Европейска инвестиционна банка
Evropská investiční banka
Den Europæiske Investeringsbank
Europäische Investitionsbank
Euroopa Investeerimispank
Ευρωπαϊκή Τράπεζα Επενδύσεων
European Investment Bank
Banco Europeo de Inversiones
Banque européenne d'investissement
Banca europea per gli investimenti
Eiropas Investīciju banka
Europos investicijų bankas
Európai Beruházási Bank
Bank Ewropew ta' l-Investiment
Europese Investeringsbank
Europejski Bank Inwestycyjny
Banco Europeu de Investimento
Banca Europeană de Investiţii
Európska investičná banka
Evropska investicijska banka
Euroopan investointipankki
Europeiska investeringsbanken

David A. Stawick, Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, DC 20581

Jennifer J. Johnson, Secretary
Board of Governors of the Federal
Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219

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

Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590-AA45
Federal Housing Finance Agency
Fourth Floor, 1700 G Street, NW
Washington, DC 20552

Gary K. Van Meter, Acting Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102

September 14, 2012

SG-JU/JU CORP/FI/2012-2418/ES/sldg

Re: Swap Margin Proposals

Ladies and Gentlemen:

We are submitting this letter in response to the Commodity Futures Trading Commission ("CFTC" or "Commission") reopening on July 6, 2012[1] of the comment period for its proposed rule on margin requirements[2] (the "CFTC Release") and the prior request by several regulatory agencies[3] (the "Agencies") for comments on proposed rules (the "Proposed Rules" and together with the CFTC Release, the "Margin Regulations")[4]

[1] Press release, U.S. Commodity Futures Trading Comm'n, CFTC Reopens Public Comment Period on Margin Requirements for Uncleared Swaps (July 6, 2012).

[2] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 76 Fed. Reg. 23732 (Apr. 28, 2011) (Notice of Proposed Rulemaking).

[3] The Board of Governors of the Federal Reserve System (the "Board"), the Office of the Comptroller of the Currency (the "OCC"), the Federal Deposit Insurance Corporation (the "FDIC"), the Federal Housing Finance Agency (the "FHFA") and the Farm Credit Administration (the "FCA").

[4] Margin and Capital Requirements for Covered Swap Entities, 76 Fed. Reg. 27564 (May 11, 2011) (Notice of Proposed Rulemaking).

100, boulevard Konrad Adenauer L-2950 Luxembourg (+352) 43 79 -1 (+352) 43 77 04 www.eib.org info@eib.org

under Sections 731 and 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act governing margin and capital requirements applicable to swap dealers and major swap participants (together, "swap entities"), as the Margin Regulations may be affected by the international effort to harmonize margin rules and the consultative paper [5] released on July 6, 2012 by the Working Group on Margin Requirements ("WGMR") of the Basel Committee on Banking Supervision ("BCBS") and the International Organization of Securities Commissions ("IOSCO").

In particular, the EIB is concerned about the application of the Margin Regulations to uncleared swaps that it, as a multilateral development institution, routinely uses to reduce risk and lower costs associated with providing support for its member countries and their development agenda. Specifically, EIB respectfully suggests that the Margin Regulations need not be imposed on it in order to help ensure the safety and soundness of the swap entities with which it deals nor would margin requirements in general be appropriate for the risk associated with non-cleared swaps of EIB held by swap entities.[6] Further, in the interests of international harmonization,[7] forebearance by CFTC and the Agencies would be particularly appropriate in light of the treatment of EIB under the proposed European Market Infrastructure Regulation ("EMIR") due to come into effect on January 1, 2013, as well as the Commission's treatment of international financial institutions, including with a specific mention of EIB, in the release of its Final Rule on the End User Exception to the Clearing Requirement for Swaps adopted on July 10, 2012.[8]

I. The European Investment Bank.

A. Background.

The European Investment Bank is an autonomous public institution operating on a non-profit making basis, comparable with other development banks known in CFTC parlance as "international financial institutions."[9]

---

[5] Basel Committee on Banking Supervision & Board of the International Organization of Securities Commissions, *Consultative Document: Margin Requirements for Non-Centrally-Cleared Derivatives* (July 6, 2012), *available at* http://www.bis.org/publ/bcbs226.pdf.

[6] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 731(e)(3)(A) (2010).

[7] *See id.* § 752.

[8] End-User Exception to the Clearing Requirement for Swaps, 77 Fed. Reg. 42560, 42561-62 n.14 (July 19, 2012) (Final Rule).

[9] For CFTC use of the term "international financial institution," including explicit listing of EIB, see End-User Exception to the Clearing Requirement for Swaps, 77 Fed. Reg. 42560, 42561-62 n.14 (July 19, 2012) (Final Rule); see also Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement," Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48208, 48303 n. 1070 (Aug. 13, 2012) (Joint Final Rule); Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant," 77 Fed. Reg. 30596, 30692 n. 1180 (May 23, 2012) (Joint Final Rule) (defining "international

Footnote continued on next page

The Bank, owned entirely by the Member States of the European Union, is the financing institution of the European Union. It was created in 1958 under the original Treaty of Rome, and remains authorized under the Treaty on European Union and the Treaty on the Functioning of the European Union, amending the Treaty of Rome. It is constituted pursuant to the Statute of the European Investment Bank (the "Statute"). The Statute, as amended, is set out in a Protocol annexed to the Treaty on the Functioning of the European Union. As an annexed Protocol, the Statue is an integral part of, and has the same legal force as, the Treaty.

The Bank's mission is to foster the balanced and steady development of a common market among Member States. To that end the Bank focuses on co-financing projects by working with banks as well as corporate and public sector project promoters in the less-developed regions of the EU. To fulfill this purpose the Bank provides financing in particular in the form of loans and guarantees for projects that foster economic cohesion and convergence, and in areas that include promotion of environmental sustainability and that provide support for sustainable, competitive and secure energy.

To a more limited extent, the Bank also provides funding for certain development projects outside the EU, accounting for approximately 10% of the Bank's portfolio. Activities outside the European Union are devoted to emerging economies, notably EU-candidate countries, neighboring countries such as Russia and other countries on the EU's eastern perimeter, Mediterranean partner countries, and Asian, African, Latin American, Caribbean and Pacific countries. Projects in these areas support development of private sector enterprises, the financial sector, infrastructure, secure energy supply and environmental sustainability.

B. Ownership, Governance and Financing Activity.

The Bank is owned entirely by the Member States of the European Union. The Member States subscribe to the Bank's capital. Generally, each member's share is based on its economic weight within the EU (as expressed by gross domestic product) at the time of its accession.

Pursuant to the Statute, the Bank is governed by a 27 member Board of Governors, each of whom is designated by a Member State of the EU. They are, primarily, the Finance Ministers of the EU Member States. The Board of Governors approves the overall strategy of the Bank, establishes credit policy guidelines, approves the annual account and balance sheet, decides on capital increases and approves activities outside the EU. The Board of Governors also appoints the 28 members to the Board of Directors on nomination by the Member States and the European Commission. The Board of Directors has sole power to make decisions on loans, guarantees and borrowings. It is also responsible for ensuring that the Bank operates within the parameters of the Treaty and Statute. The

---

Footnote continued from previous page
financial institution" for the purpose of concluding that Congress did not intend to include such entities within the definition of "major swap participant").

Board of Governors also appoints a Management Committee and a six-person Audit Committee. Thus, the EU Member States retain a high degree of oversight over the Bank's financial status and operations.

By Treaty and under its Statute, the Bank is to operate as a non-profit entity. Its mission is to finance sound projects (and not speculative activities), as stipulated in Article 309 (ex Article 267 TEC) of the Treaty on the Functioning of the European Union:

> The task of the European Investment Bank shall be to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the internal market in the interest of the Union. For this purpose the Bank shall, operating on a *non-profit-making basis*, grant loans and give guarantees which facilitate the financing of the following projects in all sectors of the economy: (a) projects for developing less-developed regions; (b) projects for modernising or converting undertakings or for developing fresh activities called for by the establishment or functioning of the internal market, where these projects are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States; (c) projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States (emphasis added).

In addition, pursuant to the Statute, the Bank's treasury activities are not oriented toward speculative trading or the pursuit of profit. In fact, as reflected in Art. 21 of the Statute "the *Bank shall not, in managing its investments, engage in any currency arbitrage* not directly required to carry out its lending operations or fulfill commitments arising out of loans raised or guarantees granted by it (emphasis added)."

Under its Statute, the Bank's lending volume is capped by a statutory gearing ratio. It is permitted to have outstanding loans and guarantees of up to two and one-half times its subscribed capital, reserves, non-allocated provisions and profit and loss account surplus. The latter aggregate amount must be reduced by an amount equal to the amount subscribed (whether or not paid in) for any equity participation of the Bank.[10] As of December 31, 2011, the Bank's total subscribed capital was EUR 232,382,989,000 (of which EUR 11,619,649,000 was paid-in) and reserves, non-allocated provisions and profit and loss account surplus totaled EUR 30,857,947,000. As of December 31, 2011, outstanding loans

---

[10] Statute Article 16, Section 5.

and guarantees totaled EUR 482,308,485,000 equivalent.[11] In June 2012, the Member States of the EU proposed to increase the paid-in capital of the EIB by EUR 10 billion.[12]

C. *The Bank's Funding.*

The Bank raises capital for its financing operations primarily by issuing bonds on international capital markets. Bonds are issued in around 20 currencies, chief among them Euros, the US Dollar and British Pounds, in order to diversify and optimize funding sources. As a Treaty entity and due to its backing by 27 sovereigns and its conservative financial management, the Bank enjoys a AAA credit rating, which allows it to obtain favorable credit terms.

D. *Use of Swaps and Other Derivatives.*

The Bank uses derivative instruments principally to hedge two main risks to which it is exposed.[13] First, the Bank employs derivatives of several types in order to hedge specific risks associated with its fund raising and with the maintenance of its treasury. The majority of the Bank's hedging is for this purpose. In brief, the Bank seeks to hedge risks associated with changes in interest rates and foreign exchange rates. Second, the Bank uses swaps to hedge the asset and liability sides of its balance sheet (treasury investments and loans, including hedging the margin component of the expected interest payments on the loans that EIB makes), as well as broad asset liability management (the overall balance sheet). In addition, the Bank enters into short-term foreign exchange swaps in order to adjust positions in its treasury in relation to its benchmark currency, the Euro, and to cater to the demand for currencies in conjunction with loan disbursements.[14]

All of the Bank's long-term derivative transactions are conducted in the contractual framework of appropriate ISDA Master Swap Agreements with Credit Support Annexes (or equivalent), which specify the conditions of exposure collateralization by the Bank's counterparties. Financial risk policy guidelines specify collateral management rules, and establish detailed eligibility criteria and risk limits for swap counterparties. Credit risk associated with derivatives is managed by selecting well-rated counterparties, and trading with counterparties only under collateral agreements and within risk limits. Of the notional value of the Bank's derivatives portfolio, 73.9% was with counterparties rated A-1 or higher in 2011. The Bank's year-end 2011 unsecured exposure in derivatives

---

[11] In 2011, the Bank's lending totaled EUR 61 billion, of which EUR 54 billion was within the EU and EUR 7 billion was outside.

[12] Press release, European Inv. Bank, EIB President Welcomes EUR 10BN Capital Increase Proposal (June 29, 2012), *available at* http://www.sec.gov/Archives/edgar/data/33745/000095015712000269/ex99-1.htm.

[13] Nonetheless, we note that the Bank's use of derivatives is limited. Capital and reserves were over 72 times net market exposure to derivatives at the end of 2011 (EUR 3.7 billion).

[14] The Bank also uses exchange-traded futures to hedge investments in government bonds, but these are standardized derivatives traded on regulated markets and not swaps or other over-the-counter derivatives.

transactions (EUR 15.6bn) represents only 6% of the Bank's subscribed capital and reserves (EUR 261bn).

The Bank is forbidden from seeking to generate profit from over-the-counter derivatives transactions. As noted above, the Statute prohibits the Bank from engaging in currency arbitrage.[15]

II. Application of Proposed Margin Regulations

A. Applying US Margin Regulations to EIB Would Negatively Impact Pursuit of Its Public Mission

As originally proposed, the Margin Regulations would likely treat EIB as a "financial end user" or a "financial entity" subject to substantial margin requirements. Application of margin requirements would reduce the effectiveness of EIB and undermine the policy objectives of the EU Member States that authorize and direct its activities.

The use of swaps and other over-the-counter derivatives by EIB is essential to reducing the risk and lowering the costs associated with its borrowing and lending operations. Indeed, EIB would be unable to provide the current level of financing without its existing hedging strategies. The proposed Margin Regulations, if applied to EIB's swaps, could significantly affect the Bank's ability to hedge in a cost efficient manner.

At present, as a triple-A rated supranational entity, the EIB is not required by law or any regulation to post collateral on its swap transactions, and as a commercial matter, it does not. Resources not posted as collateral are available to support development projects. However, under the proposed Margin Regulations, the EIB would likely be required to post both initial and variation margin with its counterparties for all uncleared swaps. This would both reduce the Bank's hedging flexibility and increase its costs.

We recognize that the CFTC has proposed exemptions for certain commercial end users from margin requirements for uncleared swaps. However, it would appear that such exemptions would not be available to the Bank because, as the Margin Regulations are now proposed, the Bank might be deemed a "financial end user" or a "financial entity," which would disqualify it from the more flexible treatment that would be afforded to other end users. For the reasons that follow, however, EIB submits that just as the CFTC concluded in the release of the Final Rule on the End-User Exception to the Clearing Requirement for Swaps, that the EIB and similarly situated international financial institutions should not be subject to Section 2(h)(1) of the Commodity Exchange Act ("CEA") and not analyzed as to their status as "financial entities" under Section 2(h)(7) of the CEA, so the CFTC should accord the same treatment to the EIB and similarly situated international financial institutions for purposes of the Margin Regulations.

---

[15] Statute, Article 21.

B. EIB Does Not Meet the Statutory Threshold for Subjecting Uncleared Swaps to Margin Requirements

Section 731(e)(3) of the Dodd-Frank Act sets out the criteria by which the regulators are to establish margin requirements. These requirements are to help ensure the safety and soundness of swap dealers and major swap participants and be appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant. Since the CFTC has determined that EIB is not required to register as a swap dealer nor as a major swap participant,[16] the statutory directive is addressed to EIB counterparties that are swap dealers or major swap participants. The essential question, therefore, is whether exposure to EIB swaps could affect the safety and soundness or present undue risk to a swap dealer or major swap participant. EIB submits that it does not.

It is difficult to see how EIB's use of swaps to hedge its interest rate and currency risks presents a significant risk to the US financial system. The Bank is owned by 27 sovereign states, and its Board of Governors is composed primarily of the Finance Ministers of the EU Member States. The strength of EIB's capital base is evidenced by subscribed capital and reserves which in 2011 was EUR 261 billion, equal to 55.8% of the balance sheet.

Thus, the Bank is 0% risk-weighted under the rules of the Basel Committee on Banking Supervision (standardized approach)[17] and has a triple-A credit rating from the three major rating agencies. The Bank's securities are also recognized as High Quality Liquid Assets (for calculation of the Liquidity Coverage Ratio) by the Basel Committee on Banking Supervision. EIB's swaps positions did not contribute in any way to the recent financial crisis. To the contrary, EIB was a source of strength and provided a vehicle through which the EU and its Member States could provide financing to aid in the economic recovery.

In the implementation of the Basel regime in the United States, EIB receives differential treatment in line with its low risk profile. For example, under rules issued by the Board, certain "claims on, and the portion of claims guaranteed by the International

---

[16] Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant," 77 Fed. Reg. 30596, 30692 n. 1180 (May 23, 2012) (Joint Final Rule).

[17] ANNEX VI of the 2006/48/EC Capital Requirements Directive:

STANDARDIZED APPROACH: Part 1, Risk weights

20. Exposures to the following multilateral development banks <u>shall be assigned a 0 % risk weight:</u>

> ***(j) the European Investment Bank;***
>
> *(k) the European Investment Fund; and*
>
> *(l) the Multilateral Investment Guarantee Agency.*

Official Journal of the European Union L. 177/83 (June 30, 2006).

Bank for Reconstruction and Development (World Bank), the International Finance Corporation, the Interamerican Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank (emphasis added), the European Bank for Reconstruction and Development, the Nordic Investment Bank and other multilateral lending institutions or regional development banks in which the U.S. Government is a shareholder or contributing member" qualify for a 20% risk rating.[18] Furthermore, in a recent joint notice of proposed rulemaking issued by the OCC, Board, and the FDIC (collectively, the "Banking Agencies"), the Banking Agencies proposed to apply a zero percent risk weight to exposures to certain enumerated multilateral development banks ("MDBs"), including EIB.[19] According to the notice of proposed rulemaking, "The [Banking Agencies] believe this treatment is appropriate in light of the generally high-credit quality of MDBs, their strong shareholder support, and a shareholder structure comprised of a significant proportion of sovereign entities with strong creditworthiness."[20]

On the other side of its swaps trades, the Bank operates with carefully chosen, highly rated counterparties that post significant collateral to cover both initial and variation margin requirements under the applicable ISDA Master Agreements and Credit Support Annexes (or equivalent). As a commercial matter, the EIB's counterparties would continue to post collateral notwithstanding any exemption the Commissions might grant for EIB derivatives.

As originally proposed, the Margin Regulations of the CFTC and of the Agencies included "the government of any foreign country or a political subdivision, agency or instrumentality thereof" within the definition of "financial entity" (CFTC) or "financial end user" (Agencies). The latter explained that this classification did

> not fit easily into the proposed rule's categories of financial and non-financial end users. In comparing the characteristics of sovereign counterparties with those of financial and non-financial end users, the Agencies preliminarily believe that the financial condition of a sovereign will tend to be closely linked with the financial condition of its domestic banking system, through common effects of the business cycle on both government finances and bank losses, as well as through the safety net that

---

18 12 C.F.R. Part 325 Appendix A (2012).

19 Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements, 77 Fed. Reg. 52888, 52896 (Aug. 30, 2012) (Joint Notice of Proposed Rulemaking). The proposed rule generally includes proposed changes to the Banking Agencies' general risk-based capital requirements for determining risk-weighted assets. The proposed changes would revise and harmonize the Banking Agencies' rules for calculating risk-weighted assets to enhance risk-sensitivity and address weaknesses identified over recent years, including by incorporating certain international capital standards of the BCBS set forth in the standardized approach of the "International Convergence of Capital Measurement and Capital Standards: A Revised Framework" (Basel II), as revised by the BCBS between 2006 and 2009, and other proposals addressed in recent consultative papers of the BCBS.

20 *Id.*

> many sovereigns provide banks. Such a tight link with the health of its domestic banking system, and by extension with the broader global financial system, makes a sovereign counterparty similar to a financial end user both in the nature of the systemic risk and the risk to the safety and soundness of the covered swap entity. As a result the Agencies propose to treat sovereign counterparties as financial end users for purposes of the proposed rule's margin requirements.[21]

The above rationale developed by the prudential regulators should not apply to the EIB, which is not part of any domestic banking system. It does not accept deposits from the public nor does it engage in retail lending to domestic borrowers. In short, EIB does not constitute a channel for the transmission of risk between sovereigns and banks or vice versa.

As the description above made clear, EIB is very conservatively managed. It is not permitted to, and does not, engage in currency arbitrage. All of its hedging activity is undertaken as an end user. Its gearing ratio is limited by its Statute at two and one-half times its subscribed capital, reserves and non-allocated provisions and profit and loss account surplus. Since the EIB does not operate for maximum profit, it also has no incentive to over-lever, and the government officials who represent its 27 Member State shareholders scrutinize the EIB closely and ensure adherence to its Statute.

For all of the reasons stated above, the rationale expressed by the prudential regulators does not apply to EIB, and the CFTC and the Agencies should not classify EIB as a source of systemic risk or as a risk to the safety and soundness of U.S. financial institutions.[22]

---

21 Margin and Capital Requirements for Covered Swap Entities, 76 Fed. Reg. 27564, 27571 (May 11, 2011) (Notice of Proposed Rulemaking).

22 The Agencies include in their definition of "financial end user" an item (4) covering the following: "A person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k))." Margin and Capital Requirements for Covered Swap Entities, 76 Fed. Reg. 27564, 27587 (May 11, 2011) (Notice of Proposed Rulemaking). In addition, the CFTC's proposed definition of "financial entity" contains identical language (aside from the U.S. Code citation). It is not entirely clear whether EIB would fall under this definition. Accordingly, EIB suggests that if the CFTC and prudential regulators are inclined to address its situation and that of other similarly situated international financial institutions that they do so explicitly in order to make it clear that EIB does not fall within item (4) of the proposed definition. An example of the approach may be found in the CFTC's treatment of international financial institutions in its final definitions of swap dealer and major swap participant. *See* Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant," 77 Fed. Reg. 30596, 30692 n. 1180 (May 23, 2012) (Joint Final Rule) (enumerating specific entities and incorporating the EMIR list of multilateral development banks).

C. *International Harmonization Efforts*

It is interesting to note an important evolution in thinking since publication of the Margin Regulations in April and May 2011. Consistent with the Dodd Frank Act mandate to promote effective and consistent global regulation, representatives of the Board of Governors of the Federal Reserve Board, the CFTC and the Securities and Exchange Commission participated in the work of the WGMR referred to above, which released a consultative paper in July 2012.[23] That paper contained an important recommendation on the scope of coverage of margin requirements.

Specifically, the WGMR report discussed the concept that "margin requirements need not apply to non-centrally cleared derivatives to which non-financial entities that are not systemically important are a party given that (i) such transactions are viewed as posing little or no systemic risk and (ii) such transactions are exempt from central clearing mandates under most national regimes", as indeed they are under the CFTC and Agencies' Margin Regulations. Interestingly, the WGMR report then stated:

> Similarly, the BCBS and IOSCO broadly supported not applying the margin requirements in a way that would require sovereigns or central banks to either collect or post margin. Both of these views are reflected by the effective exclusion of such transactions from the scope of margin requirements proposed in this consultative paper.[24]

If the WGMR is correct in its views on sovereigns and central banks, margin requirements should also not apply to the EIB and other international financial institutions, which are managed conservatively and are far removed from risk transmission channels between sovereign and domestic banking systems.[25]

---

[23] *See* Basel Committee on Banking Supervision & Board of the International Organization of Securities Commissions, *supra* note 5.

[24] *See* Basel Committee on Banking Supervision & Board of the International Organization of Securities Commissions, *supra* note 5, at 9.

[25] EIB requests that the CFTC and the Agencies conclude that Margin Regulations not apply to it, rather than classifying EIB as a low-risk financial end user. Although the EIB predominantly uses swaps to hedge or mitigate the risks of its business activities, including balance sheet, interest rate or other risk arising from its business, and is subject to capital and leverage requirements imposed by its sovereign shareholders (albeit not by a prudential regulator or state insurance regulator), EIB does have substantial activity in the market, and any effort to fit EIB within the rubric of "low-risk financial end user" might excessively distort the regulators' careful construct. In any case, as an international organization under public international law, EIB believes that any margin it posts should be voluntary and based on commercial considerations and not the result of national requirements. Any margin requirement will necessarily reduce the amount of resources available for EIB's core mission and should only arise from a conscious choice of its sovereign shareholders. Any such requirement would also produce differential treatment in the United States and in Europe (as a consequence of the proposed treatment of EIB under EMIR) with all the attendant negative consequences of the absence of a harmonized approach.

The foregoing conclusion also applies as a matter of international harmonization. The treatment of EIB and other international financial institutions under EMIR is built on similar conclusions of low risk from this sector to its swap counterparties. In fact, under EMIR, the EIB and other international financial institutions are excluded from all but certain limited reporting rules. Applying the Margin Regulations to the EIB and other similarly situated financial institutions would produce differential treatment in the United States and in Europe with all the attendant negative consequences of the absence of a harmonized approach.

D. Conclusion

The EIB respectfully submits that the CFTC and the Agencies should not apply the Margin Regulations to it and other similarly situated international financial institutions. Such action would be consistent with the CFTC's earlier use of its statutory exemptive powers[26] and conclusions in the context of its final rules defining swap dealers and major swap participants and determining the scope of the End User Exception from central clearing requirements. It would also be consistent with emerging international harmonization efforts, including a logical extension to international financial institutions of the treatment proposed by the WGMR for foreign sovereigns and central banks. We thank you for this opportunity to comment. If you have any questions about the EIB or the impact of the proposed rules on its core mission, please communicate with Whitney Debevoise of Arnold & Porter LLP at 202 942 5042 or Whitney.Debevoise@aporter.com or Dan Waldman at 202 942 5804 or Dan.Waldman@aporter.com.

Respectfully submitted,

A. Querejeta
Secretary General and General Counsel

B. de Mazières
Director General - Finance

[26] 7 U.S.C.A. §§ 2(h)(2)(D)(iii), 4(c) (West 2012).