



November 26, 2012

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Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
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Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, NW
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Alfred M. Pollard
General Counsel
Attention: Comments/RIN 2590-AA45
Federal Housing Finance Agency
Eighth Floor, 400 Seventh Street, SW
Washington, DC 20024

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Comment of the Inter-American Development Bank on the Proposed Rule Entitled “Margin and Capital Requirements for Covered Swap Entities”

Dear Sirs:

This comment letter 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”). Specifically, this comment letter is with respect to the proposed rule entitled “Margin and Capital Requirements for Covered Swap Entities” (the Proposed Rule)¹ issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the Federal Housing Finance Agency (collectively, the “Agencies”)².

Reference is made to the comment letter, dated November 26, 2012 on the Proposed Rule submitted by the International Bank for Reconstruction and Development (“IBRD”) and the International Finance Corporation (“IFC”) on behalf of all multilateral development institutions in which the United States is a

¹ 76 Fed. Reg. 27564.

² The Agencies and their respective RINs for the Proposed Rule include the Office of the Comptroller of the Currency (Docket ID OCC-2011-0008 and RIN 1557-AD43), Board of Governors of the Federal Reserve System (Docket No. R-1415 and RIN 7100 AD74), Federal Deposit Insurance Corporation (RIN 3064 AD 79), Farm Credit Administration (RIN 3052-AC69), and Federal Housing Finance Agency (RIN 2590-AA45).

member, among which the IDB is included (collectively, the “MDBs”). As provided in the IBRD and IFC comments, we request that the Agencies ensure that the 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, rather than being subject to regulatory margin requirements. Further, we request regulatory clarifications to ensure that capital requirements applicable to non-cleared, non-margined swaps with MDBs accurately reflect the minimal risk involved in such exposures.

The IDB filed a comment letter with the above stated opinions with the Commodity Futures Trading Commission (the “CFTC”) on September 14, 2012 regarding the proposed rule, “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants” (the “CFTC’s Proposed Margin Rule”).³ On July 22, 2011, the IDB also filed a comment letter with the CFTC on the proposed rule, “Further Definition of ‘Swap,’ ‘Security-Based Swap,’ and ‘Security-Based Swap Agreement’; Mixed Swaps; Security-Based Swap Agreement Recordkeeping”. The CFTC’s decision as reflected in the final rules was 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.⁴ We welcome these decisions and the CFTC’s acknowledgement of the importance of the privileges and immunities accorded to international financial institutions such as the IDB and other MDBs.

We wish to take this opportunity to provide the Agencies with the following information about the IDB: (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.

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.

³ 76 Fed. Reg. 23732.

⁴ “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.

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 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 other MDBs, 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)]; 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 actions 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 MDBs, 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, D.C., but this does not alter its legal character as an international, intergovernmental organization. The IDB is not a U.S. person, nor is it a U.S. 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.

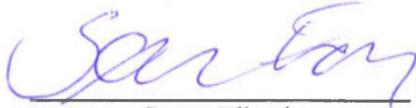
The IDB uses over-the-counter derivatives to hedge currency, interest rate, and other market risks in lending, borrowing, equity management, and investment operations and does not engage in speculative transactions. These risk management transactions are integral to the development operations of the 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 final performance of individual employees. Thus, neither management nor staff of the IDB has any individual financial incentives to undertake undue risk.

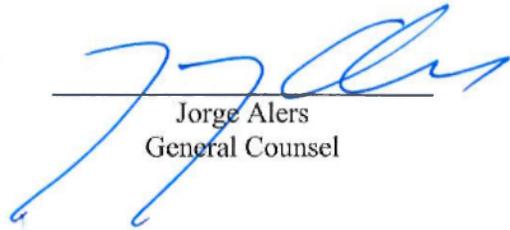
The IBRD and IFC comments weigh similar considerations with reference to the regulations and experiences that govern their own institutions. The IDB fully shares these principles as another MDB, as prescribed in the IBRD and IFC comments. As we endorse the conclusions of the IBRD and IFC comments, we 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 CFTC 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 we respectfully request a similar resolution by the Agencies of the Proposed Rule and the definitional issues discussed above.

Sincerely yours,



Søren Elbech
Treasurer



Jorge Alers
General Counsel