

December 29, 2004

Via E-Mail (Original By Courier)

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

**Re: Proposed Revisions to the Annual Report of Foreign Banking  
Organizations (FR Y-7): OMB Control No. 7100-0125**

Dear Ms. Johnson:

On behalf of our client, Julius Baer Holding Ltd. ("Julius Baer"), Zurich, Switzerland, we are submitting this comment letter on the proposed revisions to the FR Y-7 Annual Report of Foreign Banking Organizations (the "FR Y-7"). Julius Baer appreciates and supports the goal of the Federal Reserve Board (the "Board") to streamline the collection of financial and structural information under the International Banking Act of 1978. As explained in greater detail below, however, Julius Baer recommends that certain modifications be made to the Board's proposal in order to reduce regulatory burden and potential conflict with Swiss law. In particular, Julius Baer recommends that the Board: (1) refrain from amending the instructions to state that it is Federal Reserve policy to disclose certain information about persons owning 10 percent or more of any class of voting shares of a foreign banking organization ("FBO") absent a showing of a "well-defined present threat to the liberty or personal security of individuals;" and (2) delay the effective date of the proposed changes until December 31, 2005.

1. Confidential Shareholder Information

Julius Baer recommends that the Board refrain from amending the instructions to state that it is Federal Reserve policy to disclose information about persons owning 10 percent or more of any class of voting shares of an FBO absent a showing of a "well-defined present threat to the liberty or personal security of individuals." At Report Item 3, the FR Y-7 requires FBOs to report information about shareholders that directly or indirectly own, control, or hold with power to vote 5 percent or more of any class of securities of an FBO. Specifically, FBQs must provide the following shareholder

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information: (1) name and address of principal residence for individuals or of head office for companies; (2) country of citizenship or organization; and (3) number and percentage of each class of securities (or their equivalent) owned, controlled, or held with power to vote.

Currently, the instructions to the FR Y-7 permit an FBO to request confidential treatment of information provided in the FR Y-7, including shareholder information reported at Report Item 3, if the FBO believes that the information is (1) “commercial or financial information” the disclosure of which “would likely result in substantial harm to the FBO’s (or its subsidiaries’) competitive position” or (2) “personal information” the disclosure of which would “result in an unwarranted invasion of personal privacy.” Under the proposal, the Board would add the following statement:

Reporters requesting confidential treatment of information should be advised that it is Federal Reserve policy to disclose the names and the number and percentage of voting securities provided in response to Report Item 3 that pertain to shareholders who control 10 percent or more of any class of voting shares of a FBO, unless there is shown to be a well-defined present threat to the liberty or personal security of individuals.<sup>2</sup>

Julius Baer has three principal concerns with respect to this proposed change in the instructions. First, the proposed change elevates the standard by which the Board will

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<sup>1</sup> Current FR Y-7 Report Instructions at 2. These instructions are consistent with provisions in the Freedom of Information Act (the “FOIA”), 5 U.S.C. § 552, and the Board’s implementing regulations at 12 C.F.R. Part 261. Specifically, under the FOIA, information is exempt from disclosure and may remain confidential if it consists of “trade secrets and commercial or financial information obtained from a person and is privileged or confidential.” 5 U.S.C. § 552(b)(4). The Board’s regulation implementing this provision provides that information is exempt from disclosure if it involves “any matter that is a trade secret or that constitutes commercial or financial information obtained from a person and that is privileged or confidential.” 12 C.F.R. § 261.14(a)(4). In addition, the FOIA provides an exemption for “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” See 5 U.S.C. § 552(b)(6) (emphasis added). See also 12 C.F.R. § 261.14(a)(6) (repeating verbatim the statutory language).

<sup>2</sup> Proposed FR Y-7 Report Instructions at GEN-2 – GEN-3.

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afford confidential treatment of certain information about shareholders of 10 percent or more of an FBO's voting shares. As proposed, it appears that it would no longer be adequate for an FBO to rely on the current standards for requesting confidential treatment of the names of 10 percent or more shareholders and the number and percentage of shares that they own. Rather, an FBO would also be required to demonstrate "a well-defined present threat to the liberty or personal security of individuals."<sup>3</sup> (Presumably, an FBO would still be permitted to rely on the existing standards to request confidential treatment of the address and country of citizenship of a shareholder of 10 percent or more of an FBO's voting shares.)

Second, the proposed change does not recognize that an individual's ownership interest or identity may be confidential in a foreign bank's home country for reasons other than a "well-defined present threat to an individual's liberty or personal security." For example, in the case of Julius Baer, certain shareholder information is kept confidential under Swiss law, including information about registered shareholders that own 10 percent or more of the shares of Julius Baer.<sup>4</sup> Accordingly, pursuant to provisions of the FOIA and the Board's implementing regulations, Julius Baer has consistently requested confidential treatment of the sensitive shareholder information provided on its FR Y-7. Up until this point, the Board has granted these requests for confidential treatment. However, under the proposed change, it appears there is a heightened risk that the Board could decide to disclose portions of Julius Baer's

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<sup>3</sup> We note that the proposed instructions provide no definition of a "well-defined present threat."

<sup>4</sup> Julius Baer currently requests confidential treatment of all of the information concerning its registered shareholders provided at Report Item 3.B. All of the registered shareholders of Julius Baer are members of a shareholders agreement. Under Swiss law, Julius Baer must only disclose the total holdings of the shareholder group, the identity of its members and its representative, and the nature of the shareholders agreement. Julius Baer is not required or permitted under Swiss law to make publicly available any information pertaining to the number of shares held by individual registered shareholders. This means that, under Swiss law, Julius Baer would not be required or permitted to specifically identify the persons who own 5 (or even 10) percent or more of its shares or to disclose the precise number and percentage of shares held. This information remains fully confidential. It is kept in Julius Baer's corporate record book only for Julius Baer's internal use and is not available to the public. Public disclosure of this confidential information would represent a breach of the duty owed by officials of Julius Baer to its shareholders and would render those officials liable under Swiss law to Julius Baer and its shareholders for any damages incurred as a result of such disclosure.

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shareholder information absent a specific showing of a “well-defined present threat to the liberty or personal security of individuals.”

Third, Julius Baer believes that the proposed change may inaccurately reflect U.S. government policy under the USA PATRIOT Act. Based on our discussions with staff of the Board, we understand that the proposed change may have its genesis in section 319(b) of the USA PATRIOT Act, which, in part, requires that any covered financial institution that maintains a correspondent account in the United States for a foreign bank must maintain records in the United States identifying the foreign bank’s owners.’ However, in its final rule implementing section 319(b), the Department of the Treasury made a special exception from this record keeping requirement for foreign banks that file an FR Y-7 with the Federal Reserve.<sup>6</sup> Specifically, under the rule, covered financial institutions are not required to maintain ownership information on foreign banks that file an FR Y-7. The Department of the Treasury adopted this exception because the shareholder information at Report Item 3 of the FR Y-7 satisfies the purpose of the record keeping requirement, which is to make the ownership information available to a Federal law enforcement official.’ In the section of the preamble to the final rule discussing this exception, the Department of the Treasury referred to the comment letter submitted by the Swiss Bankers Association (the “SBA”), of which Julius Baer is a member, in which the SBA requested that a foreign bank not be required to make otherwise confidential ownership information available to a covered financial institution if the information is available to the appropriate U.S. government agencies.’ Accordingly, Julius Baer asks the Board to reconsider the impact of the proposed change in light of the policy of the Department of the Treasury in this area and the underlying purpose of section 319(b) of the USA PATRIOT Act, which is to make foreign bank ownership information available to Federal law enforcement officials and not to the public.

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<sup>5</sup> See Section 5318(k) of the Bank Secrecy Act, as amended by section 319(b) of the USA PATRIOT Act.

<sup>6</sup> See 67 Fed. Reg. 60562, 60568 (2002).

<sup>7</sup> *Id.* The Board’s regulations permit other U.S. government agencies to have access to information on such reports and provide a procedure for obtaining access to such information. See 12 C.F.R. Part 261, Subpart C.

<sup>8</sup> 67 Fed. Reg. 60568 (2002). The SBA specifically noted that confidential treatment may be requested by a particular foreign bank for ownership information filed on the FR Y-7.

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2. Effective Date

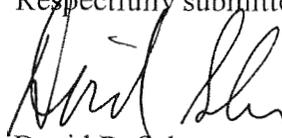
Julius Baer recommends that the Board delay the effective date of any final changes to the FR Y-7 until December 31, 2005. As proposed, the changes would be effective December 31, 2004. While certain of the proposed changes may be minor, Julius Baer notes that other of the changes are more complicated and likely will require Julius Baer to make changes in its reporting systems and procedures. In addition, the Board presumably will not be in a position to issue the final changes to the FR Y-7 until after the date on which the Board proposes to make the changes effective.

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Lastly, Julius Baer closely associates itself with and strongly supports the comments submitted by the Institute of International Bankers.

Please contact me or John Court (202-663-8598) if you wish to discuss these comments.

Respectfully submitted,



David R. Sahr