SULLIVAN & CROMWELL LLP

TELEPHONE: 1-202-956-7500
FACSIMILE: 1-202-293-6330
WWW.SULLCROM.COM

1701 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-5805

NEW YORK • LOS ANGELES • PALO ALTO
FRANKFURT • LONDON • PARIS
BEIJING • HONG KONG • TOKYO
MELBOURNE • SYDNEY

October 5, 2011

Anne-Marie Leroy
Senior Vice President and Group General Counsel
International Bank for Reconstruction and Development
1818 H Street, NW
Washington, DC 20433

Rachel Robbins
Vice President and General Counsel
International Finance Corporation
2121 Pennsylvania Avenue, NW
Washington, DC 20433

Re: Privileges and Immunities of the International Bank for Reconstruction and Development and the International Finance Corporation

Dear Ms. Leroy and Ms. Robbins:

You have asked us whether the application to the International Bank for Reconstruction and Development ("IBRD") and the International Finance Corporation ("IFC") (collectively, the "Organizations") and the derivatives transactions to which they are a party ("swaps") of the regulations proposed or adopted by the Commodity Futures Trading Commission ("CFTC")[1] implementing Title VII of the Dodd-Frank Act (17 C.F.R. Parts 1, 23, 41, 190, 240) (the "Regulations") would violate the privileges and immunities provided to the Organizations by their respective Articles of Agreement and implemented as U.S. domestic law by the Bretton Woods Agreements Act in 1945

[1] Because we understand that the Organizations do not engage in "security-based swaps", we are only addressing regulation by the CFTC. Were the Organizations to engage in "security-based swaps", our conclusions would also apply to the counterpart "security-based swaps" regulations of the Securities and Exchange Commission.

(22 U.S.C. § 286 (2006)) and the International Finance Corporation Act in 1955 (22 U.S.C. § 282 (2006)) (the "Implementing Legislation").

For the reasons and subject to the discussion below, in our opinion, such application of the Regulations would be a breach by the United States of its obligations under the Articles of Agreement. Furthermore, the effect of the Implementing Legislation is to prohibit any curtailment of the IBRD's and the IFC's privileges and immunities provided by the Articles of Agreement, in the absence of legislation authorizing such curtailment. The Dodd-Frank Act does not contain any such provision, express or implied.

I. The Basis of the Organizations' Privileges and Immunities

A. The Articles of Agreement and the Implementing Legislation

Article VII of the IBRD Articles of Agreement and Article VI of the IFC Articles of Agreement include the following privileges and immunities: (i) immunity from suit by or on behalf of member states (Section 3 of Articles VII and VI) ("immunity from members' suits"), (ii) immunity from attachment prior to entry of a final judgment (Section 3) ("attachment immunity"), (iii) immunity of their property and assets from "search, requisition, confiscation, expropriation or seizure *by executive or legislative action*" (Section 4) ("immunity from seizure"), (iv) inviolability of their archives (Section 5) ("archival immunity") and (v) "to the extent necessary to carry out the operations [of the Organizations as] provided for in" their respective Articles of Agreement, freedom of their property and assets from "*restrictions*, *regulations*, *controls* and moratoria of any nature" (Section 6) ("regulatory immunity") (emphasis added). The express purpose of the privileges and immunities is "to enable the [Organizations] to fulfill the functions with which [they are] entrusted...." (Section 1 of IBRD Article VII and IFC Article VI.)

The Articles of Agreement obligate all member governments to accept and implement the privileges and immunities espoused in the Articles of Agreement into domestic law (Section 10 of IBRD Article VII and IFC Article VI). The United States executed these obligations by passing the Implementing Legislation, which expressly provides that the Articles of Agreement have "full force and effect in the United States and its Territories and possessions" (22 U.S.C. § 286(h) (2006); 22 U.S.C. § 282(g) (2006)).

B. The International Organizations Immunity Act

The International Organizations Immunity Act ("IOIA") provides that the property and assets of international organizations designated by the President of the United States "shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments" and "shall be immune from search" and "confiscation" (22 U.S.C. §288a(b),(c)). It also provides that the archives of such organizations are inviolable. Id. The Organizations have been designated by the President as enjoying the provisions of the IOIA (Exec. Order No. 9751, 3 C.F.R. 558 (1943–1948; Exec. Order No. 10,680, 21 Fed. Reg. 7,647 (Oct. 2, 1956)).

The IOIA is not as broad as the Articles of Agreement and the Implementing Legislation in its grant of privileges and immunities. It does, however, supplement and reinforce certain of the privileges and immunities accorded to the Organizations under their Articles of Agreement and the Implementing Legislation. To the extent that the provisions of IOIA and the Articles of Agreement are not identical, the Organizations enjoy the benefits of both (Restatement of the Foreign Relations Law of the U.S., § 467, comment f (1988)). Thus, interpretations of the IOIA are instructive in understanding the privileges and immunities accorded by the Articles of Agreement. The IOIA immunities may be denied by Presidential action, but the President does not have similar authority under the Articles of Agreement and the Implementing Legislation.

C. Purposes of the Privileges and Immunities

The premises on which the Organizations' immunities – and indeed, the Articles of Agreement as a whole – are based are that (i) some measure of immunity from the legislation and application of individual sovereign rules is necessary if the Organizations are to effectively operate in an international environment and fulfill their development missions and (ii) the Articles of Agreement create a single collective governance system through which the sovereign members of the Organizations control the Organizations and through which appropriate rules and practices, such as financial controls, employment rules and financial disclosure practices, are imposed by the members. As the largest shareholder and capital contributor of the Organizations, the United States plays a very important role within this structure.

Consistent with these premises, the Organizations have functioned for decades free from national regulatory regimes. The United States has confirmed on several occasions that the Organizations are not subject to U.S. financial regulations: (i) the securities of the Organizations are not subject to the provisions of the Securities

Act of 1933 and the Securities Exchange Act of 1934 (22 U.S.C. § 282k(a) (2006); 22 U.S.C. § 286k-1(a) (2006)); (ii) the staff of the Securities and Exchange Commission ("SEC") has confirmed that the status of the IFC under its Articles of Agreement "is obviously completely inconsistent with the broad jurisdiction" of the SEC under the Investment Company Act of 1940 (Memorandum from the Division of Corporate Regulation to the SEC Re: Applicability of the Investment Company Act of 1940 to the International Finance Corporation (May 10, 1955) (on file with the SEC)); and (iii) the SEC has confirmed that the IBRD and the International Development Agency "are persons not within the intent" of the Investment Advisers Act of 1940's definition of "investment adviser" (Investment Advisers Act of 1940 Release No. 1971, 2001 SEC LEXIS 1782 (Sept. 4, 2001)). The European Commission has similarly exempted the Organizations from the reach of its Prospectus Directive and Transparency Directives (Council Directive 2003/71, para. 11, 2003 O.J. (L 345) (EC); Council Directive 2004/109, art. 8, 2004 O.J. (L 390) (EC)), as have the European Parliament and Council in the Alternative Investment Fund Managers Directive (Council and Parliament Directive 2011/61, art. 2, 2011 O.J. (L 174)).

Although there are relatively few court decisions interpreting the scope of the privileges and immunities of international organizations, and we have not found a case that is directly on point with the facts and circumstances that you have asked us to consider, the privileges and immunities of international organizations have been considered by courts and the executive branch in other regulatory contexts. For example, courts and the executive branch have confirmed that national employment laws do not apply to the Organizations. In Mendaro v. World Bank, 717 F.2d 610 (D.C. Cir. 1983), the court held that the IBRD was immune from an employment related suit under the IOIA. The court cited approvingly a 1980 letter from the State Department Legal Adviser to the General Counsel of the Equal Employment Opportunities Commission. Id. at 620. That letter stated: "[T]here has emerged a widespread practice among States not to exercise jurisdiction over internal employment disputes in international organizations, regardless of whether national law specifically provides for immunity from jurisdiction...[o]ur own practice ... has been in accord with this principle, and I believe that it is incumbent on the U.S. Government to ensure that it remains so." (Marian L. Nash, *U.S. Practice*, 74 A.J.I.L. 917, 919-20 (1980)). The Mendaro court also relied on its decision in Herbert Harvey, Inc. v. NLRB, 424 F.2d 770 (D.C. Cir. 1969), in which the court acknowledged the IBRD's immunity from the jurisdiction of the National Labor Relations Board, in holding that a supplier of maintenance building services was nevertheless subject to the NLRB's jurisdiction, because the employees were not "intimately connected" to the IBRD's operations. The court's opinion suggests that, had the supplier supplied services that were "connect[ed] with the functions of the World

Bank as an investment institution", both it and the NLRB would have found that the supplier was not subject to the NLRB's jurisdiction because of the IBRD's immunity. Id. at 782.

A key element in the rationale underlying the conclusions in the authorities cited in the previous paragraph is the necessity that international organizations be free from hindrance by individual member states. In holding the Organization of American States immune from an employment contract claim in Broadbent v. OAS, 628 F.2d 27 (D.C. Cir. 1976), the court said: "[t]he United States has accepted without qualification the principles that international organizations must be free to perform their functions and *that no member state may take action to hinder the organization. . . .* Undercutting uniformity in the application of staff rules or regulations would undermine the ability of the organization to function effectively." Id. at 34-35 (emphasis added). In supporting its holding, along this same line of reasoning, the Mendaro court included the following quotation from the State Department Legal Adviser's letter referred to in the preceding paragraph: "Forcing the organizations to conform their personnel practices to the varying – and often conflicting – domestic laws in each country where they operate would create unmanageable administrative burdens and could well prevent them from carrying out the functions for which they were created." Mendaro, 717 F.2d at 617.

II. The Dodd-Frank Act Does Not Repeal or Provide Authority for the Curtailment of the Organizations' Privileges and Immunities

A. Canons of Statutory Interpretation Dictate that Repeal or Curtailment of Privileges and Immunities Must Be Explicit

The Organizations' privileges and immunities are established by their Articles of Agreement, which are international agreements to which the United States is a party. They have been made part of the domestic law of the United States by an act of Congress. The relevant canons of statutory interpretation compel the conclusion that the Dodd-Frank Act did not, and it did not authorize the CFTC to, repeal or curtail the Organizations' privileges and immunities found in the Articles of Agreement.

1. *Generalia specialibus non derogant* ("the general do not derogate from the specific") is a long-recognized canon of statutory interpretation. It essentially holds that if a later general law and an earlier specific law are potentially in conflict, courts will adopt the reading that does not result in an implied repeal of the earlier statute absent an express indication that the legislature intended to repeal the earlier law. In Ex Parte Crow Dog, 109 U.S. 556, 572 (1883) (superseded by statute on other grounds), the United

States Supreme Court held that a subsequent treaty with Native Americans did not repeal a prior law that excepted Native Americans from the jurisdiction of U.S. courts for specified acts, since the subsequent treaty did not repeal the prior statute through express words or necessary implication. The court explained that "[t]o find [that the later treaty repealed the more specific prior statute] would be to reverse in this instance the general policy of the government towards the [Native Americans], as declared in many statutes and treaties, and recognized in many decisions of this court, from the beginning to the present time. To justify such a departure, in such a case, requires a clear expression of the intention of Congress, and that we have not been able to find." Id.

Another example of the application of this canon can be found in General Electric Credit Corp. v. James Talcott, Inc., 271 F. Supp. 699 (S.D.N.Y. 1966), which held that the venue rules under the later adopted Securities Act of 1933 and the Securities Exchange Act of 1934 do not apply to national banks, which are governed by the more specific venue rules of the National Bank Act, since (i) there is a presumption against implied repeals, (ii) a special earlier statute is deemed to remain in existence as an exception to a later inconsistent more general statute and (iii) no irreconcilable conflict existed between the two venue statutes if the prior canon of statutory interpretation were applied.

Thus, the Organizations' specific privileges and immunities must be read as exceptions to the reach of the later adopted Dodd-Frank Act's general and broad provisions that, read literally, seemingly would require the regulation of all entities engaging in derivative transactions. Any other conclusion would amount to an implied repeal of the Organizations' immunities, a violation of the *generalia specialibus non derogant* maxim, given that the conflict between the seemingly expansive reach of the Dodd-Frank Act and the expressly provided privileges and immunities of the Organizations is irreconcilable. To paraphrase Ex Parte Crow Dog, a finding that the later enacted general Dodd-Frank Act effectively repeals, or authorizes the CFTC to repeal, a more specific prior law "would be to reverse in this instance the general policy of the government towards [the Organizations] from the beginning to the present time." 109 U.S. at 572. As discussed in more detail below, Congress has not expressed a clear intention, in either the text of Title VII or its legislative history, to do so.

2. The "*Charming Betsy* canon" holds that "[A]n act of Congress ought never to be construed to violate the law of nations if any other possible construction remains" (McCullough v. Sociedad Nacional de Marineros de Honduras, 372 U.S. 10, 19 (1963) (quoting Murray v. Schooner Charming Betsy, 6 U.S. 64, 118 (1804))). The Restatement of the Foreign Relations Law of the U.S., §114 (1988) formulates the

Charming Betsy canon this way: "Where fairly possible, a United States statute is to be construed so as not to conflict with international law or with an international agreement of the United States." In McCullough, the United States Supreme Court used this canon of interpretation to hold that federal law did not apply to a foreign vessel with American contacts where (i) a well-established rule of international law would require that a different law control, (ii) no language existed in either the federal act itself or in its "extensive legislative history" that reflected an intent to apply the federal law to foreign vessels and (iii) questions of international import would remain as to invite retaliatory action from other sovereigns if the federal law were applied. McCullough, 372 U.S. at 19-22.

* * *

Thus, in the absence of any indication that Congress intended otherwise, the Dodd-Frank Act must not be interpreted in a way that would result in the violation of the domestic law of the United States established by the Implementing Legislation or in the violation by the United States of its international law obligations contained in the Organizations' Articles of Agreement.

B. There is No Indication that the Dodd-Frank Act was Intended to Apply to the Organizations, Either Directly or Indirectly

The legislative history of Title VII and the historical national and international treatment of the Organizations suggest that Title VII should not apply to them. The record is void of any indication that Congress intended for Title VII of the Dodd-Frank Act to apply to the Organizations. Nothing in either the text of Title VII or its copious legislative history suggests a concern about regulating such entities. While the legislative history contains sporadic references to "international implementation" of the provisions of Title VII, the discussions appear to be more concerned with large, international, for-profit financial institutions rather than development institutions, such as the Organizations, that are owned by sovereign states. To the extent that the IBRD is ever referred to, it is only to mention it for its beneficial purpose. (Senator Dodd referred to the IBRD as "provid[ing] financial assistance and stability to nations that are struggling" in the context of speaking about *the fiscal irresponsibility of others* (111 Cong. Rec. S3860 (daily ed. May 18, 2010)).) Were there congressional intent to apply Title VII to the Organizations, such intent should have been expressly included in the Dodd-Frank Act itself and, we would expect, an explicit reference of such application to the IBRD or the IFC would have been expressed during the course of legislative deliberations.

While the text of Title VII also refers to the need for consistent "international implementation" of swaps regulation, this requirement as espoused in Section 752(a) of the Dodd-Frank Act lends further support to the proposition that Title VII should not apply to the Organizations. Section 752(a) of the Dodd-Frank Act requires the CFTC and the SEC to "consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation ... of swaps [and] security based swaps." The European Commission, however, has already considered the applicability of national derivative regulation to the Organizations in proposed legislation. Having done so, it concluded that such regulations should not apply to entities such as the Organizations, and it expressly provided that its European Market Infrastructure Regulation[2] – the European counterpart to Title VII – shall not apply to such entities "in order to avoid limiting their powers to intervene to stabilise [sic] the market, if and when required." (Explanatory Memorandum on Commission Proposal for a Regulation of the European Parliament and of the Council on OTC Derivatives, Central Counterparties and Trade Repositories, COM (2010) 484 (final) (Sept. 15, 2010).)

III. The Organizations' Purposes and Uses of Derivatives

The Organizations exist to promote economic development in their member countries. Envisioned at the Bretton Woods Conference in 1944 and established in 1945, the focus of the IBRD is on providing financing to its sovereign member countries. In 1956, the IFC was established with the stated goal of furthering economic development in the private sector through investments and other activities in the developing world. To realize their objectives, the Organizations employ a number of tools, including direct lending in major and local currencies, investing in equity in private sector enterprises and mobilizing from the private sector in order to supplement direct investment by the Organizations.

You have informed us that the Organizations use over-the-counter ("OTC") derivatives to hedge currency, interest rate and other market risks arising in connection with their lending, borrowing, equity management and investment operations, and to enable clients in developing countries and other official sector institutions to

---

[2] The European Commission's Regulation is currently pending before the European Parliament and the Council of the European Union.

manage the risks to which they are exposed as a result of their activities.[3] For example, the Organizations are able to borrow in currencies and interest bases that offer the lowest possible cost. Typically, interest rate or currency derivatives are used to hedge these liabilities into floating rate dollars, the basis on which the Organizations manage their assets. Interest rate and currency derivatives are used by the Organizations to manage their liquidity and for asset/liability management (e.g., to hedge mismatches between their floating rate dollar balance sheets and lending operations conducted in both major and emerging market currencies and at fixed and floating rates of interest). In furtherance of the Organizations' development objectives, they also make hedging tools available to their sovereign and private sector clients, doing so by engaging in back-to-back principal transactions that allow the Organizations to take the credit risk of their clients and bridge the credit gap preventing their clients from obtaining direct access to hedging markets, while simultaneously hedging any associated market risk with major international banks and swap dealers. These risk management transactions are part of a comprehensive suite of development financing tools that, in your view, are integral to the development operations of the Organizations, both as part of the Organizations' own tools for managing their funding, liquidity management and asset/liability management functions, and in providing needed access to financing strategies for the Organizations' sovereign and private sector clients. Indeed, you have advised us that, in your opinion, without access to derivatives markets, the Organizations could not operate effectively in a multi-currency, floating rate environment as they do today. The Organizations use derivatives for such hedging purposes as part of providing financing solutions to emerging market countries and do not engage in speculative transactions.

Furthermore, you advise, the Organizations have the necessary capabilities for managing the risks associated with over-the-counter derivatives, including transaction valuation tools and collateral management operations. In addition, both Organizations have established risk management procedures that set and monitor commercial counterparty credit exposure. The IBRD has been active in the derivatives market for three decades and has supported market initiatives to manage risk. Notably, both Organizations currently require even highly rated major market counterparties to collateralize trades undertaken with the Organizations. You have informed us that the strong practices of both Organizations have led them to be consistently rated as highly credit-worthy counterparties by credit rating agencies, and that banking regulators have

---

[3] In rendering this opinion, we have relied, without independent verification, on information provided to us by the Organizations as to their swaps activities and the impact the application of the Regulations would have on their development missions.

consistently assigned low risk weightings to transactions with the Organizations under the Basel II framework.

A determination that the privileges and immunities of the Organizations do not insulate them from compliance with the provisions of the Dodd-Frank Act and the Regulations would impede the Organizations' abilities to effectively fulfill their functions by opening the door to the imposition of a multitude of national regulatory regimes on the Organizations. Regulation by several member states would inevitably result in conflicting regulation in many respects, which would hinder their ability to realize the international development objectives of their member governments, including the United States.

Finally, it is quite important to note that the Organizations are wholly owned by their sovereign shareholders; there are no equity shares held by individuals or financial institutions. Furthermore, there are no substantial bonuses or differential compensation arrangements that depend on financial performance. Thus, in your view, neither management nor staff of the Organizations has any individual or collective financial incentive to undertake undue risk.

IV. Application of the Regulations to the Organizations' Derivatives Would Violate their Privileges and Immunities

A. The Regulatory Scheme of the Regulations

There are basically two types of regulatory measures to which the Organizations and their swaps would be subject, were they to be covered by the Regulations, that would violate the Organizations' privileges and immunities:

1. *Direct Regulation of Entities under Title VII Based on Their Derivatives Activities ("Direct Regulation").* If the Organizations were covered by the Regulations, they could be required to register as "major swap participants" or "MSPs".[4] As an MSP, each would likely be required to, among other things:

[4] Given the status of the Regulations as of the date hereof, particularly the definition of "swap dealer", we are not able to conclude that the Organizations' activities would cause them to come within the definition of "swap dealer". The regulatory measures that would apply to the Organizations if they were required to register as "swap dealers" would create substantially the same conflicts with the Organizations' privileges and immunities as those that would be imposed on them as MSPs.

(a) Prepare and retain books and records in such manner and for such period as may be prescribed by the CFTC and submit to examinations and investigations by the CFTC;

(b) Maintain daily trading records (including records of oral and electronic communications and recording telephone calls);

(c) Post collateral as security for its swap obligations;

(d) Comply with capital requirements prescribed by the CFTC;

(e) Execute its swaps on a designated contract market or swap execution facility and clear them through a derivatives clearing organization;

(f) Conform to specific business conduct standards as adopted by the CFTC;

(g) Conform its swaps documentation to the standards proscribed by the CFTC; and

(h) Establish other practices that would be monitored by the CFTC.

Failure to comply with these measures, if they were applicable, would, of course, subject the Organizations to enforcement action.

2. *Regulation of Derivatives Entered into by the Organizations with Regulated Entities ("Direct Regulation Equivalent").* Even if the Organizations are not required to register as MSPs, if their swap transactions are covered, then transactions with entities that are MSPs or "swap dealers" would subject the Organizations to several of the Direct Regulation measures. For example, the Organizations would be required to post collateral as security for their swap obligations and their swap transactions would be required to be executed on a designated contract market or swap execution facility and cleared through a derivatives clearing organization. The documentation would have to conform to standard documentation. This is in many ways the substantive equivalent of the Organizations' being subjected to Direct Regulation, as the Regulations would have the effect of requiring the Organizations to modify their current practices.

B. Why the Regulations Would Violate the Organizations' Privileges and Immunities

Our conclusions set forth below as to the scope of the privileges and immunities of the Organizations in the context of the Regulations are based on our reading of the Organizations' respective Articles of Agreement, and our understanding of the policies underlying the scope and purposes of the privileges and immunities of international organizations generally, as illustrated in applicable court decisions and regulatory actions, as discussed in Section I.C.[5]

In our view, the books and records requirements, as well as the CFTC's examination and investigative powers, would violate the Organizations' archival immunity. Being subject to enforcement action would violate their immunity from members' suits, as well as their immunity from searches.

The requirement that the Organizations post collateral would violate the Organizations' immunities from attachment and seizure, whether the requirement is imposed as a Direct Regulation or a Direct Regulation Equivalent measure. The Organizations' attachment immunity protects the Organizations' assets from an attachment before the entry of a final judgment. Posting collateral in order to enter into a transaction, particularly when there is no indication that the collateral will ever be called, is the economic equivalent of an attachment prior to a judgment having been entered. The Organizations' immunity from seizure protects the Organizations from any government's attempt to, among other things, requisition the Organizations' assets, such as by requiring that the Organizations use their assets in a prescribed manner. Likewise, requiring that the Organizations use their assets for a purpose other than for the furtherance of their development purposes is the economic equivalent of a requisition, even if it is for a limited purpose.

While the Organizations' regulatory immunity may appear to be less absolute and perhaps more conditional than the other immunities found in the Articles of Agreement, because their regulatory immunity provides freedom from regulation only

---

[5] In light of the scarcity of authority, and the absence of controlling authority in this specific context, the scope of the privileges and immunities of the Organizations in this context is not entirely free from doubt. Nevertheless, we believe that a court, if presented with a properly pleaded and argued case, should agree with our conclusions as to their scope.

"[t]o the extent necessary to carry out the operations provided for" in the Articles of Agreement, we do not believe that this is the case as applied to the context that you have asked us to consider. As the authorities cited in Section I.C indicate, a key element to the immunities is the necessity of avoiding the imposition by member states of regulations that could hinder the Organizations' abilities to accomplish their stated purposes. While those authorities cited were dealing with immunities that did not contain the "to the extent necessary" clause, we do not believe that difference is significant in this context. Because the imposition of regulations by one member state could lead to the imposition of additional, or varying or even conflicting, regulations by other member states, we believe that any regulatory measures that, while not necessarily prohibiting essential activities, increase the costs of such activities, reduce their effectiveness, adversely affect uses of capital or encourage other members to attempt to regulate or impose controls on the Organizations violate the Organizations' regulatory immunity.

In addition, you have informed us that compliance with many of the Regulations would come at a substantial cost of capital, personnel and time, causing the Organizations to divert resources intended for clients in the developing world. As an alternative, it might be necessary for the Organizations to remove themselves from the larger marketplace and transact wholly with other exempt entities or limit their activities to jurisdictions where their activities are not regulated, at a substantial cost to their ability to effectively manage risk due to the exponentially smaller universe of available counterparties. Other alternatives would be for the Organizations to limit lending activities, to the detriment of prospective borrowers and their development mission, or to discontinue providing risk management tools to borrowing countries and other clients, leaving them exposed to interest rate and currency risks. All of these options would impede the development effectiveness of the Organizations.

V. Regulation of the Organizations or Their Swaps is not Necessary

As we indicate in Section I.C, one of the premises on which the Organizations' privileges and immunities are based is that their Articles of Agreement create a single collective governance system through which the sovereign members of the Organizations control the Organizations and through which appropriate rules and practices are imposed by the members. The use of derivatives by the Organizations is authorized, monitored and controlled by their sovereign members, including the United States, in accordance with the organizations' operative documents. Thus, not only is there no need for a country-specific layer of regulation, but if the United States were to regulate the Organizations under the Dodd-Frank Act, it would open the door to other individual member states imposing their own regulations. This would undercut the

Organizations' governance system, which is based on the participation of each member government in the collective system as the exclusive method of governance.

For approximately thirty years, the Organizations have effectively managed their derivative operations independent of individual sovereign regulation. Given their history of responsible risk management, the fact that the Organizations' swaps are not regulated under Title VII would not create systemic risk or materially limit the CFTC's ability to regulate the market. (The Organizations' counterparties would, of course, continue to be regulated, to the extent that they are MSPs or swap dealers.) On the other hand, if the Organizations – both of which are very credit-worthy, responsible risk managers with strong capital structures backed by sovereign shareholders – are forced by the Regulations to withdraw from the larger swap market, it would leave fewer highly rated swap counterparties to transact with. Such a result may prove to be squarely inconsistent with Title VII's underlying concern about limiting systemic market risk.

It is also important to note that there is nothing to prevent the Organizations from voluntarily complying with provisions of Title VII, if the Organizations conclude that such actions are financially efficient and consistent with their development mandates. In any event, the history of responsible risk management by the Organizations and the overall mission of the Organizations helps to give comfort that the Organizations are unlikely to engage in the offending practices that Title VII was intended to curtail. Furthermore, the United States and the other member states, through their role in the Organizations' governance structures, should be able to prevent the Organizations' engagement in such practices.

With respect to Title VII's margin requirements, which you have advised us would be particularly burdensome to the Organizations, it is of note that each of the Organizations' ISDA agreements with counterparties, under which its swaps are entered into, contains a provision obligating the Organization to post collateral if its credit rating is downgraded below triple-A. (Currently, the Organizations are not required to post collateral.) Accordingly, the protections that Title VII seeks to impose in this regard are already built into the Organizations' contractual agreements. The Organizations' governance structures provide the member governments with a vehicle for maintaining these protective measures.

VI. Conclusion

The Direct Regulation and the Direct Regulation Equivalent measures may not apply to the Organizations or their swap transactions, because (i) such

application would be inconsistent with the Organizations' broad privileges and immunities provided in their Articles of Agreement, (ii) the United States has adopted implementing legislation giving full force to these privileges and immunities as domestic law of the United States and (iii) such application would violate the international obligations of the United States. Moreover, nothing in the text of Title VII of the Dodd-Frank Act or its extensive legislative history suggests that the Organizations or their swaps were intended to be subject to the requirements of Title VII. We also note your concern that inclusion of the Organizations and their swap transactions in the regulatory structure prescribed by the Dodd-Frank Act regarding derivative transactions is unnecessary in light of the governance structures of the Organizations, and that subjecting the Organizations or their swaps to regulation would likely have substantial negative consequences for the Organizations and their clients.

This opinion is addressed to you, is solely for your benefit and may not be relied upon by any other person without our express written consent.

Very truly yours,

SULLIVAN & CROMWELL LLP