

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-1955/803-164]

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT AND INTERNATIONAL DEVELOPMENT ASSOCIATION; NOTICE OF APPLICATION

66 FR 40301

DATE: Thursday, August 2, 2001

ACTION: Notice of application for exemption under the investment advisers act of 1940 ("Advisers Act").

Applicants: International Bank for Reconstruction and Development ("IBRD") and International Development Association ("IDA").

Relevant Advisers Act Sections: Exemption requested under section 202(a)(11)(F) from section 202(a)(11).

SUMMARY OF APPLICATION: Applicants request an order declaring them to be persons not within the intent of section 202(a)(11), which defines the term "investment adviser."

Filing Dates: The application was filed on June 22, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 31, 2001, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary: SEC, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants: International Bank for Reconstruction and Development and International Development Association, 1818 H Street, NW., Washington, DC 20433.

FOR FURTHER INFORMATION CONTACT: Marilyn D. Barker, Senior Counsel, (202) 942-0719, or Jennifer L. Swain, Assistant Director, at (202) 942-0719 (Division of Investment Management, Office of Investment Adviser Regulation).

July 27, 2001.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch.

Applicant's Representations

1. IBRD was established by international treaty and its principal purpose is reducing poverty by promoting the economic development of member countries. IBRD has operated since 1946 under Articles of Agreement signed by the governments of its member countries, and its member countries own all of its capital stock.

2. IDA is an affiliated international organization, and membership in IDA is open only to members of IBRD. IDA was established in 1960, and its main goal is reducing poverty by promoting the economic development of its less developed member countries. IDA's members own all of its capital stock.

3. IBRD and IDA have the same staff. Applicants represent that since 1990, they have regularly offered multi-country technical assistance on reserves asset management to central banks of member countries, to other government institutions of member countries, and to other international organizations owned entirely by their sovereign nation members substantially all of which are also members of Applicants ("Sovereign Organizations"). Applicants represent this program's objectives is to assist central banks in adopting portfolio management techniques.

4. Applicants represent that they seek to expand their reserve assets technical assistance program to meet requests for more sustained services and requests for asset management. Applicants would provide the expanded services to member countries, central banks of member countries, other government institutions of member countries, and Sovereign Organizations. Applicants represent that they would manage only government or other public assets.

5. Applicants represent that they have also hosted financial assistance seminars for member countries, and that these courses have included asset and liability management, capital markets and derivatives activities, and middle and back office operations. Applicants represent that they now seek to provide detailed advice on debt management, hedging techniques for specific transactions (e.g., derivatives), and capital market borrowing.

6. Applicants represent that they plan to charge a fee for the expanded services, to recover the costs associated with the expanded services, including the incremental costs of additional assets under management.

Applicants' Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines "investment adviser" to mean "any person who, for compensation, engages in the business of advising others * * * as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities * * *."

2. Applicants propose to offer asset management and other advisory services on a regular, recurring basis and to charge recipients a fee for these services. Accordingly, Applicants would be "in the business of" providing investment advice for compensation and would be "investment advisers" for purposes of the Advisers Act.

3. Section 202(a)(11)(F) of the Adviser Act authorizes the Commission to exclude from the definition of "investment adviser" person that are not within the intent of section 202(a)(ii). Applicants request that the Commission issue an order under section 202(a)(11)(F) declaring them to be persons not within the intent of section 202(a)(11).

4. Applicants argue that the Advisers Act contemplates the regulation of private sector entities and was not intended to regulate an entity that is an organization of sovereign nations providing investment advice to its sovereign nation members, their central banks and other government institutions, and Sovereign Organizations. Applicants state that section 202(b) of the Advisers Act provides that the Advisers Act is not applicable to the "United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto." While Applicants acknowledge that the Advisers Act does not expressly exempt international organizations made up solely of sovereign nations, Applicants argue that the Advisers Act seems clearly intended not to apply to such organizations.

5. Applicants acknowledge that a foreign individual or corporate investor would expect the protections of the United States securities laws to apply when doing business with an investment adviser resident in the United States. Applicants assert, however, that, given the particular nature of IBRD and IDA, their unique purposes, and the nature of their constituent members, recipients of the proposed investment advice would not reasonably expect the Advisers Act to apply.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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