

July 13, 2015

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Secretary,
Securities and Exchange Commission,
100 F Street NE.,
Washington, DC 20549-1090.

Re: Release No. 34-74834
File No. S7-06-15 [RIN 3235-AL73]

On August 21, 2013, in response to the Securities and Exchange Commission's ("SEC") request for comments on its proposed rules and interpretive guidance to address the application of the provisions of the Securities Exchange Act of 1934 ("Exchange Act") that were added by Subtitle B of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") to cross-border security-based swap activities, as set forth in Release No. 34-69490 ("Cross-Border Release I"), we submitted comments as a supplement to those of the International Bank for Reconstruction and Development (generally known as the "World Bank") and the International Finance Corporation ("IFC").¹ Our comments, which applied to the World Bank and IFC as well as the other multilateral development institutions in which the United States is a member and which were listed on Schedule A to our Comment Letter (collectively with the World Bank and IFC, the "MDBs"), were submitted to reiterate their and our concern that the SEC, in its proposals of regulations under the Dodd-Frank Act, had not fully addressed the potential breach of the MDBs' privileges and immunities posed by certain of those proposed regulations.²

We were pleased that the SEC, in the rules adopted in Release No. 34-72472 ("Cross-Border Release II") and proposed in the above-captioned Release No. 34-74834 ("Cross-Border Release III"), avoided many of the potential breaches of the MDBs' privileges and immunities that we pointed out in our Comment Letter. There remain two significant issues, however, that we believe still need to be addressed – (1) the failure by the SEC to recognize the impact on its authority and the statutes that it administers of the international

¹ Our comment letter ("our Comment Letter") can be found at <http://www.sec.gov/comments/s7-02-13/s70213-45.pdf>.

² Our Comment Letter explained that the MDBs' affiliates are also covered by those privileges and immunities and responded to the request set forth in footnote 301 of Cross-Border Release I for comments with respect to affiliates of the international organizations specifically excluded from the definition of "U.S. person" in the proposed rules.

and domestic legal obligations of the United States under international agreements that have been enacted into domestic U.S. law and (2) the related failure to adopt an exclusion, similar to that adopted by the CFTC, of the MDBs from foreign Major Security-Based Swap Participant (“MSBSP”) and foreign Security-Based Swap Dealer (“SBSD”) registration.

We refer you to our Comment Letter and the documents, cases and materials referred to therein, with particular reference to our opinion letter, dated October 5, 2011 (“our Opinion”),³ which addressed the extent to which the MDBs’ privileges and immunities limit the application of the Dodd Frank Act and regulations promulgated thereunder to the MDBs and their operations, and to the letter of the World Bank and IFC General Counsels, dated May 17, 2012 (a copy of which is attached to our Comment Letter and which we fully support), commenting on the CFTC’s decision to exclude the MDBs from registration as Major Swap Participants (“MSPs”) or Swap Dealers (“SDs”) under the Dodd-Frank Act and the CFTC’s regulations thereunder.

We respectfully disagree with the Commission’s statement in Cross-Border Release II to the effect that the assertions that the regulation of the MDBs as MSBSPs or SBSDBs would violate their (and certain affiliates’) privileges and immunities “are outside the scope of this release given that the source of any such privileges and immunities is found outside of the Dodd-Frank Act and the federal securities laws” (see Release 34-72472, 80 Fed. Reg. at 39116 and 39139 (July 9, 2014)). We believe that statement fails to take into account the relationship of the international legal obligations of the United States that have been enacted into U.S. domestic law, by which the SEC and other agencies are bound, to either existing or later-enacted legislation. We will not repeat in detail the reasons why the SEC may not promulgate regulations or take an interpretative position that could cause the United States to violate its international and domestic legal obligations embodied in the MDBs’ Articles of Agreement and legislation passed by the United States Congress that enacted the U.S.’s obligations under the MDBs’ Articles into domestic U.S. law,⁴ but rather refer you to the extensive treatment of this matter in our Comment Letter and our Opinion.

The Cross-Border Releases leave in place one major issue that could constitute a breach of the MDBs’ privileges and immunities – the possibility⁵ that an MDB could be

³ Our Opinion can be found at at <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=48505>.

⁴ For references to the provisions of the MDBs’ respective Articles of Agreement containing their respective privileges and immunities and citations to the legislation enacting those privileges and immunities into domestic law, see Schedule A to our Comment Letter.

⁵ Unlike the MDBs’ swap activities, we understand that their security-based swap activities are not currently at such a level that would cause them to exceed the threshold for MSBSP registration or the de minimis level for exemption from SBSDB registration. This could, however, change, and the principles set forth in our Comment Letter and our Opinion should be addressed by the SEC in its rule-making.

required to register as an MSBSP or SBSD. As we indicate, we are pleased that the SEC has found a way to avoid some of the issues we raised in our Comment Letter, and we are likewise pleased that the CFTC concluded that the MDBs would not be subject to MSP or SD registration, even though, in both cases, the reasons given for such conclusions were other than the MDBs' privileges and immunities. We believe that the SEC must with respect to MSBSP and SBSD registration do what the CFTC did with respect to MSP and SD registration – find another reason for not requiring such registration (or explain why not doing so is consistent with the MDBs' privileges and immunities).⁶

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Any questions relating to these comments should be directed to Edwin D. Williamson ([REDACTED]; [REDACTED]).

Very truly yours,

SULLIVAN & CROMWELL LLP

cc: Anne K. Small, General Counsel
Securities and Exchange Commission
Chris Kirkpatrick, Secretary
Commodity Futures Trading Commission

⁶ There are a few other issues that we have raised with respect to both the SEC and CFTC regulations that remain outstanding – mainly having to do with the status of an affiliate of an MDB under the MDB's privileges and immunities and whether a non-U.S. person's transactions with an MDB should count towards whether that non-U.S. person could be required to register.