



INSTITUTE OF INTERNATIONAL BANKERS

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November 13, 2006

Via E-mail

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) and Report of Changes in FBO Organizational Structure on Form FR Y-10F (OMB Control Number 7100-0297)

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 (i) revise the Annual Report of Foreign Banking Organizations ("FBOs") on Form FR Y-7 (the "FR Y-7") and (ii) combine the four existing forms used to report changes in organizational structure (Forms FR Y-10, FR Y-10F, FR Y-10S and FR 2058) into a single report to be designated Form FR Y-10 (the "FR Y-10").¹ 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 Institute generally supports the Proposal and believes the adoption of a single, combined form for reporting changes in organizational structure will streamline the data submission process. Our specific comments on the Proposal relate to the Nonbanking Schedule to the FR Y-10 and the definition of "control" governing reporting requirements under the FR Y-7 and FR Y-10.

Nonbanking Schedule

As proposed, the Nonbanking Schedule to the FR Y-10 will include a new field to collect data on wholly owned entities, whereas the current Forms FR Y-10/10F require

¹ See 71 Fed. Reg. 54075 (Sept. 13, 2006).

INSTITUTE OF INTERNATIONAL BANKERS

such entities to be identified only as 80 percent-or-more owned.² The Institute recognizes that specifically identifying an entity as being wholly owned can be helpful to the supervisory process and that doing so with respect to entities newly formed or acquired, or that become wholly owned, prior to only after the new FR Y-10 takes effect, would not be burdensome. However, identifying and then submitting an amended report with respect to each existing reportable entity that is wholly owned prior to the time the new FR Y-10 takes effect may require considerable effort on the part of reporting institutions, especially those with extensive U.S. nonbanking operations. There is a concern that the cost and burden associated with such an effort would outweigh the supervisory benefit of knowing whether an entity that may well have been a part of the reporter's U.S. nonbanking operations for many years is wholly owned and not merely 80 percent-or-more owned.

To address this concern, we believe it would be appropriate to require specific identification and reporting of a nonbank entity as wholly owned only with respect to such entities established or acquired, or that otherwise become wholly owned, on or after January 1, 2007 (under the Proposal, event-generated transactions occurring between January 1, 2007 and June 30, 2007 would have to be reported on the new FR Y-10 by July 30, 2007³), and we respectfully request that the Federal Reserve confirm the permissibility of this approach in connection with finalizing the Proposal.⁴

As an alternative, and in order to minimize the burden associated with having to file separate reports for each reportable entity existing prior to January 1, 2007 that is wholly owned, we urge the adoption of a procedure whereby reporters would be permitted to provide a composite list of all such entities to the Federal Reserve on or before July 30, 2007 (or such later date as the Federal Reserve may consider appropriate).

Definition of "Control"

The Glossary to the new FR Y-10 has not been published for comment. We understand it is intended that the Glossary will consist of the same definitions set forth in

² Specifically, Item 11.a of the proposed Nonbanking Schedule calls for reporting on entities in which the reporter holds 100% of any class of voting shares, and the instructions explain how to report interests in two or more classes of an entity's voting shares. For the sake of convenience, references in this letter to an entity being "wholly owned" include the situation in which a reporter owns 100% of any class of the entity's voting shares.

³ We understand this part of the Proposal to mean that reporters will not be required to file a report on any of the existing forms with respect to otherwise reportable events occurring on and after January 1, 2007 and that reportable events occurring between January 1, 2007 and June 30, 2007 need not be reported until July 30, 2007, by which time they must be reported on the new FR Y-10. We would appreciate the Federal Reserve's confirmation of this understanding in connection with finalizing the Proposal.

⁴ Similarly, FBOs' reporting obligations with respect to Item 3 of the proposed "Branch, Agency, and Representative Office of FBOs Schedule" to the FR Y-10 are ambiguous and should be clarified in connection with finalizing the Proposal. This Item calls for reporting the "popular name" of the office, information which previously has not been required as part of the Form FR Y-10F.

INSTITUTE OF INTERNATIONAL BANKERS

the existing FR Y-10 and FR Y-10F Glossary.⁵ At present, the Glossary defines “control” by cross reference to the standards set forth at pages 1-2 of the instructions to the existing Nonbanking Schedules used with Forms FR Y-10/10F, and we assume it is intended that these standards will be incorporated into the new Glossary.

The “control” standards include several presumptions of control, all but one of which are drawn from Section 225.31(d) of the Board’s Regulation Y. The single exception is the presumption of control prescribed with respect to any company in which the reporter has a 10 percent-or-greater voting interest and one or more officer or director interlocks (the “10% Vote Plus Interlock Presumption”). This presumption does not serve any function under the Bank Holding Company Act (the “BHC Act”) other than delineating the scope of applicable reporting requirements.

As explained in the Supporting Statement accompanying the Proposal, the purpose of gathering the structure information required from FBOs is to enable the Board to assess an FBO’s ability to be a source of strength to its U.S. banking operations and to determine compliance with the BHC Act. Inasmuch as a company covered by the 10% Vote Plus Interlock Presumption is not otherwise deemed to be controlled by an FBO under the BHC Act, neither purpose is served by requiring FBOs to report entities covered by the presumption, which only results in additional and unnecessary burdens on reporters. The Institute respectfully recommends elimination of the 10% Vote Plus Interlock Presumption, so that the definition of control prescribed for reporting purposes is the same as the definition provided for general regulatory purposes under the BHC Act, as implemented through Regulation Y.

Moreover, the definition of “control” used for reporting purposes has significantly different ramifications for FBOs than for U.S. domestic bank holding companies in that it governs not only the reporting of entities on the FR Y-10, but also the reporting on the FR Y-7 of interests in foreign companies held pursuant to Section 2(h)(2) of the BHC Act (“Section 2(h)(2) Companies”).⁶ The reporting burden with respect to such companies is otherwise substantial and is only exacerbated by having to treat as a subsidiary (or demonstrate to the satisfaction of the appropriate Reserve Bank that the entity should not be treated as a subsidiary) a foreign company covered by the 10% Vote Plus Interlock Presumption. Such companies generally are not treated as subsidiaries of the investing FBO under applicable home country laws, and the FBO’s *de facto* lack of control over such companies seriously impedes its ability to determine (i) whether the foreign company has any U.S. activities, and thus is covered under Section 2(h)(2), and (ii)

⁵ Further, we understand that each of the Appendices to Forms FR Y-10 and FR Y-10F, including the “Board to NAICS Activity Code Conversion Table”, will be retained in their entirety without revision and included as Appendices to the new FR Y-10.

⁶ See footnote 3 to the instructions to the FR Y-7. Report Item 2(b) in the FR Y-7 requires reporting certain information regarding a foreign company that is a “subsidiary” of the reporting FBO and that engages in U.S. activities. For these purposes, the term “subsidiary” has the same meaning given in the Glossary to the FR Y-10, which provides that a “subsidiary” is a “a company or bank that is controlled by another company as control is defined above in this Glossary.”

INSTITUTE OF INTERNATIONAL BANKERS

assuming such determination can be made, whether those U.S. activities “match” the activities conducted by the foreign company outside the United States, as measured by the NAICS codes. In practice, this can prove to be an extremely arduous undertaking. Eliminating the 10% Vote Plus Interlock Presumption would diminish the burden associated with reporting interests in Section 2(h)(2) Companies without impeding the Board’s ability to monitor an FBO’s compliance with the BHC Act – a foreign company treated as a Section 2(h)(2) Company solely by virtue of the 10% Plus Presumption would nevertheless be reportable under Item 2(b) of the FR Y-7 as an entity held pursuant to Section 4(c)(9) of the BHC Act.

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

Very truly yours,

A handwritten signature in black ink that reads "Lawrence R. Uhlick". The signature is written in a cursive style with a large, prominent initial "L".

Lawrence R. Uhlick
Chief Executive Officer