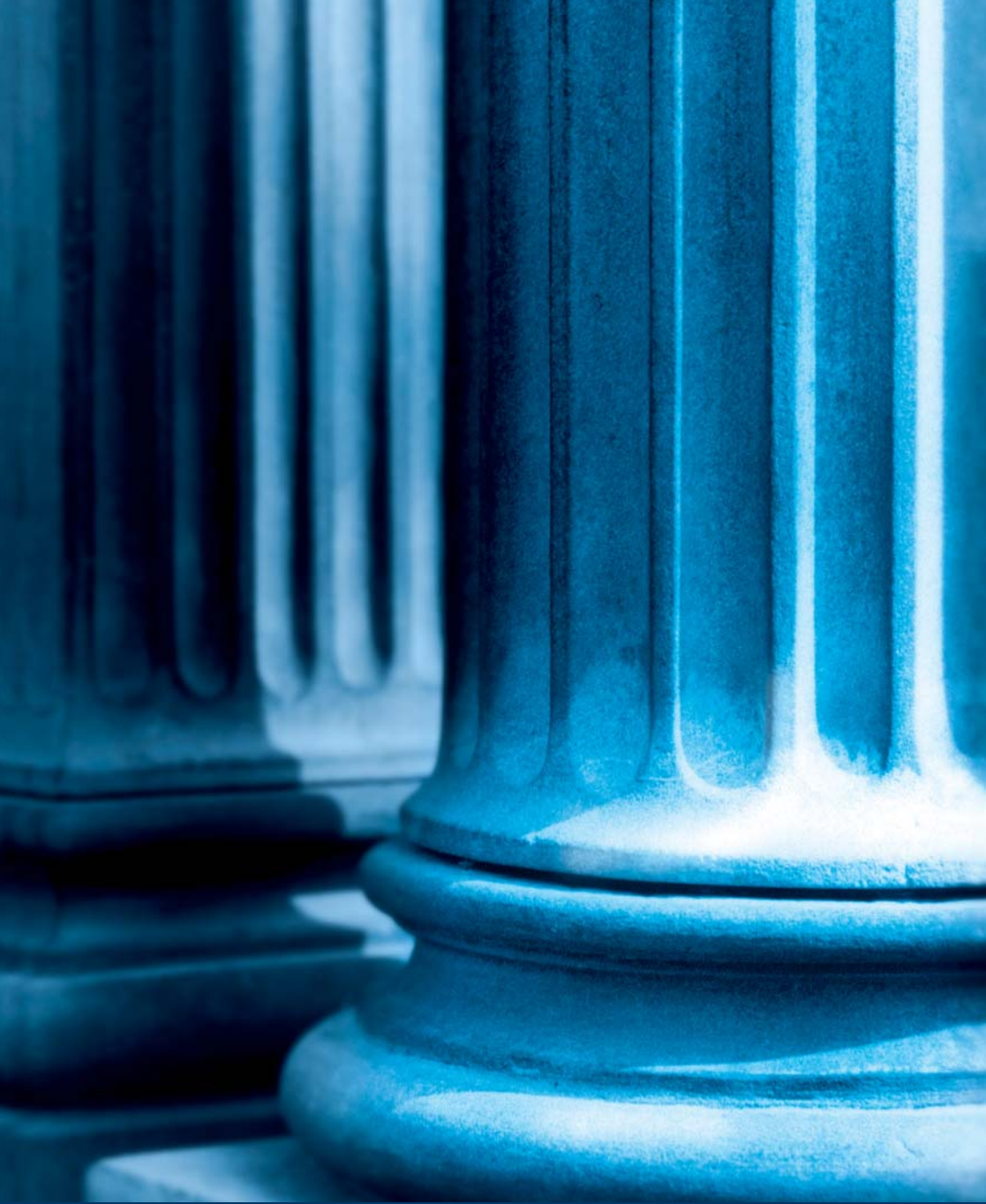
MEMORANDUM

TO: File
FROM: Richard Gabbert
RE: Conference call with representatives of KfW Bankengruppe
DATE: May 23, 2012

On May 23, 2012, representatives from the Securities and Exchange Commission ("SEC") participated in a conference call with representatives from KfW Bankengruppe ("KfW") and its legal counsel. The SEC representatives present on the call were Richard Grant and Richard Gabbert. The KfW representatives present on the call were Jochen Leubner, Dr. Svenja Brinkmann, Markus Zellmann, and Sabine Glink-Hoffmann. Also on the call were KfW's outside attorneys at Sullivan and Cromwell: David Gilberg, Sophie Moeder, and Krystian Cziernecki. During the call, KfW representatives and counsel provided their views on the application of the major security-based swap participant definition in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act to KfW.

[No agenda available for this meeting.]



Law concerning KfW.

KfW BANKENGRUPPE

dated 5 November 1948 (WiGBl., p. 123) in the version of 23 Juni 1969 (BGBl. I p. 573) as last amended by the Neunte Zuständigkeitsanpassungsverordnung (Ninth Ordinance on the Adaptation of Responsibilities) dated 31 October 2006 (BGBl. I p. 2427).

The following version of the Gesetz über die KfW (Law Concerning the KfW) dated 5 November 1948 (WiGBl., p. 123) considers

- the Gesetz zur Änderung und Ergänzung des Gesetzes über die Kreditanstalt für Wiederaufbau (Law to Amend and Supplement the Law Concerning the Kreditanstalt für Wiederaufbau) dated 18 August 1949 (WiGBl. p. 290),
- the Zweites Gesetz zur Änderung des Gesetzes über die Kreditanstalt für Wiederaufbau (Second Law for the Amendment of the Law Concerning the Kreditanstalt für Wiederaufbau) dated 4 December 1951 (Bundesgesetzbl. I p. 931),
- Article 43, Para. 2 No. 4 of the Gesetz über die Deutsche Bundesbank (Law Concerning the Deutsche Bundesbank) dated 26 July 1957 (Bundesgesetzbl. I p. 745),
- the Gesetz zur Änderung des Gesetzes über die Kreditanstalt für Wiederaufbau (Law for the Amendment of the Law Concerning the Kreditanstalt für Wiederaufbau) dated 16 August 1961 (Bundesgesetzbl. I p. 1339),
- the Gesetz zur Änderung des Gesetzes über die Kreditanstalt für Wiederaufbau (Law for the Amendment of the Law Concerning the Kreditanstalt für Wiederaufbau) dated 20 May 1969 (Bundesgesetzbl. I p. 433),
- Article 17 of the Zuständigkeitsanpassungs-Gesetz (Law on the Adaptation of Responsibilities) dated 18 March 1975 (Bundesgesetzbl. I p. 705),
- Article 10, Para. 18 of the Bilanzrichtlinien-Gesetz (Law on the Principles of Accounting) dated 19 December 1985 (Bundesgesetzbl. I p. 2355),

- Article 2, Para. 1 of the Börsenzulassungs-Gesetz (Law Governing Admission to the Stock Exchange) dated 16 December 1986 (Bundesgesetzbl. I p. 2478),
- Article 7 of the Bankbilanzrichtlinie-Gesetz (Law on the Principles of Accounting of Banks) dated 30 November 1990 (Bundesgesetzbl. I p. 2570),
- Article 2 of the Gesetz zur Änderung von Vorschriften über die Deutsche Bundesbank (Law on the Amendment of Provisions Concerning the Deutsche Bundesbank) dated 8 July 1994 (Bundesgesetzbl. I p. 1465),
- Article 23 of the Gesetz zur weiteren Fortentwicklung des Finanzplatzes Deutschland (Drittes Finanzmarktförderungsgesetz) (Law on the Further Development of Germany as a Financial Location - Third Financial Market Promotion Law) dated 24 March 1998 (Bundesgesetzbl. I p. 529),
- Article 7, Para. 36 of the Mietrechtsreformgesetz (Law on the Reform of the Landlord and Tenant Act) dated 19 June 2001 (Bundesgesetzbl. I p. 1149),
- Article 167 of the Siebte Zuständigkeitsanpassungs-Verordnung (Seventh Ordinance on the Adaptation of Responsibilities) dated 29 October 2001 (Bundesgesetzbl. I p. 2785),
- Article 14 of the Gesetz zur weiteren Fortentwicklung des Finanzplatzes Deutschland (Viertes Finanzmarktförderungsgesetz) (Law on the Further Development of Germany as a Financial Location - Fourth Financial Market Promotion Law) dated 21 June 2002 (Bundesgesetzbl. I p. 2010),
- Article 2 of the Gesetz zur Neustrukturierung der Förderbanken des Bundes (Förderbankenneustrukturierungsgesetz) (Law on the Restructuring of Promotional Banks of the Federal Republic - Promotional Bank Restructuring Act) dated 15 August 2003 (Bundesgesetzbl. I p. 1657),

- Article 4a of the Gesetz zur Umsetzung aufsichtsrechtlicher Bestimmungen zur Sanierung und Liquidation von Versicherungsunternehmen und Kreditinstituten (law on the reorganisation and winding-up of insurance undertakings and credit institutions) dated 10 December 2003 (BGBl. I p. 2478), and
- Article 173 of the Neunte Zuständigkeitsanpassungsverordnung (Ninth Ordinance on the Adaptation of Responsibilities) dated 31 October 2006 (Bundesgesetzbl. I p. 2427).

§ 1
LEGAL STATUS, DESIGNATION, SEAT AND CAPITAL

(1) Kreditanstalt für Wiederaufbau is a public law institution and may use the designation "KfW" in business operations. It has its seat in Frankfurt (Main) and may establish a branch office in Berlin and in Bonn.

(2) The nominal capital of the Institution amounts to three billion seven hundred fifty million Euros. The Federal Republic participates in the nominal capital in the amount of three billion Euros, and the Länder (federal states) in the amount of seven hundred fifty million Euros.

(3) The shares in the nominal capital must be paid in to the amount of three billion three hundred million Euros. For this purpose reserves are converted into nominal capital in favour of the Federal Republic in the amount of two billion five hundred seventy-eight million six hundred forty-four thousand nine hundred seventy-four Euros, and in favour of the Länder (federal states) in the amount of six hundred forty-four million six hundred sixty-one thousand two hundred forty-four Euros. This conversion increases the nominal capital paid in by the Federal Republic from sixty-one million three hundred fifty-five thousand and twenty-six Euros to two billion six hundred forty million Euros, and it increases the nominal capital paid in by the Länder (federal states) from fifteen million three hundred thirty-eight thousand seven hundred fifty-six Euros to six hundred sixty million Euros. The payment of the remaining four hundred fifty million Euros of the nominal capital may be ordered by the Board of Supervisory Directors of the Institution insofar as it is necessary in order to meet the Institution's liabilities.

(4) The amount of two billion six hundred forty million Euros paid in on the Federal Republic's share in accordance with Paragraph 3 belongs in the amount of one billion eighty-eight million fifty-three thousand nine hundred and eight Euros to the ERP Special Fund.

(5) Shares in the nominal capital cannot be pledged, and can be assigned only among the shareholders.

§ 1a
GUARANTEE OF THE FEDERAL REPUBLIC

The Federal Republic guarantees all obligations of the Institution in respect of loans extended to and debt securities issued by the Institution, fixed forward transactions or options entered into by the Institution and other credits extended to the Institution as well as credits extended to third parties inasmuch as they are expressly guaranteed by the Institution.

§ 2
FUNCTIONS AND BUSINESS

(1) The Institution has the function of

1. performing promotional tasks, in particular financings, pursuant to a state mandate in the following areas:

a) Small and medium-sized enterprises, liberal professions and business start-ups,

b) Risk capital,

c) Housing,

d) Environmental protection,

e) Infrastructure,

f) Technical progress and innovations,

g) Internationally agreed promotional programmes,

h) Development Cooperation,

i) Other promotional areas specifically stated in laws, regulations or published guidelines on state economic policy that are assigned to the Institution by the Federal Republic or one of the Länder (federal states).

Each promotional task must be specified in a body of rules;

2. granting loans and other forms of financing to territorial authorities and special-purpose associations under public law (öffentlich-rechtliche Zweckverbände);

3. financing measures with purely social goals as well as for the promotion of education;

4. granting other financings in the interest of the German and European economy. The tasks of the Institution in this area include

a) Projects in the interest of the European Community that are co-financed by the European Investment Bank or similar European financing institutions,

b) Export financings outside of the Member States of the European Union, of the other contracting states of the Agreement on the European Economic Area and of states with official status as candidates for accession to the European Union

aa) on a syndicated basis or

bb) in countries lacking sufficient financing offers.

All other financings in the interest of the German and European economy are to be carried out by a separate legal entity without public support, in which the Institution has a majority holding. The By-Laws contain more specific provisions.

(2) The tasks stated in Paragraph 1 No. 1 lit. a and b will be performed by a promotional unit of the Institution under the designation "KfW-Mittelstandsbank". These tasks include, in particular, advisory services as well as the implementation of promotional measures in the field of technical progress and innovations.

(3) The Institution may carry out other operations to the extent that there is a direct relation between such operations and the performance of its function described in Paragraph 1. In this context it may in particular

1. purchase or sell claims and securities and also incur obligations in the form of bills of exchange and promissory notes,

2. carry out operations and take measures to manage and safeguard its financial liquidity (treasury management),

3. carry out all operations necessary for risk management,
4. provide to a subsidiary founded in direct connection with tasks described in Paragraph 1 No. 4 the necessary refinancing funds and other company services, both at market conditions.
It is not permitted to take deposits, to conduct current account business or to deal in securities for account of third parties.

(4) The limitations of Paragraph 3 do not apply insofar as an operation is involved in which the Federal Republic of Germany has a state interest and which, in each case, is assigned to the Institution by the Federal Government.

§ 3
CONDUCT OF BUSINESS

(1) In connection with the granting of financings under Article 2 Paragraph 1 No. 1 lit. a through f, credit institutions or other financing institutions must be involved; financings may be granted directly with the approval of the Board of Supervisory Directors. The financings described in Article 2 Paragraph 1 No. 1 lit. a through f are granted for the medium and long term; in exceptional cases they may be granted for the short term with the approval of the Board of Supervisory Directors. Export financings described under Article 2 Paragraph 1 No. 4 lit. b carried out outside of such countries in which, as specified in the By-Laws of May 2, 2003, there is an insufficient supply of financing funds on offer must - as specified in the By-Laws of May 2, 2003 - be carried out by the Institution in cooperation with credit institutions or other financing institutions. In carrying out its operations the Institution must respect with regard to credit institutions or financing institutions the principle of non-discrimination under European Community law.

(2) Loans under Article 2 Paragraph 1 Nos. 1 and 4 must be directly or indirectly secured by customary banking security. Unsecured loans require the approval of the Board of Supervisory Directors.

(3) The provisions of Paragraph 2 apply mutatis mutandis to guarantees under Article 2 Paragraph 1 Nos. 1 and 4, and the provisions of Paragraph 1 Sentence 2 also apply mutatis mutandis to guarantees under Article 2 Paragraph 1 No. 1 lit. a through f.

(4) Financings granted for account of third parties do not require the approval of the Board of Supervisory Directors in accordance with Paragraph 1 or 2.

§ 4
PROCUREMENT OF FUNDS

(1) For the purpose of procuring the necessary funds the Institution may in particular issue debt securities and take up loans.

(2) The short-term liabilities of the Institution must not exceed ten percent of the medium and long-term liabilities.

(3) The debt securities issued by the Institution in domestic currency are suitable for the investment of ward's money.

§ 5
BODIES

(1) The bodies of the Institution are the Board of Managing Directors and the Board of Supervisory Directors.

(2) Unless otherwise provided in the Law, the functions and powers of the bodies are regulated in the By-Laws.

§ 6
BOARD OF MANAGING DIRECTORS

(1) The Board of Managing Directors has at least two members. The members of the Board of Managing Directors are appointed and dismissed by the Board of Supervisory Directors.

(2) The Board of Managing Directors is in charge of conducting the business and administering the assets of the Institution, unless stated otherwise in the Law or By-Laws. The Board of Supervisory Directors may delegate one of its members to the Board of Managing Directors. In this case said member's rights as a member of the Board of Supervisory Directors are suspended.

(3) The Board of Managing Directors represents the Institution in judicial proceedings and otherwise. Declarations are binding for the Institution if they are made either by two members of the Board of Managing Directors or by one member of the Board of Managing Directors jointly with an authorized representative. The By-Laws may allow declarations on behalf of the Institution to also be made by two authorized representatives.

(4) Where a declaration has to be made towards the Institution it is sufficient when said declaration is made towards one member of the Board of Managing Directors.

(5) The compensation of the members of the Board of Managing Directors will be contractually agreed between said members and the Institution, represented by the Board of Supervisory Directors.

§ 7
BOARD OF SUPERVISORY DIRECTORS

(1) The Board of Supervisory Directors of the Institution consists of

1. the Chairman and his or her Deputy; they are appointed by the Federal Government; they must be personalities with special experience in financial affairs;
2. the Federal Minister of Finance, the Federal Minister for Foreign Affairs, the Federal Minister for Economics and Technology, the Federal Minister of Food, Agriculture and Consumer Protection, the Federal Minister of Transport, Building and Urban Affairs, the Federal Minister for Economic Cooperation and Development, and the Federal Minister for the Environment, Nature Protection and Reactor Safety; they may be represented at meetings of the Board of Supervisory Directors and its committees by their permanent deputies or by heads of department;
3. seven members appointed by the Bundesrat;
4. seven members appointed by the Bundestag;
5. one representative each of the mortgage banks, the savings banks, the cooperative banks, the commercial banks and a credit institution prominent in the field of industrial credit, the said representatives

being appointed by the Federal Government after having heard the groups concerned;
6. two representatives of industry and one representative each of the municipalities (associations of municipalities), agriculture, the crafts, trade and the housing industry, the said representatives being appointed by the Federal Government after having heard the groups concerned;
7. four representatives of the trade unions who are appointed by the Federal Government after having heard the groups concerned.

(2) The Federal Minister of Finance and the Federal Minister for Economics and Technology are appointed by the Federal Government on a rotating basis as Chairman and Deputy Chairman. They are appointed for a period of no more than five years; they may be reappointed.

(3) The term of office of the other members of the Board of Supervisory Directors, with the exception of the members stated in Paragraph 1 No. 2, amounts to three years. Each year one-third of the members will retire; they may be reappointed. Further details are regulated in the By-Laws.

(4) Unless stated otherwise, the Board of Supervisory Directors takes its decisions by a simple majority of the votes cast, with each member having one vote. In case of a tie the Chairman has the casting vote. The presence of at least one-half of the members is required for a quorum. The By-Laws may allow a decision to be taken by written vote.

(5) It is the duty of the Board of Supervisory Directors to supervise the conduct of the Institution's business and the administration of its assets

on an ongoing basis. It may give the Board of Managing Directors general or specific instructions. In particular it may reserve the right to approve the conclusion of certain transactions or types of transactions.

(6) Except in the cases stated in Paragraph 5 Sentences 1 and 2 and in Articles 8, 9 and 10 the Board of Supervisory Directors may revocably delegate its powers to committees. Further details are regulated in the By-Laws.

§ 7a

MITTELSTANDSRAT (SME[1] ADVISORY COUNCIL)

(1) A Mittelstandsrat (SME Advisory Council) will be established at Kreditanstalt für Wiederaufbau. It consists of the Federal Minister for Economics and Technology as Chairman, the Federal Minister of Finance as Deputy Chairman, the Special Representative of the Federal Government for "Aufbau Ost", two representatives appointed by the Bundesrat, four additional members appointed by the Federal Ministry for Economics and Technology as well as one member each appointed by the Federal Ministry of Finance and the Federal Ministry for the Environment, Nature Protection and Reactor Safety.

(2) The Mittelstandsrat (SME Advisory Council) specifies the state mandate of the Mittelstandsbank in accordance with Article 2 Paragraph 2. It deliberates and takes decisions on proposals for the promotion of small and medium-sized enterprises, taking into consideration the overall business planning of the Institution.

[1] small and medium-sized enterprises

§ 8
BY-LAWS

(1) The By-Laws of the Institution are drawn up by the Board of Managing Directors and adopted by the Board of Supervisory Directors. They must be approved by the Supervisory Authority (Article 12 Paragraph 1 Sentence 1).

(2) The Board of Supervisory Directors may adopt amendments to the By-Laws with a majority of two-thirds of the votes cast, but not less than half of all members. Such amendments must be approved by the Supervisory Authority.

(3) The Institution must publish the By-Laws and amendments thereto in the Bundesanzeiger (Federal Gazette).

§ 9
ANNUAL REPORT

(1) The annual financial statements and the management report, the consolidated financial statements and the combined management report must be drawn up, audited and published in conformity with Articles 340a through 340o of the Handelsgesetzbuch (Commercial Code). The auditor will be proposed by the Board of Supervisory Directors and appointed by the Supervisory Authority in agreement with the Bundesrechnungshof (Federal Audit Office).

(2) The Board of Supervisory Directors decides on the approval of the annual financial statements within the first six months after the end of a financial year; it must adopt the requisite measures if it does not grant its approval.

(3) The financial year is the calendar year.

(4) The competent authorities of the Federal Republic of Germany have the rights stated in Article 55 Paragraph 2 of the Haushaltsgrundsätzegesetz (Budget Law) and in Article 112 Paragraph 2 of the Bundeshaushaltsordnung (Federal Budget Regulations).

§ 10
NET PROFIT

(1) There will be no distribution of profits.

(2) The annual net profit after depreciation allowances and provisions is to be allocated to a statutory reserve, the amount of which is limited to one billion eight hundred seventy-five million Euros. Other capital and special reserves attributable to individual shareholders are to be taken into consideration for the allocation of the net profit.

(3) The remainder of the net profit will be allocated to a special reserve.

§ 11
LEGAL STATUS

(1) With respect to taxation, construction of buildings, accommodation and rent of buildings the Institution has the same rights as the Deutsche Bundesbank. The Institution is authorized to utilize the designations “Bank” and “Bankengruppe” to refer to itself.

(2) The provisions of the Handelsgesetzbuch (Commercial Code)

regarding entry in the Handelsregister (Commercial Register) are not applicable to the Institution.

§ 12
SUPERVISION

(1) The Federal Ministry of Finance carries out the supervision of the Institution in consultation with the Federal Ministry for Economics and Technology.. The Supervisory Authority is empowered to adopt all measures necessary to keep the conduct of the Institution's business in conformity with the laws, the By-Laws and other regulations.

(2) Evidence of authority to represent the Institution is provided through a confirmation of the Federal Ministry of Finance carrying an official seal.

§ 12a
FINANCINGS BY A SEPARATE LEGAL ENTITY

Financings as described in Article 2 Paragraph 1 No. 4 Sentence 3 must be carried out by a separate legal entity without public support as of January 1, 2008 at the latest. Financings already agreed at such time may still be carried out by the Institution.

§ 13
DISSOLUTION

(1) The Institution can be dissolved only by a law.

(2) If in the event of dissolution the assets remaining after adjustment of all liabilities exceed the paid-in nominal capital, the surplus up to the sum of the statutory reserve shown upon dissolution of the Institution and the stated special reserve will first be used to compensate the losses and the expenditures which have arisen for the Federal Republic or the ERP Special Fund in connection with the Institution's development loans or through demands made under guarantees given in respect of such loans. The remainder will be distributed in an amount up to the level of the capital reserves and the special reserves, both as shown upon dissolution of the Institution and attributable to individual shareholders, to the beneficiaries thereof.
Otherwise, the assets will be distributed in proportion to the shares in the nominal capital.

§ 14
ENTRY INTO FORCE

This Law will enter into force upon promulgation.[2]

Only the German original text of this Law is legally binding.

[2] This provision relates to the coming into force of the Law in the original version of 5 November 1948 (WiGBl., p. 123). The date of coming into force of the later amendments ensues from the Laws specified on pp. 4-6.

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January 2007

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Via Agency Web Site

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100 F Street, NE
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Attention: Elizabeth M. Murphy
Secretary, Securities and Exchange Commission

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

Re: Release No. 33-9204, 34-64372, File No. S7-16-11; RIN 3038-AD46, RIN 3235-AK65; Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping — Transactions Involving Certain Foreign or Multinational Entities

Dear Ms. Murphy and Mr. Stawick:

We are submitting this comment letter in response to the May 23, 2011 Joint Proposed Rules issued by the Securities and Exchange Commission (the "SEC") and the Commodity Futures Trading Commission (the "CFTC," and together with the SEC, the "Commissions") in consultation with the Board of Governors of the Federal Reserve System, soliciting comments on the Commissions' proposed definitions of "swap," "security-based swap," and "security-based swap agreement".[1] We appreciate the opportunity to comment on the proposed definitions set forth in the Joint Proposed Rules, pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").

This comment letter is submitted on behalf of KfW, and the views expressed herein are those of KfW only. For the reasons described herein, we believe that the use of derivatives by KfW, which, as explained below, is a foreign government-linked entity owned by the German Federal and State governments and the obligations of which are backed by the full faith and credit of the Federal Republic of Germany (the "Federal Republic") due to a statutory guarantee, should not be subject to the regulatory scheme imposed by Dodd-Frank. Accordingly, we respectfully request that the Commissions use the definitional authority provided by Dodd-Frank to clarify that the definitions of "swap" and "security-based swap" as used in the Commodity

[1] While we realize that the deadline for submissions was July 22, 2011, we respectfully request that the Commissions accept this comment letter into the file and consider it along with those of other commenters.

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Vorstand: Dr. Ulrich Schröder (Vorsitzender), Dr. Günther Bräunig, Dr. Norbert Kloppenburg, Bernd Loewen, Dr. Axel Nawrath

Exchange Act and the Securities Exchange Act of 1934, respectively, exclude any agreement, contract or transaction a counterparty of which is KfW.[2]

I. Background on KfW

Legal Status, Ownership and Statutory Guarantee

KfW is a German public law institution (*Anstalt des öffentlichen Rechts*) organized under the Law Concerning KfW (*Gesetz über die Kreditanstalt für Wiederaufbau*, or "KfW Law"). The Federal Republic holds 80% of KfW's equity capital and the German federal states hold the remaining 20%.

The KfW Law expressly provides that the Federal Republic guarantees all existing and future obligations of KfW in respect of money borrowed, bonds and notes issued and derivative transactions entered into by KfW (KfW Law, Article 1a). Under this statutory guarantee (the "Guarantee of the Federal Republic"), if KfW fails to make any payment of principal or interest or any other amount required to be paid with respect to any of KfW's obligations mentioned in the preceding sentence, the Federal Republic will be liable at all times for that payment as and when it becomes due and payable. The Federal Republic's obligation under the Guarantee of the Federal Republic ranks equally, without any preference, with all of its other present and future unsecured and unsubordinated indebtedness. Creditors who have a claim against KfW resulting from one of the obligations mentioned in the first sentence of this paragraph may enforce this obligation directly against the Federal Republic without first having to take legal action against KfW. Against this background, these obligations of KfW, both financially and in terms of legal recourse, are viewed as sovereign credits and KfW, like the Federal Republic, enjoys a triple A credit rating.

Furthermore, as a public law institution, KfW benefits from the German administrative law principle of *Anstaltslast*, according to which the Federal Republic, as the constituting body of KfW, has an obligation to safeguard KfW's economic basis. Under *Anstaltslast*, the Federal Republic must keep KfW in a position to pursue its operations and enable it, in the event of financial difficulties, through the allocation of funds or in some other appropriate manner, to meet its obligations when due. Although *Anstaltslast* is not a formal guarantee of KfW's obligations by the Federal Republic, the effect of this legal principle is that KfW's obligations are fully backed by the credit of the Federal Republic on this basis as well, in addition to the Guarantee of the Federal Republic referred to above.

Purpose

KfW was established in 1948 by the Administration of the Combined Economic Area, the immediate predecessor of the Federal Republic. Originally, KfW's purpose was to distribute and lend funds of the European Recovery Program (the "ERP"), which is also known as the Marshall Plan. Even today, several of KfW's programs to promote the German and European economies are supported using funds for subsidizing interest rates from the so-called "ERP Special Fund". Over the past decades, KfW has expanded and internationalized its operations. Today, KfW

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[2] As described below, we understand that the World Bank, the European Investment Bank and the Council of Europe Development Bank have submitted comment letters to the Commissions on the topic we describe herein. We wish to provide our support for the positions set forth in those letters for the reasons described therein, and request the Commissions extend that analysis as it applies to KfW.

serves domestic and international public policy objectives of the German Federal government, primarily by engaging in various promotional lending activities.[3]

As a government-sponsored bank, KfW does not seek to maximize profits and is prohibited from distributing profits, which are instead allocated to statutory and special reserves. KfW is also prohibited from taking deposits, conducting current account business or dealing in securities for the account of others.

Governance and Supervision

KfW is governed by an Executive Board (*Vorstand*) and a Board of Supervisory Directors (*Verwaltungsrat*). The Executive Board is responsible for the day-to-day conduct of KfW's business and the administration of its assets. The Board of Supervisory Directors, which, among others, consists of seven Federal ministers[4], supervises the overall conduct of KfW's business and the administration of its assets.

Under the KfW Law, the Federal Ministry of Finance, in consultation with the Federal Ministry of Economics and Technology, supervises KfW and has the power to adopt all measures necessary to safeguard the compliance of KfW's business operations with applicable laws, KfW's by-laws and other regulations.

In addition to the annual audit of its financial statements, KfW, as a government-owned entity, is subject to an audit that meets the requirements of the German Budgeting and Accounting Act (*Haushaltsgrundsätzegesetz*). One of the specific aspects to be covered by this audit and the related reporting is the proper conduct of KfW's business by its management.

Funding Activities and Derivatives Transactions

KfW finances the majority of its lending activities from funds raised by it in the international financial markets. KfW issues debt instruments in various currencies, primarily the Euro and the U.S. dollar (which accounted for 41% and 37% of KfW's new capital-market funding in 2010, respectively). As of December 31, 2010 KfW's total outstanding funded debt amounted to EUR 336.0 billion. On the basis of a no-action letter issued by the SEC on September 21, 1987, KfW, in connection with global debt offerings in an aggregate amount equivalent to more than EUR 300 billion, has registered debt securities with the SEC under

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3 KfW's lending activities include: domestic financing, primarily made through commercial banks, including loans to small and medium-sized enterprises, housing-related loans, grants and financings to individuals for educational purposes, financing for infrastructure projects and global funding instruments for German promotional institutions of the federal states (*Landesförderinstitute)* and other financial institutions; export and project finance through its wholly-owned subsidiary KfW IPEX-Bank GmbH; and development finance for developing and transition countries, including private-sector investments in developing countries through its wholly-owned subsidiary DEG—Deutsche Investitions- und Entwicklungsgesellschaft mbH.

4 Generally, the Supervisory Board has 37 members and consists of the Federal Minister of Finance; the Federal Minister of Economics and Technology; the Federal Minister of Foreign Affairs; the Federal Minister of Food, Agriculture and Consumer Protection; the Federal Minister of Transport, Building and Urban Affairs; the Federal Minister for Economic Cooperation and Development; the Federal Minister for the Environment, Nature Conservation and Nuclear Safety; seven members appointed by the *Bundesrat*; seven members appointed by the *Bundestag*; five representatives of commercial banks; two representatives of industry; one representative each of the local municipalities, agriculture, crafts, trade and the housing industry; and four representatives of the trade unions. The representatives of the commercial banks, industry, the local municipalities, agriculture, crafts, trade, the housing industry and the trade unions are appointed by the German Federal government after consultation with their constituencies.

Schedule B of the Securities Act of 1933, which is applicable to foreign governments or political subdivisions thereof, and more than 50% of KfW's funded debt outstanding on December 31, 2010 consisted of debt securities sold in these global debt offerings.

KfW enters into derivatives transactions in order to manage the risks incurred in connection with its financing and funding activities. Such risks are almost entirely associated with changes in interest rates and foreign exchange rates. As U.S. dollar bonds make up a significant portion of KfW's financing and funding activities, KfW generally has large over-the-counter ("OTC") positions in derivatives hedging changes in the Euro/U.S. dollar exchange rate. Many of KfW's counterparties are dealers based in the United States. As of December 31, 2010, the total notional amount of interest and foreign exchange rate derivatives outstanding amounted to EUR 682 billion equivalent, of which close to 25% (by notional amount) were executed with U.S. counterparties (including non-U.S. affiliates of U.S. counterparties). These transactions are entered into solely for hedging purposes, and KfW does not and, in accordance with Article 2 paragraph 3 of the KfW Law, may not, engage in proprietary or speculative trading. Further, KfW does not accommodate demand for swaps from other parties nor enter into swaps in response to interest expressed by other parties in the manner a dealer would customarily do. KfW therefore considers itself as an end-user customer of derivatives.

All of KfW's OTC derivatives transactions are concluded under appropriate derivatives master agreements (such as the ISDA Master Agreement and the German Master Agreement for Financial Derivatives Transactions). As part of KfW's risk policy, KfW's exposures under such derivatives master agreements generally are to be collateralized by KfW's counterparties. While KfW receives collateral from its counterparties under credit support annexes pertaining to the respective derivatives master agreement, it generally does not provide collateral itself for purposes of mitigating credit risk, because, as mentioned above, its obligations are backed by the Guarantee of the Federal Republic. Internal guidelines require that no transaction is executed outside such (collateralized) derivatives master agreements.

II. Application of Title VII of the Dodd-Frank Act to KfW

KfW does not act as a swap dealer or security-based swap dealer, does not engage in any of the activities that have been identified by the Commissions as those of a dealer and is, to the contrary, a customer of the dealers that serve as its counterparties. While the Commissions' final rules regarding registration as a swap dealer or security-based swap dealer have not yet been issued, we believe it is clear that KfW will not be required to register in those capacities. However, given the extent of KfW's use of derivatives for hedging purposes, it is possible that it will be required to register as a major swap participant. This is due to the fact that KfW might be encompassed within one of the tests for determining whether an entity is a major swap participant – the provision under Section 721(a) 33(A)(ii) of Dodd-Frank which includes within the definition of a major swap participant a person whose outstanding swaps create "substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets." That test does not exclude hedging transactions in making the determination and requires, under the Commissions' proposed rules, an examination of the net uncollateralized exposure created by a person's swap transactions.[5] Because KfW's obligations under derivative transactions are guaranteed by the Federal Republic, it does not, as noted, post collateral with its counterparties to mitigate credit risk, and all of its exposures are therefore "uncollateralized" under the Commissions' Proposed Rules, notwithstanding the fact that its obligations are all government-guaranteed and its transactions are solely for hedging purposes.

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5 Proposed Rules: Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant," and "Eligible Contract Participant," 75 Fed. Reg. 80,174 (Dec. 7, 2010)(the "Proposed Rules").

We note that, in our view, transactions entered into by KfW from outside the U.S. with non-U.S. counterparties, with respect to which the conduct of the parties takes place exclusively outside the United States, should be outside the jurisdiction and scope of Dodd-Frank and should not need to be taken into account in determining KfW's status as a major swap participant.[6] However, because KfW enters into certain transactions with U.S. counterparties, and such transactions will need to be taken into account in determining KfW's registration status, absent further action by the Commissions, it is possible that KfW would be required to register as a major swap participant. This result, we respectfully submit, would be contrary to international comity, unnecessary for the realization of the purposes of Dodd-Frank and detrimental to the mission and objectives of KfW and the Federal Republic.

In particular, application of Title VII of the Dodd-Frank Act to KfW would violate the principle of international comity and legal reciprocity and interfere with KfW's purpose to serve the domestic and international public policy objectives of the German Federal government, primarily by engaging in various government-sponsored lending activities. In addition, the imposition of the requirements of Dodd-Frank on KfW would substantially increase the cost of its funding and lending activities, which will restrict its ability to fulfill its government mandate, and increase the costs its borrowers will have to bear. These effects will have serious adverse consequences for the markets served by KfW and, we submit, none of these consequences are necessary or warranted, given the nature of KfW, its ownership and its mandate.

We therefore agree with the World Bank, the European Investment Bank and the Council of Europe Development Bank[7] that the most efficient and effective mechanism for dealing with application of Dodd-Frank to Multilateral Development Banks ("MDBs"), and similarly to government-owned entities such as KfW, is for the Commissions to define the terms "swap" and "security-based swap" to exclude transactions with KfW and other government-owned entities. As the World Bank pointed out in its April 5, 2011 letter to CFTC Commissioner Jill Sommers,[8] interpreting Title VII of Dodd-Frank to impose United States regulations on the activities of MDBs would represent an unprecedented intrusion into the internal operations of international,

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6 In this regard, we note that the CFTC has a long tradition of not asserting jurisdiction over transactions, or entities that engage in transactions, that take place or operate exclusively outside of the United States. The CFTC has recognized, as a principle of international law, that domestic regulations, such as registration requirements under the CEA, apply only when either the conduct in question occurred within the United States, or conduct outside the United States has a significant impact within the United States. *See* CFTC Statement of Policy, Exercise of Commission Jurisdiction Over Reparation Claims That Involve Extraterritorial Activities by Respondents, 49 Fed. Reg. 14721 (1984); Request for IB Registration No-Action Position, CFTC Staff Letter No. 00-44 (CCH) 28,095 (Mar. 31, 2000); Revision of Registration Regulations; Final Rules; Designation of New Part, 45 Fed. Reg. 80485 (Dec. 5, 1980).

7 *See* Letter from International Bank for Reconstruction and Development and International Finance Corporation to Jill Sommers, Commissioner, Commodity Futures Trading Commission (April 5, 2011), available online at http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission21_040511-twb.pdf (visited July 13, 2011); Comment Letter from the European Investment Bank to the SEC and CFTC (July 22, 2011), available online at http://www.sec.gov/comments/s7-16-11/s71611-19.pdf (visited July 29, 2011); Comment Letter from the Council of Europe Development Bank to the SEC and CFTC (July 22, 2011), available online at http://www.sec.gov/comments/s7-16-11/s71611-18.pdf (visited July 29, 2011).

8 *See* Letter from International Bank for Reconstruction and Development and International Finance Corporation to Jill Sommers, Commissioner, Commodity Futures Trading Commission (April 5, 2011), available online at http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission21_040511-twb.pdf (visited July 29, 2011).

intergovernmental organizations.[9] We believe that the arguments the World Bank, the European Investment Bank and the Council of Europe Development Bank set forth relating to MDBs apply *mutatis mutandis* to KfW, a government-owned entity in which, like many MDBs, the United States does not have an ownership interest. Indeed, this is precisely the approach currently favored by the European Parliament and Council, as these bodies' proposed rules specifically exempt certain MDBs and their derivative transactions from regulation.[10] Moreover, we understand that the recent presidency compromise draft of the European Parliament and Council of the European Union's proposed regulation on derivative transactions, central counterparties and trade repositories circulated to delegations from the general secretariat of the European Council on July 18, 2011 includes an exemption for public sector entities "in order to avoid limiting their power to perform their tasks of common interest," and that this exemption would include KfW.[11] Adopting the same approach would therefore be in line with international harmonization and the principles of international comity and legal reciprocity.

Indeed, for the foregoing reasons, the Commissions themselves, in the release accompanying the Proposed Rules, specifically requested comment as to whether entities "linked" to foreign governments, including those that are government-owned, should be excluded from the definition of a major swap participant and whether this potential exclusion should be based in part on whether the entity's obligations are backed by the full faith and credit of the foreign government. The Commissions stated that this exclusion may be appropriate given the provisions of Dodd-Frank limiting its jurisdictional reach.

We also believe that the provisions of Dodd-Frank regarding extraterritoriality argue against imposition of its requirements on government-owned entities. In particular, Section 752(a) of Dodd-Frank states that the CFTC and SEC shall "consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation . . . of swaps . . ." Moreover, Section 722 of Dodd-Frank states that the regulatory requirements imposed under Dodd-Frank shall not apply to activities outside of the United

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9 *See also* Comment Letter from International Bank for Reconstruction and Development and International Finance Corporation (July 22, 2011), available online at http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=47911&SearchText= (visited July 29, 2011); Letter from the European Central Bank to the SEC and CFTC on the Relationship of Title VII of Dodd-Frank to the European Central Bank and Eurosystem (May 6, 2011), available online at www.ecb.int/pub/pdf/other/110601letter_cftcen.pdf (visited July 29, 2011); Comment from Cleary Gottlieb Steen & Hamilton LLP ("Cleary Comment") to the Secretaries of the SEC and CFTC relating to Release No. 34-62717, File No. S7-16-10 (September 21, 2010), available online at http://www.sec.gov/comments/s7-16-10/s71610-63.pdf (visited July 29, 2011). The European Central Bank has noted that, because it enters into "swap" transactions only in the furtherance of its public mandate, its swap transactions should not be interpreted or legally defined in the same way as otherwise similar transactions entered into by private commercial entities. This argument equally applies to KfW. The Cleary Comment, like the World Bank's letter, maintains that as a matter of comity the Commissions should exempt from their definitions of "swap" and "security-based swap" any transaction to which a foreign central bank, foreign sovereign or multi- or supranational organization is a party.

10 General Secretariat of the Council of the European Union, Proposal for a Regulation of the European Parliament and of the Council on Derivative Transactions, Central Counterparties and Trade Repositories (January 5, 2011), available online at http://register.consilium.europa.eu/pdf/en/11/st05/st05059.en11.pdf (visited July 29, 2011).

11 Council of the European Union, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on [OTC] derivative transactions, central counterparties and trade repositories, Interinstitutional File: 2010/0250 (COD), No. Cion prop.: 13917/10 EF 117 ECOFIN 543 CODEC 879, Brussels, July 18, 2011, available online at http://register.consilium.europa.eu/pdf/en/11/st13/st13012.en11.pdf (visited August 9, 2011).

States unless such activities have a "direct and significant connection with activities in, or effect on, commerce of the United States" or contravene rules designed "to prevent the evasion" of the requirements of Dodd-Frank. These provisions establish a clear directive to the Commissions not to impose regulation on non-U.S. activities, except under the limited circumstances noted in the statute, and, in our view, mandate the relief for KfW requested herein. Further, we note that Section 721(a)(21) of the Dodd-Frank Act states that "any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the Federal government, or a Federal agency that is expressly backed by the full faith and credit of the United States" is not deemed to be a swap under Dodd-Frank. Therefore, no explicit exception or exemption for these U.S. government entities within the proposed definition of a major swap participant is required to achieve the result that these entities are not deemed a major swap participant under Dodd-Frank. While Section 721(a)(21) of the Dodd-Frank Act deals only with U.S. government entities, in a dissent from the CFTC's recent approval of proposed rules governing the definition of a swap, CFTC Commissioner Jill Sommers noted that "[s]ome commenters have suggested that the Commissions should exercise their authority to further define the terms "swap" and "security-based swap" to similarly exclude transactions in which a counterparty is an international public organization, a foreign central bank, a foreign sovereign, or a multi-or supra-national organization. Commenters have advanced international comity, national treatment, limited regulatory resources, limits on the Commissions' respective extraterritorial jurisdiction, and international harmonization as rationales for such an approach."[12]

Should the Commissions nevertheless ultimately determine that it is necessary for transactions involving KfW to be included in the definitions of "swap" and "security-based swap", we believe that KfW should be treated as a "non-financial entity end-user" for purposes of the exemption from certain of the Dodd-Frank requirements. Specifically, as amended by Dodd-Frank, Section 2(h)(7) of the Commodity Exchange Act (the "*CEA*") provides that a swap that is otherwise subject to mandatory execution and clearing will not be subject to those requirements if one party to the swap i) is not a financial entity; ii) is using the swap to hedge or mitigate commercial risk; and iii) notifies the CFTC how it generally meets its financial obligations associated with entering into non-cleared swaps. We share the opinion of other commentators that the government of a foreign country or political subdivision, agency or instrumentality should not be included in the definition of a "financial entity" or a "financial end-user".[13] KfW is 100% government owned and backed by a statutory guarantee of the Federal Republic and, from a credit risk perspective, its obligations rank equally with those of the Federal Republic. The Federal Republic also has an obligation to safeguard KfW in the event of financial difficulties under the administrative law principal of *Anstaltslast* discussed above. Furthermore, given its ownership, structure and purpose, KfW is not a profit making enterprise, but rather has a mandate of furthering the international and domestic public policy objectives of the Federal Republic by primarily engaging in promotional lending activities. We therefore submit that KfW is more closely aligned with the types of MDBs discussed above, or with sovereign entities, and

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12 Product Definitions Contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, RIN 3038-AD46, April 27, 2011.

13 *See* Letter from Norges Bank Investment Management (July 6, 2011), available online at http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=47759&SearchText=17%20CFR%20part%2023 (visited August 9, 3011); Letter from Cleary Gottlieb Steen & Hamilton LLP (July 11, 2011), available online at http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=47800&SearchText= (visited August 9, 2011); *See also* Letter from Norges Bank Investment Management to 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 (July 6, 2011), available online at http://www.federalreserve.gov/SECRS/2011/July/20110711/R-1415/R-1415_070711_81756_626475355454_1.pdf (visited August 9, 2011).

is distinct from private banking or trading businesses. Accordingly, it is not necessary or appropriate to treat KfW as a "financial entity."

In sum, based on the foregoing, we believe that transactions entered into by KfW and other government-owned entities should be excluded from the definition of "swaps" or "security-based swaps", or that KfW and other government-owned entities should be excluded from the definition of "major swap participant" and "financial entity." Accordingly, KfW should not be subject to the various requirements otherwise applicable to swaps and security-based swaps. Should the Commissions nevertheless ultimately determine that they do not have the authority to grant these requests, we respectfully request that the Commissions adopt an alternative approach, pursuant to which KfW and each transaction to which KfW is a party would be eligible for relief from certain provisions of Dodd-Frank, as follows.[14]

A. KfW should not be subject to registration as a swap dealer or major swap participant

While it is not clear if KfW would be required to register as a major swap participant under Dodd-Frank, there is, as noted, a risk that such registration will be required. However, subjecting KfW to the registration requirement, and the related regulatory obligations, would not ultimately serve Dodd Frank's purpose and would be fundamentally inconsistent with principles of international comity. KfW, as noted, is a 100% government-owned entity rendering regulation by any extraterritorial government unnecessary. In addition, KfW is under the jurisdiction and supervision of the German Federal authorities, and registration and regulation under Dodd-Frank would undermine the policies of the government entities that supervise and direct KfW's activities. Due to KfW's purpose, use of derivatives, ownership structure and Guarantee of the Federal Republic, its activities will not have a "direct and significant" impact on United States commerce and will not "have serious adverse effects on the financial stability of the United States banking system or financial markets." Under such circumstances, the relief sought hereunder is appropriate and necessary.

B. Transactions entered into with KfW should not be subject to the execution and clearing requirements of Dodd-Frank (unless KfW voluntarily chooses to clear the transaction)

KfW has never been subject to any execution or clearing requirements, and subjecting it to such requirements would increase transaction costs, by significantly affecting KfW's ability to hedge cost-effectively, but would not materially reduce the risk to which any counterparties or the financial system are exposed. Many of the hedging transactions entered into by KfW are customized and structured to conform to the underlying hedged exposures. In addition, the transactions in many instances are of a substantial size. All of these factors make it impossible or infeasible to execute transactions on an exchange or swap execution facility. A requirement that KfW execute transactions with U.S. counterparties on an exchange or swap execution facility will either increase its costs (thereby increasing the funding costs to its borrowers), undermine the effectiveness of its hedging activities or force it to direct its hedging activities to non-U.S. counterparties; indeed, such a requirement will likely produce all of these effects. For the reasons noted above, these serious detrimental effects will occur without advancing the purposes of Dodd-Frank and the Commissions' regulations thereunder.

C. KfW should not be subject to the capital or margin requirements imposed under Dodd-Frank in connection with the transaction

All obligations of KfW under its OTC derivative transactions are backed by the Guarantee of the Federal Republic and KfW, like the Federal Republic, enjoys a triple A credit rating. As mentioned above, KfW generally receives collateral from its counterparties but does

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[14] This approach would preserve the Commissions' jurisdiction over certain aspects of the transaction (including reporting requirements), while ensuring that KfW does not itself become subject to Dodd-Frank.

not provide collateral itself for purposes of mitigating credit risk, because its obligations are backed by the Guarantee of the Federal Republic. Requiring KfW's U.S. counterparties to apply capital or margin requirements to transactions concluded with KfW in light of the above, would not further the purposes of Dodd-Frank to protect investors from the systemic risk imposed by inadequately collateralized transactions or poorly capitalized institutions. These requirements are therefore unnecessary, will provide no additional protection to the markets and market participants and will serve only to produce the detrimental consequences described above.

D. KfW should not be subject to the business conduct provisions of Dodd-Frank

Requiring KfW to comply with the business conduct requirements when its counterparties are themselves major dealers would serve no purpose and provide no meaningful protections to any market participants. KfW does not, and in fact is prohibited by law from engaging in any proprietary or speculative trading. As mentioned above, it utilizes derivatives solely for hedging purposes. In addition, KfW does not act as a dealer and does not market services to a broad base of counterparties, provide advice or structure transactions; to the contrary, it is a customer of major dealers many of which are currently based in the United States. Application of the business conduct rules to KfW, therefore, serves no purpose whatsoever.

We believe that these forms of relief are warranted by the nature of KfW and its credit support, its structure and purpose and its use of swaps, all of which, in our view, argue against imposition of the aforementioned Dodd-Frank requirements.

III. Conclusion

There is no evidence suggesting that Congress intended government-owned entities like KfW to be subject to Title VII of Dodd-Frank nor that KfW's derivatives transactions contributed to the recent financial crisis that resulted in the adoption of Dodd-Frank. Subjecting KfW and its derivative transactions to the requirements of Dodd-Frank could have serious adverse effects on its ability to cost-efficiently hedge the risks to which it is exposed, thereby increasing costs to its borrowers, and thus may force it to direct hedging transactions currently still concluded with U.S. counterparties to non-U.S. counterparties in the future. Moreover, imposing the requirements of Dodd-Frank on KfW and its derivative transactions is unnecessary for the protection of counterparties and the financial system.

Accordingly, for the reasons set forth above, KfW should not be subject to the Commissions' proposed regulations and, we respectfully submit, should be eligible at least for the partial relief described above.

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Thank you for your consideration of our comments and please do not hesitate to contact David J. Gilberg of Sullivan & Cromwell LLP at 212-558-4000 or gilbergd@sullcrom.com if you have questions or would find further background helpful. We have sent a copy of this letter to the Federal Ministry of Finance of Germany in its capacity as KfW's supervisory authority.

Sincerely,

KfW

Name: Dr. Lutz-Christian Funke
Title: Senior Vice President

Name: Dr. Frank Czichowski
Title: Senior Vice President and Treasurer