

Ms. Jennifer Johnson  
Secretary  
Board of Governors of the  
Federal Reserve System  
20<sup>th</sup> Street and Constitution Ave., N.W.

**Name:** Indranil Ganguli  
**Telefon:** +49 (30) 81 92 - 2 13  
**Telefax:** +49 (30) 81 92 - 2 18 or 2 19

Washington DC 20551  
USA

7 March 2005

**Proposed Revisions to Annual Report of Foreign Banking Organizations on  
Form FR Y-7 (OMB Control Number 7100-0125)**

Dear Ms. Johnson,

The Bundesverband Öffentlicher Banken Deutschlands (VOB - Association of German Public Sector Banks) as the apex association of public sector banks accounting for nearly 30 % of the banking market in Germany and appreciates the opportunity to comment on the proposal (the "Proposal") of the Board of Governors of the Federal Reserve System (the "Board") to revise the Annual Report of Foreign Banking Organisations ("FBOs") on Form FR Y-7 (the "FR Y-7"). As the Proposal is a matter of considerable importance for those of our member banks which have substantial operations in the United States as part of their international banking activities we would like to address some of our concerns.

The Proposal is designed in part to make the FR Y-7 more consistent with the annual report of U.S. Bank Holding Companies on Form FR Y-6 (the "FR Y-6") and to clarify portions of the instructions to the FR Y-7. VOB supports the efforts of the Board to re-evaluate reporting requirements generally, and the FR Y-7 in particular, to consider clarifications and improvements to the applicable forms. Especially in light of language differences that affect many international banks' efforts to interpret the FR Y-7 and other Board reporting forms, VÖB appreciates measures, such as those reflected in portions of the Proposal, to achieve greater clarity in the forms' instructions.

However, as a general matter, VOB would like to respectfully point out that the Board should exercise caution when applying the aforementioned consistency approach in revising the FR Y-7. This is largely due to the fact that the FR Y-7 and the FR Y-6 are fundamentally different reports in several respects. The FR Y-7 is a report submitted to the Federal Reserve System as host country supervisor by internationally headquartered banking organizations whose global operations are primarily supervised by their own home country supervisors. The FR Y-6, in contrast, is submitted by U.S. bank holding companies to their home country supervisor. In our view, the Board's development of FR Y-7 reporting requirements should take into account that the FR Y-7 is a host country reporting requirement (and, for many international banks, one of many such host country reporting requirements).

Given this background we strongly endorse the comments of the New York based International Institute of Bankers (IIB) stated in its letter dated 28 January 2005 (please refer to the **attachment**). Moreover we would like to encourage the Board to consider the following points before finally revising FR Y-7:

- **The Board should not revise the FR Y-7 to require filing by only top-tier FBOs.** We strongly encourage the Board to uphold its long-standing practice permitting FBOs to elect whether to file a single FR Y-7 at the level of the top-tier FBO in a tiered FBO structure or instead to submit a separate FR Y-7 for each tiered FBO.
- **The Board should not revise the FR Y-7 to require that the person signing the Form be a "Director and Officer".** We believe that it would be perfectly reasonable and logical for the Board (like any other home country supervisor) to require that a report on the financial condition and organizational structure of a U.S.-headquartered banking organization be signed by a director and officer of the organization located in the USA instead of a member of the bank's managing board (or other body of individuals who would be both directors and officers by U.S. standards).
- **The Board should not revise the standard for requesting confidential treatment of information regarding shareholders of an FBO.** For international banks operating under separate home country banking, securities and privacy laws, and under the supervision of their home country bank and other regulatory authorities, we would like to emphasize that the Board should not unilaterally impose shareholder disclosure requirements that potentially conflict with home country requirements and practices.

- **The Board should not expand the information required for companies held under authority of Section 211.23(f)(5) of the Board's Regulation K. (so-called "2(h)(2) companies<sup>\*\*\*</sup>).** In this context it should be noted that international banks are frequently compelled to rely on public information, other research sources, etc. to obtain detailed information regarding reportable 2(h)(2) companies. Expanding the information requirement concerning such companies would only exacerbate this existing burden and would not, in our view, significantly improve the supervisory value or utility of the information currently provided on the FR Y-7.
- **The Board should revise the effective date for the proposed FR Y-7 revisions.** As proposed, the Board's revisions to the FR Y-7 would be effective on December 31, 2004, i.e. with retroactive effect. However, we believe that there is no reason for making the proposed changes on such an accelerated basis and therefore respectfully suggest that changes to the FR Y-7 be made prospectively (proposed new effective date: 31 December 2005). Such a phasing would afford international banks a reasonable period of time to implement the necessary systems and internal reporting changes required to comply with the revised FR Y-7 reporting requirements.
- **As to future revisions of FR Y the Board should develop a reasonably phased process of informal consultations with the banking industry.** We would therefore suggest that the Board develop a process for soliciting and considering informal feedback from the industry and other interested persons regarding the FR Y-7 (and related forms, such as the FR Y-1OF) before issuing a formal proposal for public comment. Such a consultation process should provide the banking industry with a reasonable time frame for submitting comments and implementing the revised reporting requirements.

Should you have any further queries please do not hesitate to contact the undersigned - Karl-Heinz Boos: +49 (30) 81 92 - 2 00 or Bjorn christian Stein: +49 (30) 81 92 - 2 10 - at your convenience.

Yours sincerely,  
 Bundesverband Öffentlicher Banken Deutschlands  
 (Association of German Public Sector Banks)

**Attachment**



(Karl-Heinz Boos)  
 Executive Managing Director



(Bjorn Christian Stein)  
 Director Banking Supervision/Deposit Insurance

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\* In general, these are non-U.S. companies engaged in non-financial business activities in the United States in the same lines of business as those they conduct outside the United States.

# INSTITUTE OF INTERNATIONAL BANKERS

299 PARK AVENUE, 17<sup>TH</sup> FLOOR, NEW YORK, N.Y. 10171  
TELEPHONE: (212) 421-1611 FACSIMILE: (212) 421-1119  
HTTP://WWW.IIB.ORG

LAWRENCE R. UHLICK  
EXECUTIVE DIRECTOR AND GENERAL COUNSEL  
DIRECT E-MAIL: LUHLICK@IIB.ORG

January 28, 2005

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Ave., N.W.  
Washington, D.C. 20551

Re: Proposed Revisions to Annual Report of Foreign Banking Organizations  
on Form FR Y-7 (OMB Control Number 7100-0125)

Dear Ms. Johnson:

The Institute of International Bankers appreciates this opportunity to comment on the proposal (the "Proposal") of the Board of Governors of the Federal Reserve System (the "Board") to revise the Annual Report of Foreign Banking Organizations ("FBOs") on Form FR Y-7 (the "FR Y-7").<sup>1</sup> The Institute's members are internationally headquartered banking/financial institutions that are subject to these reporting requirements because they conduct banking operations in the United States through branches, agencies, commercial lending company subsidiaries, Edge corporations and/or U.S. bank subsidiaries.

The Proposal is designed in part to make the FR Y-7 more consistent with the Annual Report of U.S. Bank Holding Companies on Form FR Y-6 (the "FR Y-6") and to clarify portions of the instructions to the FR Y-7. The Institute continues to support efforts by the Board to re-evaluate reporting requirements generally, and the FR Y-7 in particular, to consider clarifications and improvements to the applicable forms. Especially in light of language differences that affect many international banks' efforts to interpret the FR Y-7 and other Board reporting forms, the Institute appreciates efforts, such as those reflected in portions of the Proposal, to achieve greater clarity in the forms' instructions.

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<sup>1</sup> See 69 Fed. Reg. 62,269 (Oct. 25, 2004). In accordance with our discussions with Board staff, this comment letter is being submitted beyond the close of the official public comment period. The Institute requested an extension of the comment period in a letter dated December 2, 2004. While the Institute's request was not formally granted, we understand that our submission of this letter before the end of January will be considered timely, and that the comments reflected herein will be considered by the Board before it finalizes the Proposal.

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The Institute's mission is to help resolve the many special legislative, regulatory and tax issues confronting **internationally headquartered** financial institutions that engage in banking, securities and/or insurance activities in the United States

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# INSTITUTE OF INTERNATIONAL BANKERS

## General Comments Regarding the Proposal

The most significant revisions reflected in the Proposal are described in the Supporting Statement accompanying the Proposal (the "Supporting Statement") as designed to achieve consistency with the FR Y-6. The Institute's specific comments on these revisions and other aspects of the Proposal are set forth below. As a general matter, however, the Institute would respectfully submit that the Board should exercise caution when applying this consistency principle in revising the FR Y-7.

The FR Y-7 and the FR Y-6 are fundamentally different reports in several respects. The FR Y-7 is a report submitted to the Federal Reserve System as host country supervisor by internationally headquartered banking organizations whose global operations are primarily supervised by their own home country supervisors. The FR Y-6, in contrast, is submitted by U.S. bank holding companies to their home country supervisor. In the Institute's view, the Board's development of FR Y-7 reporting requirements should take into account that the FR Y-7 is a host country reporting requirement (and, for many international banks, one of many such host country reporting requirements). Similarly, the FR Y-7 reporting requirements should recognize that international banks conduct their global business operations from non-U.S. jurisdictions, where home country laws and regulations may differ from U.S. laws and regulations and where market practices may differ from U.S. practices.

The Board historically has recognized these differences and has made appropriate accommodations in the FR Y-7 to take into account (a) the distinction between the Board's role as host country vs. home country supervisor; and (b) the sometimes profound differences between international banks and U.S. domestic bank holding companies. In recent years, however, the Board has increasingly proposed to eliminate many of these accommodations, including most recently in connection with the Proposal (e.g., the proposed requirement that only top-tier FBOs file the FR Y-7 and the proposed requirement that a "director and officer" sign the FR Y-7, as described below). The stated justification for these changes is to achieve consistency with the FR Y-6, but the Board has not, in the Institute's view, articulated a compelling policy basis for eliminating what are appropriate and justified differences between the FR Y-6 and the FR Y-7. The Institute continues to believe, as the Board traditionally has agreed, that appropriate differences between the FR Y-6 and the FR Y-7 should persist.

## The Board Should Not Revise the FR Y-7 to Require Filing by Only Top-Tier FBOs

The most fundamental change to the FR Y-7 included in the Proposal is the proposed elimination of the Board's long-standing practice permitting FBOs to elect whether to file a single FR Y-7 at the level of the top-tier FBO in a tiered FBO structure or instead to submit a separate FR Y-7 for each tiered FBO. The Board's historical practice has been important to tiered FBOs in a number of contexts. For example, when one FBO acquires another FBO, especially if the acquisition is consummated near the end of the top-tier FBO's fiscal year, the FBOs typically file separate FR Y-7s for at least the first fiscal year-end after the acquisition. Integration of internal reporting mechanisms designed to comply with FR Y-7 reporting requirements takes time and management resources, and it is often not possible to effect the required changes in time to file a single FR Y-7 soon after consummating such an acquisition. This is especially true in a cross-border acquisition, when the international banks in question are

## INSTITUTE OF INTERNATIONAL BANKERS

headquartered in different jurisdictions (e.g., a European jurisdiction and a Latin American jurisdiction).

Even more importantly, the flexibility to file separate FR Y-7s for tiered FBOs has been critical in the context of international banks with minority investments in other international banks that have U.S. banking operations (and thus are FBOs subject to FR Y-7 reporting requirements). In that context, while the relationship between the investing international bank and the investee international bank may amount to "control" for purposes of the FR Y-7, the investing international bank often does not have any practical ability to control the investee or to compel the investee to disclose what is, for many banks, confidential proprietary information. For example, an international bank that acquires a 30% voting interest in another international bank is unlikely to be able to require the investee bank to disclose information necessary to complete a single, consolidated FR Y-7 at the level of the investing international bank (e.g., information necessary to complete a consolidated organizational chart of reportable U.S. and non-U.S. investments in response to Report Item 2).<sup>2</sup>

Minority investments by banking organizations in other banking organizations are more common outside the United States than for U.S. bank holding companies. Given the practical realities associated with such investments, and the limitations on the investing bank's access to information at, or influence over, the investee banking organization, international banks that hold such investments would be compelled either (1) to submit an FR Y-7 based on the information available to them (which often will not be complete in relation to the lower-tier FBO), or (2) to divest what may be a financially significant investment that was originally made for reasons entirely unrelated to U.S. business considerations. The Institute would respectfully submit that the former option would unnecessarily detract from the quality of information obtained through the FR Y-7. It would replace complete information submitted by the lower-tier FBO under the current FR Y-7 reporting regime with incomplete information submitted by the top-tier FBO under the proposed FR Y-7 reporting regime. As to the second option, the Institute believes that the Federal Reserve System's reporting requirements should not drive fundamental market practices in European and other non-U.S. banking markets. If the FR Y-7 reporting requirements were effectively to prohibit international banks from making minority investments in other international banks, we believe that such extraterritorial effects would be grossly unfair to international banks and would need to be supported by much more compelling policy considerations than simply achieving consistency with the FR Y-6.

Lastly, the Board's proposal to eliminate existing flexibility to submit separate FR Y-7s for tiered FBOs raises a number of other logistical and interpretive questions. For example, the instructions to the FR Y-7 do not address how an international bank should submit an FR Y-7 when there are multiple top-tier FBOs (i.e., multiple entities that directly "control" (for FR Y-7 purposes) the international bank). The Institute believes these and other questions would need to be considered in greater detail and with greater care before the existing FR Y-7 reporting approach for tiered FBOs were revised.

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<sup>2</sup> Cf. 66 Fed. Reg. 400,411 (Jan. 3, 2001) (final rule establishing procedures, among other things, for FBOs to elect to be treated as financial holding companies under the Gramm-Leach-Bliley Act. noting implications of minority investments of greater than 25 percent of voting shares).

## INSTITUTE OF INTERNATIONAL BANKERS

### The Board Should Not Revise the FR Y-7 to Require That the Person Signing the Form be a "Director and Officer"

As part of the Proposal, the Board would revise the cover page of the FR Y-7 to change the person required to sign the form. On the existing form, the person signing is required to be an "Authorized Official." The proposed revisions would change this requirement so that the person signing would need to be both a director and an officer of the international bank. As with other changes included in the Proposal, the stated basis for making this change is to achieve consistency with the FR Y-6.

In this regard, the Institute would respectfully submit that the proposed change ignores a fundamental distinction between the FR Y-7 and the FR Y-6. The FR Y-7 is a host country reporting requirement (and for many international banks, only one of several such host country reporting requirements). The FR Y-6, in contrast, is a home country reporting requirement. The Institute believes that it would be reasonable and logical for the Board (like any other home country supervisor) to require that a report on the financial condition and organizational structure of a U.S.-headquartered banking organization be signed by a director and officer of the organization. For an international bank with operations in 30 or 40 jurisdictions, however, it is simply not reasonable to require that a member of the bank's managing board (or other body of individuals who would be both directors and officers by U.S. standards) sign host country reports such as the FR Y-7. Indeed, we would respectfully submit that it would not be reasonable to require a U.S.-headquartered global banking institution to have a director and officer sign host country reports submitted in the variety of jurisdictions in which it operates throughout the globe.

In the Institute's view, host country reporting requirements such as the FR Y-7 should permit the supervised institution to determine who within the organization is best suited to execute the form. This flexibility should include the ability to designate an appropriate head office or U.S.-based official of the institution with responsibility for overseeing the completion of the form. This flexibility is especially important in the context of the FR Y-7 in light of the fact that the signature accompanies a certification relating to the preparation of the form. For international banks, obtaining the requisite familiarity with the instructions to the form (particularly for personnel whose first language is not English) requires special expertise, and for this reason, we believe international banks should continue to have the flexibility to delegate to the management official responsible for overseeing preparation of the form the responsibility of signing the form.

Flexibility to delegate signing authority to an authorized official also is important in view of the substantial and detailed information required by the FR Y-7, especially in relation to U.S. and non-U.S. nonbank investments reported in the Organizational Chart in response to Report Item 2. For many international banks, the Organizational Chart contains information regarding a multitude of legal entities (which would continue to be true even if the Board were to adopt our suggestion below to expand the category of SPEs not reportable on the FR Y-7), information which must be collected specifically for that purpose. The scope and nature of the information required to complete the FR Y-7 simply underscores the importance of retaining international banks' flexibility to determine which authorized officer is in the best position to sign the form and make the accompanying certification regarding the preparation of the form. In the absence

## INSTITUTE OF INTERNATIONAL BANKERS

of an independent policy basis for depriving international banks of this flexibility, the Institute would respectfully submit that consistency with the FR Y-6 is an insufficient basis for such a change in view of the important differences between the roles of the FR Y-6 and the FR Y-7.

### The Board Should Not Revise the Standard for Requesting Confidential Treatment of Information Regarding Shareholders of an FBO

Under the existing FR Y-7, a reporter may request confidential treatment for information contained in the form based on certain criteria for confidential treatment set forth in the Freedom of Information Act ("FOIA")<sup>3</sup> and the Board's implementing regulations.<sup>4</sup> The instructions to the form specifically refer to two bases for confidential treatment, which are based on two FOIA exemptions from public disclosure: certain commercial or financial information the disclosure of which would likely result in substantial harm to the reporter's (or its subsidiaries') competitive position (FOIA Exemption 4); and (2) personal information the disclosure of which would result in an unwarranted invasion of personal privacy (FOIA Exemption 6).

As part of the Proposal, the Board would amend the FR Y-7 instructions relating to confidentiality to include the following statement:

[I]t 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 an FBO, unless there is shown to be a well-defined present threat to the liberty or personal security of individuals. [Emphasis added.]

The Supporting Statement does not expressly state the Board's rationale for this change, which is referred to as a clarification. In the Institute's view, the proposed change would effect a departure from existing and accepted standards for confidential treatment under the FOIA and the Board's FOIA Regulations as they relate to international banks.

As a matter of principle and administrative law and practice, the Institute would submit that if an international bank submits information concerning shareholders that would be protected from public disclosure under the FOIA and the Board's FOIA Regulations, the information should be protected regardless of whether disclosure would create "a well-defined present threat to the liberty or personal security of individuals." Specifically in relation to Report Item 3, which requires that reports provide detailed information regarding shareholders that directly or indirectly own, control or hold with power to vote 5 percent or more of any class of the reporter's voting securities, the Institute believes that the Board should provide at least the protections available under the FOIA. The requirement that reporters provide detailed personal information concerning shareholders already creates significant burdens for international banks and has been a source of serious concern for non-U.S. shareholders whose information is provided to the Board. An increase in the likelihood that certain such information could be disclosed publicly would only exacerbate this concern.

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<sup>3</sup> See 5 U.S.C. § 552.

<sup>4</sup> See 12 C.F.R. Part 261.

## INSTITUTE OF INTERNATIONAL BANKERS

In addition, certain of the shareholder information required in response to Report Item 3 may be protected from disclosure by home country privacy laws. Amending the confidential treatment instructions to the FR Y-7 could thus present conflicts between Board reporting requirements and home country laws. The Institute would respectfully submit that the Board should avoid creating such conflicts by adhering to the existing FR Y-7 instructions and Board practice.

The Institute recognizes that the availability of a procedure for requesting confidential treatment on the basis of FOIA exemptions from public disclosure does not necessarily equate to a right to preserve the confidentiality of the information once it is submitted to the Federal Reserve System. At the same time, however, international banks requesting confidential treatment regularly include a request that the Board will advise them before disclosing information for which confidential treatment has been requested to a person who has requested the information under FOIA, especially where the information is confidential commercial or financial information.<sup>5</sup> By advising the international bank of the pending FOIA request, the Board provides the international bank with an opportunity to be heard regarding the prospective disclosure. More importantly, we believe an international bank objecting to the proposed disclosure should be entitled to rely on established FOIA grounds for confidential treatment and should not be held to the substantially stricter standard articulated in the Proposal with respect to the identified shareholder information.

Lastly, although the Supporting Statement does not specifically refer to consistency with the FR Y-6 as an objective of this proposed change, the Institute notes that the instructions would in this respect be made consistent with the instructions for the FR Y-6. As with other changes, however, the Institute believes that this change ignores certain fundamental differences between the FR Y-6 and the FR Y-7. As the home country supervisor of U.S.-based bank holding companies, the Board is in a unique position to determine the public availability of shareholder information. For international banks operating under separate home country banking, securities and privacy laws, and under the supervision of their home country bank and other regulatory authorities, the Institute would respectfully submit that the Board should not unilaterally impose shareholder disclosure requirements that potentially conflict with home country requirements and practices.

### The Board Should Not Expand the Information Required for Companies Held Under Authority of Section 211.23(f)(5) of the Board's Regulation K

The Proposal would amend the instructions to Report Item 2(b), a portion of the Organizational Chart requirement that permits FBOs to provide streamlined information concerning certain non-U.S. companies held under authority of Section 2(h)(2) of the Bank Holding Company Act of 1956, as amended, and Section 211.23(f)(5)(iii) of the Board's Regulation K (so-called "2(h)(2) companies"). In general, these are non-U.S. companies

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<sup>5</sup> See, e.g., 12 C.F.R. § 261.16(b) (generally requiring notice to submitter of information for which confidential treatment was requested under FOIA Exemption (4)); see also Instructions to Form FR Y-7 at p. 3 ("The Board will determine whether information submitted with a request for confidential treatment will be so treated, and will advise the [FBO] through the appropriate Federal Reserve Bank, of any decision to make available to the public any of the information.").

## INSTITUTE OF INTERNATIONAL BANKERS

engaged in non-financial business activities in the United States in the same lines of business as those they conduct outside the United States.

It appears that the proposed amendment would require FBOs to expand the information provided for 2(h)(2) companies to include essentially the same information as is required for reportable U.S. companies (*i.e.*, to include legal name, location, intercompany ownership and percentage of ownership of voting equity, nonvoting equity, or other interests). In this regard, the Proposal would reverse a change to the FR Y-7 Organizational Chart instructions adopted in 2000, when the Board specifically reduced the amount of information required for 2(h)(2) companies by adopting the format called for in Report Item 2(b) of the current form.<sup>6</sup> No explicit justification is included in the Supporting Statement in relation to the Board's reversal of that change, and the Institute would urge the Board to reconsider it in the absence of a clear showing that the information currently provided by FBOs is insufficient.

Many 2(h)(2) companies are "controlled" for FR Y-7 purposes but are not controlled as a practical matter by the investing international bank. It can therefore be difficult to obtain detailed information from 2(h)(2) companies, and international banks are frequently compelled to rely on public information, other research sources, etc. to obtain information regarding reportable companies. Expanding the information required for 2(h)(2) companies would only exacerbate this existing burden and would not, in the Institute's view, significantly improve the supervisory value or utility of the information currently provided on the FR Y-7.

Lastly, to the extent the Board does adopt the proposed change to Report Item 2(b), we would respectfully request that the Board clarify the wording of the instructions in relevant part. Specifically, it is not clear to which types of companies the second paragraph of the proposed revised instructions for Report Item 2(b) would apply (*e.g.*, whether both U.S. and non-U.S. companies, and whether both companies held under Section 211.23(f)(5)(i) of Regulation K and companies held under Section 211.23(f)(5)(iii) of Regulation K).

### The Board Should Revise the Effective Date for the Proposed FR Y-7 Revisions

As we wrote in our December 2, 2004 letter regarding the Proposal, we strongly urge the Board to revise the Proposal's effective date. As proposed, the Board's revisions to the FR Y-7 would be effective on December 31, 2004. This would make any changes that the Board determined to adopt in the coming months essentially retroactive. The Institute would respectfully submit that the rationale underlying the Proposal (principally consistency with the FR Y-6, but also clarification of the instructions) does not reflect the level of urgency that would warrant making the proposed changes on such an accelerated basis.

Instead, the Institute would respectfully submit that the Board should make any changes to the FR Y-7 prospectively and should afford international banks a reasonable period of time to

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<sup>6</sup> See Supporting Statement accompanying proposed revisions to the FR Y-7, at 12 (accompanying proposed revisions adopted in December 2000 (*see* 65 Fed. Reg. 81,864, 81,866 (Dec. 27, 2000)); *see also* 66 Fed. Reg. 54,346, 54,370 (Oct. 26, 2001) (final rule amending Regulation K, noting, in response to a commenter's request for review of reporting requirements relating to 2(h)(2) companies, that "the Board is undertaking a review of reporting requirements for [FBOs] and is seeking to reduce burden where appropriate").

## INSTITUTE OF INTERNATIONAL BANKERS

implement the necessary systems and internal reporting changes required to comply with the revised FR Y-7 reporting requirements. The most straightforward approach to establishing a reasonable effective date would be to make any changes to the FR Y-7 effective December 31, 2005.<sup>7</sup> Thus, the changes would apply for fiscal years ending on or after December 31, 2005.<sup>7</sup> The Institute believes that a December 31, 2005 effective date would give international banks a reasonable opportunity to adapt to any revisions to the FR Y-7 that may be adopted in the near term.<sup>8</sup>

Deferring the effective date from December 31, 2004 until December 31, 2005 would be imperative to the extent the Board were to adopt the proposed requirement that international banks submit a single FR Y-7 for the top-tier FBO in a tiered FBO structure. As noted above, this particular proposed change raises important logistical issues and fundamental policy issues. Indeed, it could make it effectively impossible for some FBOs to file complete organizational charts in response to the FR Y-7 and may even require that some international banks restructure minority investments in other banking organizations. If final revisions including this change were to be effective as of December 31, 2004, it would be too late for international banks to consider such measures.

The Institute would also like to reiterate its concern regarding the apparent trend toward shorter and shorter periods for implementing proposed changes to the FR Y-7. When the Board last revised the FR Y-7, it published a request for public comment in August 2002, with a 60-day public comment period ending in October. The Board adopted the final changes in early December 2002, and made the changes effective as of December 31, 2002. In the Institute's view, the Board's implementation schedule for that round of revisions was unnecessarily accelerated, and one of the Institute's comments on that proposal was an objection to the effective date of the proposed revisions. The proposed implementation schedule in this case, however, would be even more accelerated (and, as noted above, any eventual revisions to the FR Y-7 would be effectively retroactive). The Institute remains concerned not only regarding the specific implementation schedule reflected in this Proposal, but also that it appears to reflect a trend toward shortening the amount of time given to international banks to implement the changes necessary to conform to a revised FR Y-7, notwithstanding the Institute's earlier objections.

### Future Revisions to the FR Y-7

The Board proposes revisions to the FR Y-7 on a regular basis. In some cases, the proposed revisions have sought to alleviate burdens associated with the FR Y-7, and in some cases the proposed revisions have created additional or new burdens. Occasionally, the proposed revisions have reflected a desire for consistency with domestic reporting requirements that the

<sup>7</sup> If the Board were to consider any earlier effective date for international banks with non-calendar year fiscal years, the Institute respectfully submits that the effective date should be no earlier than six months after the changes are published in final form.

<sup>8</sup> The Institute recognizes that the FR Y-7 would not need to be submitted until April 30, 2005 for FBOs with fiscal years ending December 31, 2004. Even measured against the FR Y-7's due date, however, the proposed implementation schedule would be too short. If the Board publishes the forms in March 2005, effective December 31, 2004, affected FBOs will have only one month before the due date to adopt and implement necessary changes to complete to the new forms.

## INSTITUTE OF INTERNATIONAL BANKERS

Institute believes has not taken sufficient account of the significant differences between U.S. and non-U.S. banking organizations, or the differences between home country and host country reporting requirements.

Consequently, the Institute would respectfully suggest that the Board consider a number of improvements to the process associated with amending the FR Y-7. First, the Institute believes that industry input (e.g., regarding potential conflicts with home country laws and regulations or practices and other concerns unique to international banks) can be especially valuable to the Board's consideration of possible changes to the FR Y-7. We would therefore suggest that the Board develop a process for soliciting and considering informal feedback from the industry and other interested persons regarding the FR Y-7 (and related forms, such as the FR Y-IOF) before issuing a formal proposal for public comment. Feedback could, for example, be solicited through the Federal Reserve Banks, which deal on a daily basis with the personnel at our member institutions responsible for reporting matters. By obtaining such feedback informally, the Board could hopefully avoid the significant concerns that are raised at the head offices of our members institutions when a formal proposal is released that does not appear workable or that appears to change fundamentally the way international banks are able to comply with Board reporting requirements.

Secondly, we would suggest that the Board alter the schedule for issuing proposed revisions to the FR Y-7 and related forms to give international banks more time to consider the implications of the proposal, develop meaningful comments on the proposal and, ultimately, adopt necessary changes to implement the revised reporting requirements. Reporting matters typically require coordination between U.S.-based management and head office management, and consideration of significant reporting changes can therefore take considerable time and internal resources at our member institutions. Especially when the purpose of proposed changes to the FR Y-7 is to conform the FR Y-7 to the FR Y-6, we would respectfully submit that, in the future, it should be possible for the Board to publish such changes sufficiently in advance of the proposed effective date to provide international banks with a meaningful opportunity to adopt the changes necessary to conform to the revised forms. For example, publishing proposed revisions in January and adopting any revisions by no later than June, with an effective date of December 31 of that year, should give international banks such an opportunity.

Lastly, we would request that the Board consider potential revisions to the FR Y-7 on a less frequent basis. Because each round of changes requires adjustments to an international bank's worldwide internal reporting systems, it can be less burdensome if proposed changes (even if the changes include changes designed to alleviate burden) are adopted less frequently. Particularly for changes that are not designed to conform to changes in law or regulations (e.g., the changes in the current Proposal), the Institute would respectfully request that the Board take into consideration the burdens associated with changes in reporting requirements when the Board considers how often to propose such changes.

### Other Comments

Although not directly raised by changes reflected in the Proposal, the Institute offers the following additional comments on issues relating to the FR Y-7 and related Board reporting forms:

## INSTITUTE OF INTERNATIONAL BANKERS

- We would encourage the Board to amend the confidential treatment procedure associated with the FR Y-7Q (information regarding an FBO's regulatory capital ratios). Under current practice, the Board maintains the reported financial information confidential for a period of 120 days after the "as of" date of the information. While the Federal Reserve Banks have granted requests for confidential treatment beyond this period (e.g., until the date that the financial information is made public in accordance with home country laws and regulation or practice),<sup>9</sup> we understand that the practice of granting such requests has not been uniform. So as not to require ad hoc confidential treatment requests, which impose a significant burden and may not be uniformly processed throughout the Federal Reserve System, we would suggest that the confidential treatment period be extended to 180 days after the "as of" date. Alternatively, the FR Y-7Q and instructions could be amended to permit reporters to indicate the date on which the information is expected to be disclosed publicly by the reporter, in which case such date would become the operative date for public disclosure by the Board. (In the Institute's view, however, changing the period from 120 days to 180 days would be easier to administer.)
- We would urge the Board to consider expanding an existing exemption from reporting on the FR Y-7 Organizational Chart for "Special Purpose Vehicles: An interest in any company formed for specific leasing transactions, such as a special purpose vehicle engaged in a single leasing transaction." The Institute supports this exemption and believes that the exemption can reasonably be expanded to include other types of special purpose vehicles. For example, certain structured finance transactions involve the formation of multiple legal entities that do not engage in business with third parties, many of which hold a single asset, such as a loan or a swap. Similarly, certain private equity investment structures involve the creation of multiple legal entities in relation to a single investment. Particularly where the investment itself is not reportable (e.g., because it is a small merchant banking investment expressly exempted from reporting in the instructions to the FR Y-7 Organizational Chart), the reporting of such multiple legal entities does not appear to add significant value to the data reported on the FR Y-7. Consequently, we would urge the Board to consider including a broader exemption for special purpose vehicles that are formed for specific investments or transactions and that do not control, directly or indirectly, an entity that would otherwise be reportable on the FR Y-7. In this regard, the Institute would be pleased to assist the Board in the consideration of the appropriate scope of such an exemption.

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<sup>9</sup> This has been especially important for quarterly information submitted by FBOs that qualify as financial holding companies under the Gramm-Leach-Bliley Act, as such information is often not disclosed publicly until well more than 120 days after the "as of" date.

INSTITUTE OF INTERNATIONAL BANKERS

Please contact the Institute if we can provide additional information or assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Lawrence R. Uhlick".

Lawrence R. Uhlick  
Executive Director and General Counsel