

June 18, 1947

Securities and Exchange Commission,
Philadelphia, Pennsylvania.

Dear Sirs:

International Bank for Reconstruction and Development intends in the near future to make a public offering of an issue of its unsecured bonds. The amount of the issue and the exact designation, terms and conditions of the bonds have not yet been determined. The Bank has received assurance that, upon its request, the United States will give its approval to the proposed borrowing, as required by Section 1(b) of Article IV of the Articles of Agreement of the Bank. The Bank intends to file a registration statement for the proposed issue under the Securities Act of 1933.

The details of the marketing plan have not yet been definitely determined, but the general outlines are as follows. The offering will not be underwritten. The Bank will offer the bonds for sale, on a commission basis, only to or through securities dealers. The Bank proposes to invite all members of the National Association of Securities Dealers, Inc., and a number of other securities dealers to participate in the sale of the bonds. The terms and conditions on which such dealers may offer the bonds for sale will be set forth in a simple form of agreement between the Bank and the respective dealers. The Bank desires to have as many dealers as possible participate in the distribution of its securities and so to obtain the widest possible distribution of such securities.

Section 2(11) of the Securities Act of 1933 provides in part as follows:

The term "underwriter" means any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not

in excess of the usual and customary distributors' or sellers' commission.

The Bank hereby requests that the Commission, by rule or regulation made pursuant to Section 19 of the Securities Act of 1933, determine that, for the purposes of Section 11 of that Act, the term "underwriter" shall not be deemed to include dealers who participate in the distribution of securities issued by the Bank either by soliciting orders for such securities or by purchasing them for resale on a commission basis.

The Bank believes that such a determination is necessary and desirable for the following reasons:

(a) As the Commission knows, at the time when the Securities Act of 1933 was adopted neither the Bank nor any similar international institution was in existence and the provisions of the Act are not, therefore, properly adapted for application to such an institution. In fact, there are such material inconsistencies between the Securities Act of 1933 and the Bretton Woods Agreements Act, under which the United States accepted membership in the Bank, as to furnish reasonable grounds for asserting that the Bretton Woods Agreements Act pro tanto repealed the Securities Act of 1933 in so far as the Bank is concerned. The Bank is not opposed to registering its securities under the Securities Act of 1933 and giving to the public all the information called for by that Act. Accordingly, the Bank is not disposed to press for a determination of the question as to whether or not the Act is properly applicable to securities of the Bank, unless it appears that the application of the provisions of the Act to the securities of the Bank will impede the effective accomplishment of the purposes for which the Bank was created.

(b) The provisions of Section 11 of the Act with regard to the liability of underwriters thereunder for misstatements or omissions in the registration statement impose upon the underwriter the duty of making a "reasonable investigation" of the statements contained in a registration statement. In practice, as the Commission knows, underwriters in the ordinary sense of that term do make an extensive investigation of fact and law in respect of the securities which they underwrite and do have an opportunity to influence the statements which are contained in registration statements for such securities. Under the plan of distribution which the Bank proposes to follow in the sale of its securities, it will be impossible for the respective security dealers who participate in the distribution (and there may be as many as 2,000 of them) to make such an investigation or to exert an effective influence on the statements which shall be contained in the registration statement for such securities. Their only alternative will be to accept whatever liability may be involved in their participating in the sale of such securities or to refrain from so participating. Since many of them are not accustomed to participating in the underwriting of securities, it is to be expected that they will be reluctant to assume the responsibilities of underwriters in connection with the sale of the Bank's securities. That is especially true of dealers in United States Government and other securities which are exempt from the Securities Act of 1933 who could be one of the most important groups in the distribution of the Bank's securities.

(c) The United States Government is a member of the Bank and under the Articles of Agreement of the Bank it may sell its securities in the United States only with the approval of the United States Government. Under the Bretton Woods Agreement Act that approval is given by the National Advisory Council under the general direction of the President of the United States. It is to be assumed, therefore, that the National Advisory Council will not give its approval to the issuance in the United States of securities of the Bank, unless such issuance accords with the general public policy of the United States.

(d) The National Advisory Council through the United States Executive Director is also in position to see that proper investigation is made by the staff of the Bank as to the contents of a registration statement for the Bank's securities.

(e) Under the Articles of Agreement of the Bank and the Bretton Woods Agreements Act the Governors and Executive Directors and their alternates, and the officers and employees of the Bank are immune from legal process with respect to acts performed by them in their official capacity. In the circumstances, the effect of imposing upon security dealers who participate in the distribution of the Bank's securities the liability of underwriters under Section 11 of the Securities Act of 1933 would be to impose on such dealers a liability from which, because of the international character of the Bank, the United States Congress has exempted the officers and employees of the Bank. Furthermore, under the plan of distribution which the Bank proposes to follow, such dealers would be selling the securities of the Bank as dealers on a small commission and would not receive compensation on a scale which is generally paid to underwriters.

Section 19 of the Securities Act of 1933 authorizes the Commission

“ . . . to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this title, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers, and defining accounting, technical, and trade terms used in this title.”

The Commission has previously invoked this power to clarify the definition of “underwriter” in Section 2(11) with the effect of exempting certain persons or classes of persons from the liability imposed by Section 11 of the Act (See Rules 142 and 143 of the General Rules and Regulations under the Securities Act of 1933).

It will be necessary for the Bank to inform any securities dealers who shall participate in the sale of the proposed bond issue whether or not they are to be deemed underwriters for the purposes of the Securities Act of 1933. Accordingly, if the Securities and Exchange Commission shall not make the determination hereinbefore requested, the Bank requests that the Commission determine whether or not such dealers will be deemed to be underwriters for the purposes of said Act.

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If the Commission shall so desire and will so inform us, the Bank will be glad to have its representative present to the Commission a more detailed statement of the reasons in support of the Bank's request.

Very truly yours,

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By

(Signed) John J. McCloy

President