

Anne-Marie Leroy
Senior Vice President and Group General Counsel

October 5, 2011

The Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

International Bank for Reconstruction and Development
and International Finance Corporation –
Legal Opinion Regarding Privileges and Immunities

Dear Mr. Chairman:

We met with you and your staff on July 6, 2011 to discuss the special status under U.S. law of the International Bank for Reconstruction and Development (IBRD), the International Finance Corporation (IFC), and other multilateral development institutions in which the United States is a member (collectively, the MDBs). In particular, we urged the CFTC to implement Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) in a manner that (1) fully respects the privileges and immunities of IBRD, IFC, and other MDBs, as implemented in U.S. law, and (2) does not impair the development effectiveness of these institutions. We subsequently filed a July 22, 2011 comment on the proposed rule regarding the further definition of the term “swap”, a copy of which is attached for your reference.

In our July 6 meeting, you asked if an external law firm had opined on this matter. IBRD and IFC subsequently commissioned the firm of Sullivan & Cromwell to analyze the potential application of the Dodd-Frank Act to our derivatives activities. The opinion was primarily prepared by Edwin Williamson, currently Senior Counsel to Sullivan & Cromwell and formerly the Legal Adviser of the U.S. Department of State. The Sullivan & Cromwell opinion, which is attached to this letter, confirms that regulation of IBRD and IFC under Title VII of the Dodd-Frank Act would constitute a breach by the United States of its international obligations under the Articles of Agreement of each organization, as implemented in U.S. law by the Bretton Woods Agreements Act and the International Finance Corporation Act. The opinion further concludes that the Dodd-Frank Act does not authorize any such curtailment of the privileges and immunities of IBRD and IFC.

The legal opinion is addressed to and focuses on the privileges and immunities of IBRD and IFC, the organizations that commissioned it. As noted in July 22, 2011 letter, all of the other MDBs (as defined therein) have equivalent privileges and immunities that

the US has agreed to accept (page 4) and which are implemented in U.S. law in the same manner as the privileges and immunities of IBRD and IFC (page 4, footnote 2).

As outlined in the July 22, 2011 letter, we continue to believe that one potentially efficient and effective mechanism for dealing with this issue is for the CFTC to define the term “swap” to exclude transactions with MDBs of which the United States is a member (subject to a potential exclusion that would ensure that our commercial counterparties still report any transactions with us to the CFTC).

At the same time, we remain open to other options that would provide a comprehensive solution to this issue – in particular, solutions that would deal with what the Sullivan & Cromwell opinion describes as prohibited “Direct Regulation Equivalent” measures such as mandatory collateralization and clearing requirements for our derivatives transactions.

Please feel free to share this letter with the staff of the CFTC as you see fit, and to make it part of the public record as necessary or desirable. We would welcome the opportunity to engage in further consultations about any other potential implementation options that the Commissioners or the CFTC staff believe would be appropriate in the circumstances.

Sincerely,



Anne-Marie Leroy
Senior Vice President and Group General Counsel

cc: Mr. Michael Dunn, CFTC Commissioner
Ms. Jill E. Sommers, CFTC Commissioner
Mr. Bart Chilton, CFTC Commissioner
Mr. Scott D. O'Malia, CFTC Commissioner
Mr. Ian Solomon, Executive Director for the United States of America, World Bank
Mr. Vincenzo La Via, World Bank Group Chief Financial Officer
Ms. Madelyn Antoncic, Vice President and Treasurer, World Bank
Ms. Rachel Robbins, Vice President and General Counsel, IFC
Mr. Jingdong Hua, Vice President, Treasury and Information Technology,
International Finance Corporation
Mr. Soren Elbech, Treasurer, Inter-American Development Bank
Mr. Pierre Van Peteghem, Group Treasurer, African Development Bank
Mr. Thierry De Longuemar, Treasurer, Asian Development Bank
Ms. Isabelle Laurent, Deputy Treasurer & Head of Funding, European Bank for
Reconstruction & Development
Mr. John Borthwick, Deputy Treasurer, International Finance Corporation
Ms. Doris Herrera-Pol, Director, Capital Markets, The World Bank