KfW BANKENGRUPPE

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Via Agency Web Site

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
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).

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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

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.

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