U.S. DEPARTMENT OF JUSTICE
Antitrust Division

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Timothy Cornell
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Dear Mr. Cornell:

This letter responds to your request, made on behalf of the Institute of International Finance ("IIF"), for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. Specifically, you have requested a statement of the Department's present enforcement intentions with respect to the IIF's proposal to publish a set of voluntary Principles for Debt Transparency ("Principles") that would make public certain information about sovereign debt taken on by various countries. Based on the information and representations you provided, and for the reasons explained below, the Department does not presently intend to challenge the Principles.

I. Factual Background

All facts set forth in this section regarding the Institute of International Finance and the proposed Principles are based on your representations to the Department.

The IIF is a global finance trade association, comprised of approximately 450 members (from 70 countries) from various stakeholder groups of the finance industry, including banks, hedge funds, insurance companies, and sovereign wealth funds, among others. Their stated mission is to support the financial industry by developing sound industry practices and advocating for regulatory, financial, and economic policies.

II. The Principles

The IIF is considering publishing the Principles, which would allow for the disclosure of certain information about the issuance of sovereign debt. The Principles contemplate that lenders would report, after at least 60 days and upon agreement with the borrower, information about the sovereign debt agreement including:

(i) identification of the borrower (or equivalent);
(ii) identification of the guarantor or provider of indemnity (if any) or equivalent, the beneficiaries of the guarantees/indemnities or equivalent and maximum amount payable thereunder;
(iii) type of financing;
(iv) for bilateral financings, the lender (or equivalent) at signing;
(v) for syndicated financings, the mandated lead arrangers and the facility agent (or equivalent) at signing;
(vi) applicable agent/trustee/transaction intermediary (for syndicated deals or those with multiple providers of financing/underwrites);
(vii) ranking (e.g., senior, subordinated, etc.);
(viii) amount that can be borrowed/raised and details of disbursement period, if prolonged;
(ix) applicable currency or currencies;
(x) repayment or maturity profile;
(xi) interest rate (or commercial equivalent) within ranges;
(xii) intended use of proceeds on drawdown;
(xiii) governing law;
(xiv) extent of waiver of sovereign immunity;
(xv) dispute resolution mechanism; and
(xvi) applicable collateral/security/assets subject to repo.

The exact nature and scope of the information disclosed would be subject to agreement between the lender and borrower. The Principles are intended to cover many types of financial arrangements, including "any arrangements, irrespective of their form, which have the economic effect of borrowing; and any guarantee or other assurance provided against such arrangements."

You represent that the Principles are voluntary, and cover transactions not only entered into by the sovereign but also those entered into by sub-sovereigns, as well as those transactions entered into by others but guaranteed by the sovereign or sub-sovereign. You contemplate that information will be disclosed between 60 and 120 days after the debt is encumbered.

III. Analysis of the Principles

The Transparency Principles you propose contemplate a type of information exchange among competitors. Under the antitrust laws, information exchanges among competitors are generally analyzed under the "rule of reason."[1] A rule of reason analysis is a flexible inquiry that focuses

[1] *See* U.S. DEP'T OF JUSTICE AND FED. TRADE COMM'N, ANTITRUST GUIDELINES FOR COLLABORATIONS AMONG COMPETITORS (2000), available at https://www.ftc.gov/sites/default/files/documents/public_events/joint-venture-hearings-antitrust-guidelines-collaboration-among-competitors/ftcdojguidelines-2.pdf [hereinafter Collaboration

on those factors necessary to evaluate the overall competitive effect of an agreement. More specifically, rule of reason analysis focuses on the state of competition with, as compared to without, the relevant agreement. The central question is whether the relevant agreement likely would harm competition by increasing the ability or incentive profitably to raise prices or reduce output, quality, service, or innovation relative to what likely would prevail in the absence of the relevant agreement. Various criteria are considered in assessing the legality of an information exchange, such as the parties' intent in sharing the information, the nature and quality of the information shared, and the structure of the information exchange, including safeguards implemented to minimize the risk that competitively sensitive information will be disclosed. There does not appear to be a substantial risk of anticompetitive effects in this case for the following reasons.

First, the business purpose of the Principles does not appear to be either directly or indirectly anticompetitive or designed to further coordination among private lenders to sovereign borrowers. The business purpose of the Principles is to enhance transparency in the sovereign debt markets in order to strengthen the credibility in sovereign fiscal plans, reduce the risk of adverse economic and social consequences resulting from undisclosed public liabilities, promote sound practices in public debt management, and increase efficiency in the market for sovereign debt financing.

Second, the nature of the information that will be shared is unlikely to facilitate tacit or explicit price-based or other anticompetitive coordination among competitors. You represent that the disclosure guidelines are limited to the categories of information about a government's liabilities that are necessary to permit an accurate and complete debt sustainability analysis. For example, disclosure of interest rate information within broad ranges after the issuance of a private loan, as you have proposed, would provide valuable information to the market and the public about the present value of a loan and the government's ability to service the debt. You further represent that disclosure of individual loan information is voluntary and requires the agreement of the borrower.

Third, the Principles contain several safeguards that are intended to mitigate the risk of exchanging any competitively sensitive information among competitors. As described above, potentially competitively sensitive information such as interest rates would only be disclosed in ranges (e.g., 1-3%, 4-7%, 8-11%, etc.). In addition, disclosure of debt information would be delayed, occurring no earlier than sixty days after the date on which funds first move in connection with the financing transaction. The disclosed information would also be collected and maintained by a "Reporting Host," an appropriate international financial institution (i.e., not a private sector lender or borrower).

It is also possible that the Principles will have procompetitive effects. The proposed disclosure is intended to generate efficiencies in the sovereign debt market by contributing to more informed

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Guidelines]. The Collaboration Guidelines provide a general outline of the analytical framework for evaluating collaborations among competitors.

sovereign debt financing decisions. You represent that the lack of transparency in the sovereign debt market increases transaction costs and results in less efficient pricing. Your Request Letter also states that, to the extent creditors may use the publicly available information to compete for loans with sovereign borrowers, they will be doing so on a more equal footing and with more reliable data. As positive outcomes of debt transparency begin to manifest, you represent that the market for sovereign debt financing will increase, as more creditors will be open to providing loans and guarantees to countries previously deemed to be at high-risk for default.

Finally, there appear to be numerous other benefits in the public interest from improved transparency in the sovereign debt market, including better governance and accountability; improved fiscal discipline and risk management practices; greater confidence on the part of investors, lenders, international financial institutions, and the general public in the sovereign debt market; and a reduction in vulnerability to market shocks that result from undisclosed public liabilities.

IV. Conclusion

Based on your representations and the documents and information submitted in support of your request, the Department has no present intention to challenge the Principles, as drafted. However, there are number of implementation details that have not been fully developed in the current proposal. The Department assumes that those details will follow the same procompetitive ideals embodied in the Principles, but does not and cannot prospectively opine on any details not included in the letter.

This letter expresses the Department's current enforcement intention and is predicated on the accuracy of the information that you have presented to us, as well as any additional qualifications set forth in this letter. In accordance with its normal practice, the Department reserves the right to bring an enforcement action in the future if the actions of the IIF regarding the implementation or operation of the Principles produce anticompetitive effects in any market.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6, and subject to the limitations and reservations of rights therein. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data you submitted will be made publicly available within thirty (30) days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,

Makan Delrahim