this letter, the characteristics and qualities of AIIB are comparable to those of other MDBs viewed as IFIs under the Proposed Rule.

#### **A. *Organizational Structure and Purpose***

As noted, the Bank commenced its operations on January 16, 2016 to help its members meet a substantial financing gap between the demand for infrastructure in Asia and available financial resources. The Bank aims to work with public and private sector partners to channel its own public resources, together with private and institutional funds, into sustainable infrastructure investment. The Bank focuses on three areas of particular relevance which have evolved into the Bank's thematic priorities: (1) sustainable infrastructure (*i.e.*, promoting green infrastructure and supporting countries to meet their environmental and development goals); (2) cross-border connectivity (*i.e.*, prioritizing cross-border infrastructure, ranging from roads and rail, to ports, energy pipelines and telecommunications across Central Asia, and the maritime routes in South East and South Asia, and the Middle East, and beyond); and (3) private capital mobilization (*i.e.*, devising innovative solutions that catalyze private capital, in partnership with other MDBs, governments, private financiers and other partners).

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<sup>13</sup> Proposing Release at 27,960–61.

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**B. *Membership***

Membership of the Bank is open to members of the International Bank for Reconstruction and Development (the “World Bank”)<sup>14</sup> or the Asian Development Bank.<sup>15</sup> In the case of an applicant that is not a sovereign or not responsible for the conduct of its international relations (*e.g.*, a political subdivision such as a semi-autonomous territory), application for membership in the Bank must be presented or agreed by the member of the Bank responsible for its international relations. As noted above, the Bank currently has 82 regional and non-regional members and 20 prospective members.

**C. *Administration and Governance***

Pursuant to the Agreement, the Bank is administered and managed by a Board of Governors, a Board of Directors, a President, one or more Vice-Presidents and other officers and staff. All of the powers of the Bank are vested in the Board of Governors, consisting of one Governor and one Alternate Governor appointed by each member. While the Agreement does not specify criteria for the appointment of a Governor by the member, the current composition of Governors includes officials of ministerial (or equivalent) rank. Notably, they are all public officials. All matters before the Board of Governors are decided by a majority vote, other than matters that are designated as a super majority or special majority vote per the Agreement (such as certain matters pertaining to membership, Bank operations and capital, and amendments to the Agreement).

The Board of Directors consists of twelve members who are not members of the Board of Governors, with nine being elected by the Governors representing regional members and three by the Governors representing non-regional members. The Board of Directors is responsible for the conduct of the Bank’s operations through the exercise of powers delegated to it by the Board of Governors, in addition to those expressly assigned to it by the Agreement.<sup>16</sup> The Directors, who serve the Bank on a non-resident basis, hold office for two-year terms and may be re-elected. They also must be nationals of member jurisdictions and persons of recognized capacity and experience in economic and financial matters. Matters before the Board of Directors are decided by a majority vote, except as otherwise provided in the Agreement.

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<sup>14</sup> As of the date of this letter, the World Bank has 189 members. For a complete listing of such members, *see* The World Bank, Member Countries, <https://www.worldbank.org/en/about/leadership/members> (last visited July 7, 2020).

<sup>15</sup> As of the date of this letter, the Asian Development Bank has 68 members. For a complete listing of such members, *see* Asian Development Bank, Who We Are, About ADB, Members, <https://www.adb.org/about/members> (last visited July 7, 2020).

<sup>16</sup> With certain exceptions set forth in the Agreement, the Board of Governors may delegate its powers to the Board of Directors. In addition to any delegated powers, the Board of Directors is responsible for functions such as establishing the policies of the Bank, making decisions on major operational and financial policies, supervising the management and operation of the Bank, and approving the strategy, annual plan and budget of the Bank.

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The President of the Bank shall be elected by a super majority vote of the Board of Governors through an open, transparent and merit-based process. The President must be a national of a regional member and may not be a Governor, a Director or an alternate for either. The term of office of the President is five years with the possibility of one additional term. The first term of the current President, Mr. Jin Liqun, is scheduled to expire in 2021.

The President, officers and staff of the Bank, in the discharge of their offices, are responsible solely to the Bank and may not recognize any other authority. The members are obligated to respect the international character of this obligation. Moreover, pursuant to the Agreement, the Bank, its President, officers and staff may not interfere in the political affairs of any members nor be influenced in their decisions by the political character of the member concerned.

#### **D. *Capital Structure***

The authorized capital of the Bank consists of \$100,000,000,000 divided into paid-in shares having an aggregate par value of \$20,000,000,000 and callable shares having an aggregate par value of \$80,000,000,000. Payment of subscribed capital is due in five installments, except for members designated as less developed countries which may pay in up to ten instalments. As of December 31, 2019, the members had subscribed an aggregate of \$96,718,400,000 of the Bank's share capital, of which \$19,343,700,000 was paid-in and \$77,374,700,000 was callable. AIIB is poised to be a major issuer in the international capital markets. As of the end of the first quarter of 2020, AIIB issued through private placements a total of about \$395,120,000 equivalent fixed rate notes under the Bank's Global Medium-Term Note Programme. In addition, as discussed further below, AIIB filed a shelf registration with the U.S. Securities and Exchange Commission ("SEC") which was declared effective as of May 2020 for \$12,000,000,000. AIIB anticipates that it will be required to negotiate a significant volume of swaps in connection with issuances under these programs.

#### **E. *Legal Status and Privileges and Immunities***

The Agreement provides that AIIB is a juridical person in international law and enjoys, in the territory of each of its members, the following immunities, exemptions and privileges. The Bank enjoys immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its power to raise funds, to guarantee obligations, or to buy and sell securities, in which case actions may be brought in a court of competent jurisdiction in the territory in which the Bank has an office, has appointed an agent for service of process, or has issued or guaranteed securities. Moreover, no action may be brought against the Bank by a member or an instrumentality of such member; instead they have recourse to special procedures for dispute settlement as described in the Agreement, in the Bylaws and regulations of the Bank, or in contracts entered with the Bank.

The property and other assets of AIIB are immune from all forms of seizure, attachment or execution before delivery of a final judgment against the Bank, and from search, requisition, confiscation, expropriation or any other forceful taking by executive or

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legislative action. The archives of the Bank and all documents belonging to it or held by it are inviolable, regardless of location or who holds them. The Bank, its assets, property, income and its operations and transactions are immune from all taxes and customs duties, and the Bank is immune from any obligation relating to the payment, withholding or collection of any tax or duty.

All Governors, Directors, Alternates, the President, Vice Presidents and other officers and employees of the Bank are immune from legal process with respect to acts performed by them in their official capacity, except when the Bank waives this immunity. The salaries, emoluments and expenses which the Bank pays to its Directors, Alternate Directors, President, Vice Presidents and other officers and employees of the Bank are exempt from taxation, save to the extent that a member has explicitly reserved its right to tax such payments to its nationals or citizens.

#### **F. *Swaps Activities***

In order to mitigate counterparty, interest rate and currency risks, AIIB may wish to negotiate and execute various types of swaps, including interest rate swaps, cross currency swaps, asset swaps and other swaps, including in the United States and with U.S. counterparties. All such swaps would be executed for hedging or other asset and liability management purposes. At present, however, AIIB has not negotiated swaps with any U.S. counterparty because, unlike other MDBs, the Bank is not yet exempt from U.S. central clearing and regulatory margin requirements. AIIB has a U.S. dollar-based balance sheet and hedging into U.S. dollars is central to the Bank's financial management. The Bank may fund itself in various markets and currencies, but maintaining its capital denominated in U.S. dollars is crucial for its purposes.

The Bank effects swaps transactions, including pursuant to International Swaps and Derivatives Association Master Agreements with Credit Support Annexes, executed with counterparties deemed eligible pursuant to its internal criteria (*e.g.*, minimum credit ratings, willingness to net exposures, and collateral exchange arrangements). The Bank does not engage in swaps transactions for speculative purposes.

#### **IV. The Status of AIIB as an IFI Exempt from the CEA Clearing Requirement**

For the reasons discussed above and summarized below, we believe that AIIB should be treated consistently with other MDBs and deemed to be an IFI under the proposed new Regulation 50.76 exempting IFIs from the CEA swap clearing requirement.

***Ownership Structure.*** AIIB's ownership structure is consistent with that of the IFIs/MDBs identified in the Proposed Rule. For example, the MDBs with which the World Bank works are "characterized by a broad membership, including both borrowing developing countries and developed donor countries, and not limited to member countries from the region of a regional development bank. Each [MDB] has its own independent legal and operational status, but with a similar mandate and a considerable number of joint



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owners, the MDBs maintain a high level of cooperation.”<sup>17</sup> AIIB can be characterized in precisely the same way. The Bank’s member base is broad, consisting of regional and non-regional members with economies of varying sizes, strengths and growth rates. The Bank benefits from strong shareholder support from all its members, is conservatively managed and, including for these reasons, has attracted the highest credit rating from all three major credit rating agencies.<sup>18</sup> The Bank is an independent legal entity that enjoys a wide array of privileges and immunities, is jointly owned by its members, and is governed by representatives therefrom. In addition, the Bank engages in co-financings and other forms of close collaboration with a number of MDBs and IFIs.<sup>19</sup>

AIIB was established by and operates pursuant to the Agreement. The Bank’s members have paid substantial capital and contribute in a significant manner to the governance and operations of the Bank. The Bank’s Board of Governors consists entirely of representatives appointed by those members, and all powers of the Bank are vested in its Board of Governors.

***Organizational Mission and Activities.*** AIIB’s mission and activities are comparable to those of the IFIs identified in the Proposed Rule, including those for which the CFTC has, to date, determined No-Action relief from the CEA’s clearing requirement to be appropriate.<sup>20</sup> The Bank may offer a range of financial products, including loans, equity investments and guarantees of loans for economic development (either as primary or secondary obligor). For the Bank to agree to provide financing, the project in question must meet a variety of conditions, including the following: (i) it must have clearly defined development objectives consistent with the Bank’s purpose that permit appropriate evaluation of the project’s impact, (ii) it must provide for specific productive activities necessary to meet these development objectives, (iii) alternative sources of finance, in particular private capital, must be unavailable for the project on terms and conditions that the Bank considers reasonable and (iv) it must be in compliance with all applicable Bank

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<sup>17</sup> See, e.g., The World Bank, Who We Are, Partners, Affiliates, <https://www.worldbank.org/en/about/partners#2> (last visited July 6, 2020).

<sup>18</sup> See AIIB, Credit Ratings Reports, [https://www.aiib.org/en/treasury/other\\_content/rating-reports/index.html](https://www.aiib.org/en/treasury/other_content/rating-reports/index.html) (last visited July 6, 2020).

<sup>19</sup> AIIB has entered into a co-financing framework agreement with the World Bank and has signed memoranda on joint cooperation and co-financing with several institutions in which the United States is a member, including the Asian Development Bank, the Inter-American Development Bank and Inter-American Investment Corporation, and the World Bank Group. For further information, see AIIB, Who We Are, Partnerships, <https://www.aiib.org/en/about-aiib/who-we-are/partnership/index.html> (last visited July 10, 2020).

<sup>20</sup> CFTC No-Action Letter No. 13-25 (June 10, 2013) (CAF); CFTC No-Action Letter No. 17-57 (Nov. 7, 2017) (CABEL); CFTC No-Action Letter No. 17-58 (Nov. 7, 2017) (ESM); CFTC No-Action Letter No. 17-59 (NAD Bank) (Nov. 7, 2017).

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policies. The objectives of the Bank's financing activities, as well as their limited scope, are consistent with the generally recognized activities of an MDB.<sup>21</sup>

Moreover, as noted above, AIIB is now recognized as an MDB within the meaning established under EMIR and therefore is exempt from central clearing requirements thereunder.<sup>22</sup> AIIB also has been recognized by the Basel Committee on Banking Supervision as an MDB and, as such, the Basel Committee has agreed that national supervisors may allow banks to apply a 0% risk weighting to claims on AIIB for purposes of its framework for international capital adequacy standards.<sup>23</sup>

***Legal Privileges and Immunities.*** AIIB is an MDB that has been granted privileges and immunities within the territories of its members. As noted, the Bank—together with its income, assets, property, operations and transactions pursuant to the Agreement—is exempt from all taxes and customs duties and from any obligation relating to the payment, withholding or collection of any such tax or duty. The property and assets of the Bank are free from restrictions, regulations, controls and moratoria of any nature. With limited exception, the Bank is immune from every form of legal process. Because AIIB enjoys status, privileges and immunities comparable to that of the IFIs identified in the Proposed Rule, including those designated in the recent No-Action Letters, the Bank should be accorded the same treatment in any final rule promulgated by the CFTC.

***Transparent Hedging Activities and Financing Operations.*** AIIB engages in swaps transactions for the sole purpose of hedging interest rate, currency, or other risks associated with its assets and liabilities. All such activity relates to the Bank's financing activities and the conduct of its ordinary operations. The Bank's risk management policies dictate that swaps will only be entered into on the basis of netting and collateralization of

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<sup>21</sup> See, e.g., U.S. Treasury Department, Resource Center, Multilateral Development Banks, <https://home.treasury.gov/policy-issues/international/multilateral-development-banks> (last visited July 6, 2020) (“MDBs provide financial and technical support to developing countries to help them strengthen economic management and reduce poverty. Together, the MDBs provide support to the world's poorest in every corner of the globe, strengthening institutions, rebuilding states, addressing the effects of climate change, and fostering economic growth and entrepreneurship.”).

<sup>22</sup> Article 1(5)(a) of the EMIR exempts “multilateral development banks, as listed under Section 4.2 of Part 1 of Annex VI to Directive 2006/48/EC.” Directive 2006/48/EC has been repealed and recast in Directive 2013/36/EU and Regulation (EU) No 575/2013. A correlation table between the provisions of the repealed Directive 2006/48/EC and the new Regulation (EU) No 575/2013 can be found under Annex IV of the new Regulation (EU) No 575/2013 where it is made clear that point 20 of former Section 4.2 of Part 1 of Annex VI of Directive 2006/48/EC corresponds to Article 117(2) of the new Regulation (EU) No 575/2013, under which AIIB is designated as an MDB. See Regulation (EU) No 575/2013 of the European Parliament and of the Council, Art. 117(2)(p) (June 26, 2013), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02013R0575-20190627&from=EN>. Pursuant to these authorities, AIIB is an MDB pursuant to Section 1(5)(a) of the EMIR and is exempt from the requirements of that regulation.

<sup>23</sup> Basel Committee on Banking Supervision, Risk Weight for AIIB, <https://www.bis.org/bcbs/publ/d417b.pdf> (last visited July 6, 2020).

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exposures on a mark-to-market basis, with collateralization thresholds being determined based on ratings or other appropriate financial and non-financial indicators. Currently, collateral is to be held in cash, denominated in U.S. dollars. The Bank is permitted to enter into derivatives transactions only with counterparties that satisfy specific credit standards. As noted, the Bank does not engage in derivatives transactions for speculative purposes. The scope of the Bank's derivatives activity therefore is within the parameters described in the Proposing Release for the activities of qualifying IFIs.<sup>24</sup>

In addition, AIIB's financing operations—which are conducted globally, including in the U.S. dollar market<sup>25</sup> and with U.S. counterparties—are transparent. The SEC granted AIIB No-Action relief permitting it to file voluntary annual reports on Form 18-K and to use the shelf registration procedure for Schedule B issuers, including through incorporation by reference of annual reports on Form 18-K and amendments thereof on Form 18-K-A. On March 20, 2020, AIIB used this authority and filed a shelf registration.<sup>26</sup> On May 18, 2020, the SEC declared AIIB's first shelf registration for \$12,000,000,000 in effect.<sup>27</sup> On May 28, 2020, AIIB issued \$3,000,000,000 principal amount of 0.500% notes due 2025 registered pursuant to this shelf registration statement. The shelf registration contains copies of the Agreement, as well as AIIB's Bylaws, its Fiscal Agency Agreement, its Form of Underwriting Agreement and relevant legal opinions. AIIB also publishes its financial reports, including audited annual financial reports, on its website and includes them in its SEC filings, including annual reports on Form 18-K. AIIB has a commitment to file annual reports on Form 18-K so long as any of its securities sold pursuant to a registration statement is outstanding. In sum, comprehensive information regarding AIIB's financial condition and financing operations is readily available to the public.

For the reasons discussed in this letter, AIIB meets the criteria set forth in the Proposing Release to be deemed an IFI that is exempt from the CEA clearing requirement pursuant to the proposed new Regulation 50.76.

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<sup>24</sup> See Proposing Release at 27,960–61.

<sup>25</sup> On May 16, 2019, AIIB completed its inaugural SEC-registered offering, with the issuance of \$2,500,000,000 principal amount of 2.250% notes due 2024 registered on its initial registration statement pursuant to Schedule B (File No. 333-228613) under the Securities Act of 1933.

<sup>26</sup> See Registration Statement Under Schedule B of the Securities Act of 1933 of AIIB (as filed with the SEC March 20, 2020), <https://www.sec.gov/Archives/edgar/data/1733112/000119312520080673/0001193125-20-080673-index.htm>.

<sup>27</sup> See Notice of Effectiveness dated May 18, 2020, <https://www.sec.gov/Archives/edgar/data/1733112/000119312520080673/0001193125-20-080673-index.htm>.

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AIIB appreciates the opportunity to provide these comments in response to the Proposed Rule, and we thank the CFTC for its consideration of the request set forth herein. We would be pleased to provide additional information to the CFTC if it would be helpful in this regard. To that end, please feel free to contact me by telephone at +86-10-8358-0929 or by email at [Andrew.Cross@aiib.org](mailto:Andrew.Cross@aiib.org) or Whitney Debevoise by telephone at (202) 942-5042 or by email at [Whitney.Debevoise@arnoldporter.com](mailto:Whitney.Debevoise@arnoldporter.com) or Daniel Waldman by telephone at (202) 942-5804 or by email at [Dan.Waldman@arnoldporter.com](mailto:Dan.Waldman@arnoldporter.com) of our U.S. counsel Arnold & Porter Kaye Scholer LLP.

Very truly yours,



Andrew Cross  
Chief Financial Officer

cc: Domenico Nardelli  
Martine Mills Hagen  
Rüdiger Woggon  
Christopher Smith  
(Asian Infrastructure Investment Bank)

Whitney Debevoise  
Daniel Waldman  
(Arnold & Porter Kaye Scholer LLP)