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regs.comments@federalreserve.gov

Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Proposal To Approve the Banking Organization Systemic Report (Form FR Y-15)
OMB Control Number 7100-to-be-assigned

Dear Mr. deV. Frierson:

The Institute of International Bankers (“IIB”) appreciates the opportunity to comment on the proposal by the Board of Governors of the Federal Reserve System (the “Board”) to adopt a new “Banking Organization Systemic Risk Report” (Form FR Y-15) to collect consolidated systemic risk data from large U.S.-headquartered bank holding companies (“U.S. BHCs”) and savings and loan holding companies (“U.S. SLHCs”) and aggregated systemic risk information on the U.S. operations of certain foreign banking organizations (“FBOs”).¹ The IIB represents internationally headquartered financial institutions from over 35 countries around the world doing business in the United States. The IIB’s members consist principally of FBOs that operate branches and agencies, bank subsidiaries and broker-dealer and other nonbank financial subsidiaries in the United States. Each FBO that would be covered by the proposed reporting requirement, as prescribed by the reporting criteria set forth in the Draft Instructions, is a member of the IIB.

Executive Summary

We have significant concerns with the Proposal and would welcome the opportunity to meet with Board staff to discuss them further. As applied to FBOs, the Proposal provides that only those with \$50 billion or more of assets in their combined U.S. operations (including branches) are required to file Form FR Y-15 (such FBOs, “Reporting FBOs”). In addition, the

¹ See 77 Fed. Reg. 50102, 50104 – 50106 (August 20, 2012) (together with the draft Form FR Y-15 and draft instructions thereto, each dated July 11, 2012 (respectively, the “Draft Form FR Y-15” and the “Draft Instructions”), the “Proposal”).



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Proposal requires reporting only with respect to those U.S. operations. We agree with this approach as the basis on which information should be reported by FBOs for the supervisory purposes described in the Proposal in the event the Board determines to adopt such a reporting requirement.

However, we do not agree with what appears to be the Proposal's underlying premise that exactly the same type of information required by the Board from U.S. BHCs for submission to the Basel Committee on Banking Supervision (the "Basel Committee") for use in connection with its assessments of global systemically important banks ("G-SIBs") and the determination of appropriate capital surcharges for such banks is also required from FBOs with respect to their combined U.S. operations in order to (i) facilitate the Board's assessments of the systemic risk implications of proposed mergers and acquisitions, and (ii) assist in determining whether a banking organization should be designated in the United States as a domestic systemically important bank ("D-SIB"). The supervisory purposes driving reporting by U.S. BHCs and by FBOs with respect to their combined U.S. operations are significantly different and should not be conflated in a manner that requires that Reporting FBOs report exactly the same type information and with the same degree of granularity as U.S. BHCs and that reporting by U.S. BHCs and Reporting FBOs be coterminus.

Moreover, the Proposal appears to assume, incorrectly, that the highly granular information required from a Reporting FBO with respect to its combined U.S. operations currently is readily available and therefore can be collected and filed without difficulty by February 14, 2013 with respect to the condition of its combined U.S. operations as of December 31, 2012. As discussed below, Reporting FBOs will not be able to comply with this time frame because they will not be able to compile the required information within this period. The magnitude of the actions that Reporting FBOs would have to take in order to comply with the Proposal is so great that simply extending the time period further into 2013 would not help.

Even more to the point, there is simply no compelling reason to mandate for Reporting FBOs such a new and expansive information reporting requirement without giving substantially more consideration to the need for and utility of information that should be required from FBOs with respect to their combined U.S. operations in order to serve the supervisory purposes described in the Proposal. Given the inchoate status of the Board's consideration of systemic risk assessments and the fact that the Basel D-SIB framework was announced only 8 days ago, there is no need to rush to a judgment on these questions. Further, if it is determined that some type of information reporting requirement is necessary, it is essential that Reporting FBOs (i) be provided a reasonable period of time to develop, test and implement the systems, procedures and controls necessary to collect and report such information; and (ii) until then, be held only to a "best efforts" standard for the preparation and filing of any required reports.

Our other key concerns with the Proposal focus on (i) the requirement that Form FR Y-15 be signed and attested by the reporting entity's Chief Financial Officer ("CFO"); and (ii) the proposal to make Form FR Y-15 publicly available. With respect to the CFO's signature and



attestation, we recommend that any new information reporting requirement that might be established for the purposes described in the Proposal instead permit signature and attestation by a duly authorized official of a Reporting FBO. Regarding public availability of the reported information, we recommend that, given the reasons for collecting the information from Reporting FBOs, all reported information be designated and treated as confidential supervisory information. Our other comments seek clarification of certain other aspects of the Proposal. These recommendations and other comments are offered to the extent the Board determines to apply to FBOs a reporting requirement for the supervisory purposes described in the Proposal and should not be viewed as endorsing the adoption of such a requirement or the use of Draft Form FR Y-15 to implement it.

We respectfully urge the Board to withdraw the Proposal as it applies to FBOs, reconsider the matter in light of the concerns and considerations discussed in this letter and thereafter, should it determine that some type of information reporting by FBOs with respect to their combined U.S. operations is necessary for these purposes, issue a new proposal for comment.

I. Principal Concerns with Incorporating the Basel Committee’s G-SIB Methodology into the Proposal As It Applies To FBOs

As described in the Proposal, the reporting requirement is intended to serve two general purposes:²

- The Board will submit the information reported on Form FR Y-15 by U.S. BHCs to the Basel Committee for its use in identifying G-SIBs and prescribing appropriate G-SIB capital surcharges. The Proposal explains that the line items of the various Schedules to Form FR Y-15 accordingly are “derived directly from” the Basel Committee’s G-SIB methodology.³
- The Board will use the information reported on Form FR Y-15 by all reporting entities – U.S. BHCs, U.S. SLHCs and FBOs (but only with respect to their combined U.S. operations) to assess the systemic risk implications of proposed mergers and acquisitions, and such information also may be used to determine whether an institution is a D-SIB.

We believe that substantially all, if not all, Reporting FBOs currently either have been initially identified by the Financial Stability Board and the Basel Committee as G-SIBs or are within the global sample of banks used by the Basel Committee in conducting its annual G-SIB

² See *id.* at 50105.

³ See *id.* The Basel Committee’s methodology is set forth in “Global Systemically Important Banks: Assessment Methodology and the Additional Loss Absorbency Requirement” (November 2011), *available at* <http://www.bis.org/publ/bcbs207.pdf>.



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assessments. In either case, the assessment of these FBOs as G-SIBs is based on information regarding their global, consolidated operations – as is the case with the Basel Committee’s assessments of U.S. BHCs as G-SIBs – and does not require any separate reporting with respect to the FBOs’ U.S. operations. The Proposal recognizes that the information reported by FBOs on Form FR Y-15 is not relevant to the Basel Committee’s G-SIB assessment process, but it appears to take as a given that exactly the same type of information reported by FBOs for purposes of G-SIB assessments, albeit limited to their combined U.S. operations, should be used as well in assessing the systemic risk implications of proposed mergers and acquisitions and the designation of banking organizations as D-SIBs.

Our principal concerns with the rationale for the Form FR Y-15 reporting requirement are that it appears erroneously, we would submit, to assume that: (1) FBOs in the regular course of their business either (i) without great difficulty can disaggregate from the consolidated information reported to the Basel Committee in connection with the G-SIB assessment process the portions of that information attributable specifically to their combined U.S. operations or (ii) otherwise are readily able to collect that information and report to the Board; and (2) the objectives of the Basel Committee’s G-SIB process are sufficiently similar to the Proposal’s domestically-focused supervisory objectives to justify and support the use of exactly the same type of information for both purposes.

We respectfully submit that in general there is no reason to link the timing of whatever information may be required from Reporting FBOs to serve the supervisory purposes described in the Proposal to the Board’s submission of information regarding U.S. BHCs to the Basel Committee in connection with its G-SIB assessment process and, therefore, there is no reason to require Reporting FBOs to submit their initial filings by February 14, 2013 or otherwise to link the timing of their filings to filings by U.S. BHCs. Moreover, we question the need for requiring FBOs to report information regarding their combined U.S. information with the same degree of detail and granularity as may be required in connection with the Basel Committee’s G-SIB assessments, and we respectfully urge the Board to reconsider the scope and granularity of the information that should be required from FBOs with respect to their combined U.S. operations in light of the reporting requirement’s stated objectives.

A. Compiling, Aggregating and Reporting the Detailed Information Regarding Their Combined U.S. Operations Contemplated by the Proposal Constitutes A Substantial Change to FBOs’ Current Practices – Compliance with the Proposed Requirements within the Proposed Time Frame Is Impossible

FBOs do not, whether for purposes of reporting to the Basel Committee in connection with its G-SIB determinations or otherwise in connection with the ordinary course of their business operations, compile all of the information required by the Proposal on a U.S.-only basis. The only reason for Reporting FBOs to collect this information would be to satisfy the Form FR Y-15 reporting requirement.



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Accordingly, if the Form FR Y-15 reporting requirement were finalized as proposed and all ambiguities regarding its requirements were satisfactorily resolved – and in particular those relating to the scope of the U.S. operations covered by the requirement discussed in Part V.A below – Reporting FBOs would have to develop procedures, systems and controls that would enable them to complete Form FR Y-15 and support the required attestation of that information. Under the Proposal, they would be required to do so at a time when they are otherwise engaged in year-end audits and other year-end reporting. Reporting FBOs with a top-tier U.S. bank holding company of sufficient scale also will be involved in capital planning. In addition, because FBOs for their own internal financial reporting purposes report certain of their U.S. operations on the basis of International Financial Reporting Standards (“IFRS”), this information would have to be converted to U.S. Generally Accepted Accounting Principles (“GAAP”) before incorporated into the report and attested.⁴

Even in the most favorable circumstances, these undertakings would present massive challenges, and the severity of the task is only compounded by the degree of granularity of the information required by the Proposal. Leading examples include the netting requirements applicable to reporting derivatives activity as provided for in Schedule A and the information with respect to payments activity required by Schedule C. In addition, Draft Form FR Y-15 calls for information regarding metrics that have not yet been finalized, such as the “regulatory adjustments” required by Schedule A⁵ and the reporting of Basel III liquidity coverage ratio (“LCR”) “Level 1” and “Level 2” assets in Schedule D.⁶

In the case at hand – where notice of these new and expansive reporting requirements was provided less than six months before the first attested reports would have to be filed and the requirements likely will not be finalized until sometime in November at the earliest – it quite simply will not be possible for Reporting FBOs, notwithstanding their most diligent efforts, to compile and aggregate all of the information required by the six Schedules to Form FR Y-15 and file attested reports within the time period required under the Proposal. Further, it will not be possible for the board of directors and senior management of a Reporting FBO to perform their

⁴ While several line items in the Draft Instructions refer only to “GAAP”, references to “U.S. GAAP” or U.S. GAAP-related reporting standards appear in other line items in the Draft Instructions, making clear the expectation that all information included in Form FR Y-15 must be reported in on a U.S. GAAP basis. An example of the challenges regarding the required use of U.S. GAAP that Reporting FBOs would encounter under the Proposal is the situation in which a U.S. nonbank subsidiary covered by a Reporting FBO’s filings on Form FR Y-7N has a non-U.S. subsidiary. For FR Y-7N purposes, the subsidiary is reported using the equity method, whereas for U.S. GAAP purposes it would be consolidated into the U.S. nonbank subsidiary. We strongly believe that any reporting requirement that may be applied to FBOs for the supervisory purposes described in the Proposal should allow for and accommodate differences between IFRS and U.S. GAAP.

⁵ See Part V.C below.

⁶ See line items 8 and 9 of the Draft Instructions to Schedule D.



responsibilities for establishing and maintaining an effective system of internal control enabling preparation of Form FR Y-15 in accordance with its instructions.

B. The Degree of Granularity of the Information Reporting by FBOs Required by the Proposal Is Not Necessary To Accomplish the Stated Supervisory Objectives

The Proposal appropriately recognizes that reporting by FBOs with respect to their U.S. operations serves different supervisory purposes from the purposes served by the Basel Committee's G-SIB assessment process. Nevertheless, the Proposal appears to assume, without explanation of the rationale for doing so, that all of the information factored into G-SIB assessments nevertheless is needed to realize those other supervisory purposes. We are concerned that by conflating these different purposes the Proposal reaches too far and addresses substantial and complex policy questions regarding the implementation of certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") and the yet-to-be-developed methodology for designating D-SIBs in the United States that are more effectively addressed by means other than an information collection exercise.

1. Assessing the Systemic Risk Implications of Mergers and Acquisitions

It appears that this aspect of the Proposal is directed at implementation of Sections 163⁷ and 604 of the Dodd-Frank Act (and, as to the latter the provisions of Section 604 that amend Sections 3 and 4 of the of the Bank Holding Company Act of 1956 (the "BHC Act") in particular⁸),⁹ both of which are cited among the authorities for the Proposal and both of which

⁷ Section 163(b) requires Reporting FBOs to submit a written notice to the Board prior to the acquisition of certain types of nonbank companies having total consolidated assets of \$10 billion or more. The provisions of Section 163 apply equally to U.S. BHCs that would be required under the Proposal to file Form FR Y-15. In reviewing these notices, the Board is required under Section 163(b)(4) to consider "the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy."

⁸ Section 604 includes provisions expanding the various factors the Board is required to consider when reviewing transactions under Section 3 and Section 4 of the BHC Act. In reviewing transactions under Section 3 the Board is now also required to take into consideration "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system." See Section 604(d), *codified at* 12 C.F.R. 1842(c)(7). In reviewing notices under Section 4 the Board is now also required to consider the extent to which the benefits expected from the transaction under review outweigh its possible adverse effects, including "risk to the stability of the United States banking or financial system. See Section 604(e)(1), *codified at* 12 C.F.R. 1843(j)(2)(A). Thus, in both cases systemic risk considerations are one of several factors to be weighed in determining whether to approve an application and not the sole determinant.

⁹ Like Section 163, Section 604 applies equally to U.S. BHCs. We note that Section 604(f) amends the Bank Merger Act to expand the factors which the Board, the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") are required to take into consideration when reviewing a proposed bank merger for which it is the "responsible agency" to include "the risk to the stability of the United States banking or financial system." See 12 U.S.C. 1828(c)(5). The Proposal does not indicate whether the Board



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are applicable to Reporting FBOs. As discussed below, we question the necessity of requiring Reporting FBOs to file Form FR Y-15 reports for these supervisory purposes, and urge the Board to reconsider this aspect of the Proposal.

Although the Proposal does not discuss its applicability to Section 163, presumably it is contemplated that the Board will utilize the information reported on Form FR Y-15 in connection with its review of notices submitted pursuant to Section 163(b). To our knowledge, the Board to date has not conducted any review under Section 163 or indicated the approach it intends to take in conducting such reviews. At this very early stage of development of supervisory thought and practice under Section 163 it is premature to prescribe any information reporting requirement directed at Section 163, much less one of such detailed and prescriptive a nature as embodied in Draft Form FR Y-15.

Regarding implementation of Section 604, last year, in the context of approving an application under Section 3 of the BHC Act, the Board stated that it “expects to issue a notice of proposed rulemaking implementing the provisions of the Dodd-Frank Act that require the Board to take into account a proposal’s impact on the risks to stability of the U.S. financial or banking system.”¹⁰ The Board subsequently decided against a rulemaking, or even the issuance of detailed guidance, in favor of a case-by-case approach when reviewing under Sections 3 and 4 of the BHC Act the systemic risk presented by a merger or acquisition.¹¹ This approach calls for consideration of a variety of factors, including the size of the resulting firm, the availability of substitute provider for any critical products or services, the interconnectedness of the firm with the banking and financial system, the contribution of the firm to the complexity of the financial system, and the extent of cross-border activities of the firm.¹² It is recognized that the analysis is not well-suited to quantitative precision.¹³

Each of the factors described above corresponds to one of the Schedules to Form FR Y-15. We recognize that information regarding a Reporting FBO’s combined U.S. operations to

has consulted with either the OCC or the FDIC regarding their implementation of these provisions of the Bank Merger Act or the extent to which, if at all, they intend to use the type of information reported on Form FR Y-15 in connection with their reviews.

¹⁰ See the Board’s December 23, 2011 order approving the acquisition of RBC Bank (USA) by The PNC Financial Services Group, Inc. at p. 11 n18, *available at* <http://www.federalreserve.gov/newsevents/press/orders/order20111223.pdf>.

¹¹ See Daniel K. Tarullo, Remarks at the University of Pennsylvania Law School Distinguished Jurist Lecture: Financial Stability Regulation (Oct. 10, 2012) at 19 (“Governor Tarullo Remarks”), *available at* <http://www.federalreserve.gov/newsevents/speech/tarullo20121010a.pdf>.

¹² See the Board’s February 14, 2012 order approving the acquisition of ING Bank, fsb, by Capital One Financial Corporation at 28-29 (the “Cap One Order”), *available at* <http://www.federalreserve.gov/newsevents/press/orders/order20120214.pdf>

¹³ See Governor Tarullo Remarks at p. 20.



some degree is relevant to the Board's consideration under the BHC Act of the systemic risk posed by a transaction involving the Reporting FBO and that to some degree it may be beneficial to incorporate some type of quantitative metric into that analysis. At the same time, we question whether it is necessary to obtain such extensive and detailed information in support of such reviews as would be required under the Proposal, a matter that is not discussed in the Proposal.

It appears that the Proposal instead proceeds from the premise that all of the information required to be reported on Form FR Y-15 is essential to assessing the systemic risk implications of mergers and acquisitions. In this regard, we are concerned that the Proposal is based in important part on the fallacy that the information used by the Basel Committee in making its G-SIB determinations is equally useful to systemic risk assessments under the BHC Act. But whereas the purpose of the former is the derivation of a quantitative risk-based capital surcharge, the purpose of the latter is to weigh systemic risk considerations against other factors in a process that necessarily cannot achieve the quantitative precision inherent to deriving a capital surcharge. Indeed, the Board itself has recognized the limitations on applying an overly prescriptive, quantitative approach to systemic risk assessments under the BHC Act.¹⁴

Given the heavy compliance burdens imposed by the Proposal's information reporting requirements and the inchoate nature of assessing systemic risk under the BHC Act, we urge the Board to reconsider whether each of the items of information required by the Proposal is necessary to achieve this aspect of its intended purpose.

2. D-SIB Designations

Similar considerations drive our concerns with respect to requiring FBOs to report such extensive and detailed information about their combined U.S. operations as a means to facilitate the determination of whether to designate, and thereafter how to supervise, a banking organization as a D-SIB. Imposing such a requirement in advance of the Board undertaking any such determination, or even having in place a framework for doing so, is especially problematic. The Basel Committee announced its finalized framework for dealing with D-SIBs only 8 days ago.¹⁵ Further, the Basel Committee itself distinguishes the framework for dealing with D-SIBs from the methodology it applies for assessing G-SIBs. Most notably, the D-SIB framework is principles-based, whereas the G-SIB methodology applies an indicator-based measurement approach, and the D-SIB framework incorporates only some, and not all, of the factors incorporated into the G-SIB indicator-based measurement approach.¹⁶

¹⁴ See Cap One Order at pp. 29-30.

¹⁵ See "Dealing with domestic systemically important banks: framework issued by the Basel Committee" (October 11, 2012), available at <http://www.bis.org/press/p121011.htm>.

¹⁶ See Basel Committee, "A framework for dealing with domestic systemically important banks" (October 2012) (the "Basel D-SIB Framework") at p. 6 (paragraphs 21 and 22).



In the context of the Dodd-Frank Act, dealing with D-SIBs, like determining G-SIB capital surcharges, arises under Section 165, which requires the Board to establish enhanced capital, liquidity and other prescribed prudential standards.¹⁷ Section 165(a)(2)(A) authorizes the Board to differentiate among the companies that are subject to these enhanced standards on an individual basis or by category, taking into consideration a variety of factors listed in the statute. We recognize the relevance of these provisions to the prospective designation of D-SIBs, but we are concerned that the Proposal in effect prejudices the type of information that will be used in connection with the D-SIB assessment process rather than delaying that decision until the Board has determined how, and on the basis of which factors, the designations will be made. The determination of the information necessary for such designations should be driven by the determination of these factors and not vice versa.

We urge the Board to delay prescribing information requirements for purposes of D-SIB designations until the entire regulatory framework under Section 165 has been finalized.

II. The Time Frame for Reporting by FBOs Should Be Modified

A. The Time Frame for the Basel Committee’s G-SIB Assessments Should Not Be Determinative of the Time Frame for Reporting FBOs

The time frame prescribed by the Proposal for all Form FR Y-15 reporting entities is directly linked to the Basel Committee’s time frame for implementation of its G-SIB methodology, which is an established, annual process designed to achieve specific and well-defined purposes – the designation of internationally active banks as G-SIBs and the determination of the level of the surcharge that should be imposed on their capital. As discussed below, there is no basis for linking the timing of the G-SIB assessment process, on the one hand, and the Board’s assessment of the systemic risk implications of mergers and acquisitions and/or the yet-to-be-determined D-SIB assessment process in the United States, on the other hand.

1. Timing Considerations Relating To Mergers and Acquisition Assessments

In sharp contrast to the conduct of annual G-SIB assessments, there is no such predictability to knowing when it will be necessary to undertake an assessment of the systemic risk implications of a merger or acquisition. Given the current state of the financial services industry and the significant regulatory and market uncertainties confronting large, complex, internationally active banking organizations, we question the need for the adoption of the type of

¹⁷ Thus, in connection with its notice of proposed rulemaking implementing Section 165 with respect to U.S. bank holding companies the Board has stated that it “intends to issue a concrete proposal for implementation of a quantitative risk-based capital surcharge for covered companies, or a subset thereof, based on the [Basel Committee’s G-SIB methodology].” See 77 Fed. Reg. 593, 604 (Jan. 5, 2012).



highly prescriptive and intensely quantitative reporting framework contemplated by the Proposal and its virtually immediate application to such diverse range of reporting entities, both domestic and foreign, for the purpose of facilitating assessments of the systemic risk implications of mergers and acquisition in which they may be involved.

Further, as discussed above, development of the methodology for these assessments is still in its early stages. Use of something like the Basel Committee's indicator-based measurement approach for assessments of G-SIBs may or may not in some ways be relevant to such assessments, but there certainly is no urgent need to foreclose further consideration of that important question by finalizing a proposal that would impose an impractical and unrealistic time frame on Reporting FBOs.¹⁸

Quite simply, we do not believe that considerations relating to assessing the systemic risk implications of mergers and acquisitions justify acting with such haste.

2. Timing Considerations Relating To D-SIB Assessments

This conclusion applies with even greater force when the question turns to the relationship between the information reported on Form FR Y-15 and the D-SIB assessment process. We recognize that the D-SIB assessment process, similar to the Basel Committee's G-SIB assessment process, is intended ultimately to result in the determination of an appropriate quantitative metric for addressing the higher degree of systemic risk present by designated firms, but this does not necessarily mean that exactly the same type of information is required for both assessments.

Indeed, the Basel Committee's D-SIB framework itself recognizes the need to allow for "an appropriate degree of national discretion" in its implementation, and sets the time frame for national compliance with the principles to the phased-in arrangements for the G-SIB framework, *i.e.*, from January 2016.¹⁹ To be sure, the D-SIB framework states that "it is desirable that the interval of the [D-SIB] assessments not be significantly longer than that for G-SIBs (ie one year)."²⁰ This consideration, however, does not require that the time frames be identical, nor does it inform the question of the degree to which there need to be an identity between the information that is factored into D-SIB assessments and what is used in connection with G-SIB

¹⁸ We note that the need for the information reported on Form FR Y-15 would be substantially diminished were the Board to incorporate a strong negative presumption into its assessments of the systemic risk implication of a merger or acquisition by a G-SIB, and perhaps as well by a U.S. D-SIB, as has been recently suggested. See Governor Tarullo Remarks at p. 21.

¹⁹ See Basel D-SIB Framework at p. 2, paragraphs 5 and 10.

²⁰ *Id.* at p. 7, paragraph 27.



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assessments. Moreover, as explained above, implementation of D-SIB assessments in the United States does not appear to be on the near horizon.

Thus, there is no need to “rush to judgment” on the question of what information should be reported to facilitate D-SIB designations in the United States. Finalizing the Proposal and implementing its requirements within the prescribed time frame runs the very substantial risk of preempting to a significant degree an important aspect of determining how the D-SIB assessment process will work in the United States. An information collection process undertaken with little advance notice and within a 60-day comment period is not an appropriate context for deciding such significant questions.

B. Recommendation

Should the Board ultimately determine to require FBOs to report information regarding their combined U.S. operations as of December 31 of the year covered by the report for purposes of facilitating assessments of the systemic risk implications of mergers and acquisitions and/or D-SIB designations, such reports should be required by June 30 of the next following year.

III. The Requirement That Form FR Y-15 Be Signed and Attested by a Reporting FBO’s CFO Is Unnecessary and Should Be Revised To Permit Signature and Attestation by an Authorized Official of the Reporting FBO

The proposed CFO signature and attestation requirement is a matter of very serious concern to Reporting FBOs.

First, it is unclear why it is necessary that a Reporting FBO’s CFO (or an individual with equivalent responsibilities) sign and attest the report.²¹ We note that the Call Reports filed by a Reporting FBO’s U.S. bank subsidiary are signed and attested by the bank’s CFO and the Call Reports filed by its U.S. branches and agencies are signed by the CFO of the branch/agency and attested by a senior executive officer of the branch/agency. These requirements are understandable inasmuch as the Call Reports are limited to financial information relating specifically and only to the reporting entity and these individuals may be understood to be best situated to undertake these responsibilities. Notably, where reports to the Board include financial information that covers multiple U.S. entities or the FBO on a group-wide basis, it is

²¹ The Draft Instructions state that the Form FR Y-15 must be signed by “the Chief Financial Officer of the banking organization” which we understand to mean that the report must be signed by the CFO of the Reporting FBO itself – *i.e.*, the top-tier entity in the group’s organization that is headquartered outside the United States. We request clarification if another meaning is intended.



sufficient that they be signed and attested by an “authorized officer” or “authorized official” of the FBO.²²

Second, no one at a Reporting FBO – whether the CFO, the equivalent of the CFO, or some other authorized officer – will be able to attest that the first report required under the Proposal has been “prepared in conformance with the instructions” because, as discussed in Part I.A, no Reporting FBO will have the systems, procedures and controls in place required to support such an attestation. Moreover, this will still be the case even if the filing deadline is extended to sometime later in 2013.

Because it requires reporting of aggregated information across a wide spectrum of operations, Draft Form FR Y-15 is more akin to the reporting forms mentioned above that may be signed and attested by an authorized officer/official of an FBO than to the Call Reports that require attestation and/or signature by the reporting entity’s CFO. Given the global responsibilities of a Reporting FBO’s CFO, that individual is not necessarily the most appropriate officer within the Reporting FBO’s structure to undertake responsibility for the information reported on only a regional basis on Form FR Y-15.²³ Instead, the Reporting FBO should be provided the flexibility to determine who within its structure is best situated to sign and attest -the report. The more significant consideration should be that the Reporting FBO’s board of directors and senior management retain their responsibilities for establishing and maintaining an effective system of internal control enabling preparation of the report in accordance with its instructions.

Recommendations

We respectfully recommend that the Board take the following actions to address our concerns regarding signature and attestation of Form FR Y-15 by a Reporting FBO’s CFO:

- **The signature page and instructions for Form FR Y-15 should be revised to require signature and attestation of Form FR Y-15 by an “authorized official” of the Reporting FBO – i.e., a person with power to bind the Reporting FBO.²⁴**

²² See, e.g., the annual report on Form FR Y-7, the report of covered U.S. nonbank subsidiaries’ financial statements on Form FR Y-7N and Form FR Y-7NS, and the periodic capital and asset report on Form FR Y-7Q.

²³ Moreover, as a governance matter, attestation by a Reporting FBO’s CFO would require additional time than if the attestation were made by some other authorized official.

²⁴ See the definition of “authorized official” in the Glossary to Form FR Y-7. We note that under this approach the “authorized official” might be the Reporting FBO’s CFO, but such would be the case only if the Reporting FBO decided to give its CFO that responsibility.



- **Whatever the time frame for the initial submission of Form FR Y-15 (see Part II above), attestation of Form FR Y-15 by a Reporting FBO should not be required until the Reporting FBO has been given a reasonably opportunity to develop, test and implement the systems, procedures and controls necessary to support the attestation. Until that time, a Reporting FBO should be held to not more than a “best efforts” standard.²⁵**

IV. None of the Reported Information Should Be Publicly Disclosed and Instead Should Be Designated in its Entirety As Confidential Supervisory Information

The Draft Instructions state on page 3 of the General Instructions that “[t]he completed version of this report is not confidential and will be made available to the public for report dates beginning December 31, 2012.”²⁶ Provision is made for reporting banking organizations to request confidential for specific commercial or financial information in the report and demonstrate the specific harm that would result from such disclosure, but there is no assurance that, even if granted, confidential treatment will not subsequently be revoked.

The information required to be reported on Draft Form FR Y-15 delves to a level of granularity and provides insights into Reporting FBOs’ strategy and operations in the United States that are not found in Reporting FBOs’ other required public financial disclosures. The prospect of harm to the Reporting FBO’s competitive position is substantial. We do not believe a Reporting FBO should be required to specify the nature and extent of the potential harm resulting from disclosure of the information reported on Form FR Y-15 when each of the two reasons cited by the Proposal for requiring this information is exclusively supervisory in nature.

²⁵ We understand the Board has taken a similar approach with respect to filings of the FR Y-14 reports by bank holding companies that are subject to the Board’s capital planning rules. Likewise the Basel Committee’s ongoing Basel III monitoring exercises are conducted on a “best efforts” basis. See Basel Committee, “Results of the Basel III monitoring exercise as of 31 December 2011” (September 2012) at 8 (the “[Basel III December 2011 Monitoring Exercise Results](#)”).

²⁶ This approach appears to be in conflict with maintaining the confidentiality of the sources of information that the Proposal indicates will be used for purposes of reporting the “cross-jurisdictional activity indicators” in Schedule E. The reports cited in the instructions to Schedule E as the sources for the required information are Forms FFIEC 009 and 019 and Treasury International Capital (TIC) Forms BL-1 and BQ-2.²⁶ The instructions to Form FFIEC 009 state that each reporting banking organization’s individual report will be regarded as confidential and the TIC forms each include a statement that the reported data will be held in confidence and will not be published or otherwise disclosed. The signature page for Form FFIEC Form 019 states that the information reported in the form will be exempt from public disclosure under Section (b)(8) of the Freedom of Information Act (12 U.S.C. 552(b)(8)).



Accordingly, we respectfully recommend that none of the information reported by FBOs for the purposes described in the Proposal be publicly disclosed and all such information instead be designated and treated as confidential supervisory information.²⁷

V. Requested Clarifications²⁸

The comments in this Part V are offered to the extent the Board determines to apply to FBOs a reporting requirement for the supervisory purposes described in the Proposal and should not be viewed as endorsing either the adoption of such a requirement or the use of Draft Form FR Y-15 to implement it.

A. The Scope of “U.S. Operations”

Should they be subject to a reporting requirement, Reporting FBOs would benefit considerably from clarification of the scope of U.S. operations covered by the requirement. With respect to the Proposal, it is unclear from the explanation provided in the General Instructions to Draft Form FR Y-15 whether the intention is that Reporting FBOs report all of their U.S. entities on Form FR Y-15, regardless of their size and even if they are not otherwise reported to the Board for other purposes, or instead some smaller segment of their U.S. operations. We note that in some instances the U.S. operations of Reporting FBOs are comprised of hundreds of separate companies, many of which operate on different reporting system platforms. Aggregating the type of financial information contemplated by the Proposal across the full spectrum of these operations would entail a manually intensive consolidation process.

Further, and with reference to Reporting FBOs’ U.S. nonbank subsidiaries, there is considerable variety in both the amount of information required to be reported to the Board and the frequency with which it must be reported, with no reporting required for those with total assets of less than \$50 million.²⁹ A requirement to report the information contemplated by the Proposal for all of the entities for which reports otherwise are filed would present very significant challenges to Reporting FBOs, and the difficulty of the task would be considerably exacerbated in the case of those for which no reporting has been required.

²⁷ Tellingly, information reported to the Basel Committee in connection with its ongoing Basel III monitoring exercise is submitted on a confidential basis. See Basel III December 2011 Monitoring Exercise Results at 1. Likewise, information reported to the Board on the FR Y-14 forms is exempt from public disclosure under Section (b)(8) of the Freedom of Information Act.

²⁸ As a general matter, we recommend that a Glossary defining key terms be included in the instructions to whatever form may be adopted in the event a reporting requirement is applied to FBOs for the purposes described in the Proposal.

²⁹ See the General Instructions to Forms FR Y-7N and FR Y-7NS.



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In determining the scope of a reporting requirement applicable to FBOs for the purposes described in the Proposal, a balance must be struck between the utility of the information reported with respect to a Reporting FBO's U.S. operations and the practical consequences to Reporting FBOs of imposing such a requirement. We urge the Board to take this consideration into account in setting the parameters for any required reporting by FBOs with respect to their U.S. operations for the supervisory purposes described in the Proposal.

With specific regard to Draft Form FR Y-15, it is stated on page 2 of the General Instructions that Reporting FBOs should file information for "their top-tier US holding company plus the activities of branches and other subsidiaries." We understand this statement to mean that transactions in which a Reporting FBO's U.S. operations might be involved (other than in a principal capacity) and that are booked outside the United States – including in any non-U.S. branch of the Reporting FBO with respect to which the Reporting FBO files a report of assets and liabilities on FFIEC Form 002S – are not to be reported on Form FR Y-15. We would appreciate confirmation of this understanding.

B. The Treatment of Inter-Company Transactions³⁰

It is further stated on page 2 of the General Instructions that a Reporting FBO "has the option to eliminate transactions between the holding company and the branches when combining the data for purposes of filing [Form FR Y-15]." Read in context, we understand this statement to mean that the option applies only to any transaction between a U.S. branch of Reporting FBO and the Reporting FBO's top-tier U.S. holding company³¹ and not to transactions between a U.S. branch and U.S. entities that might be owned by the Reporting FBO outside its top-tier U.S. holding company.³² We would appreciate clarification of the scope of the option provided for in the General Instructions.

³⁰ Questions regarding treatment of inter-company transactions are not presented in the case of reporting by U.S. BHCs inasmuch as they file a single consolidated report with the Board on Form FR Y-9C encompassing the entirety of their operations. Further, under the Proposal U.S. BHCs accordingly would be able to exclude certain line items from Form FR Y-15 that are automatically retrieved from their FR Y-9C reports (see Item H in the General Instructions) but Reporting FBOs would not, unless their FR Y-9C reports cover the entirety of their U.S. operations.

³¹ In accordance with the consolidation rules provided at page 1 of the General Instructions, a Reporting FBO is required to eliminate all intercompany balances within the consolidated group of its top-tier U.S. holding company and thus all such balances are excluded from Form FR Y-15.

³² FBOs' U.S. branches and agencies report on a net basis any due from/due to amounts arising from their transactions with their head office and related depository institutions. The latter include U.S. depository institution subsidiaries of the FBO. For those Reporting FBOs that maintain a U.S. branch/agency and a U.S. depository institution subsidiary it would appear that there is the potential for double counting transactions between the U.S. branch/agency and the U.S. depository institution subsidiary depending on the structure of the Reporting FBOs' U.S. operations. In any event, it would appear that the option provided for at page 2 of the General Instructions is not intended to apply to transactions between a U.S. branch of a Reporting FBO and the Reporting FBO itself or any non-U.S. related institution of the U.S. branch.



C. Schedule A – Regulatory Adjustments

Line item 3 of the Draft Instructions to Schedule A requires reporting regulatory adjustments from Tier 1 capital as reported in the Board’s Basel III notice of proposed rulemaking (undertaken jointly with the OCC and the FDIC). We request confirmation that this item applies only to the top-tier U.S. bank holding company subsidiary, if any, of a Reporting FBO and is not intended to apply in any fashion to a Reporting FBO’s U.S. branches/agencies (and certainly not to the Reporting FBO itself).

The comment period on the U.S. Basel III rulemaking has not yet concluded. Consequently, there is not yet any final determination of the specific adjustments to Tier 1 capital that those banking organizations that are subject to the rulemaking will be required to make. We recommend that any such regulatory adjustments not be required until the U.S. Basel III implementing rules have been finalized.

D. Schedule C

We have several significant concerns regarding Schedule C:

- It is unclear how requiring such highly granular payments-related information is necessary to the intended supervisory purposes of the reporting.
- Line item 1 calls for reporting on only a gross basis, but in many instances banking organizations record their payments activities on a net basis and information on a gross basis is not maintained.
- It is understood that cash and wire transfer of funds are included as “cash payments” but it is unclear whether the term includes other items that are cleared and settled through payment systems.
- We reserve comment on the use of the “average exchange rates” provided by the Bank for International Settlements referenced in line item 1 pending clarification of which rates are intended by this reference.
- As applied to Reporting FBOs, it is unclear whether the exclusion of “inter-group transactions” called for in line item 1 is limited to the U.S. operations of the Reporting FBO covered by the report or includes the entirety of the Reporting FBO’s global operations.
- It is unclear whether the Schedule is intended to include payments made by an entity within the Reporting FBO’s combined U.S. operations for its own benefit.



E. Schedule E – Sources of Information

We request confirmation that the information required from Reporting FBOs on Schedule E consists solely of the sum of the specific items of information reported in the reporting forms referenced in the Draft Instructions to Schedule E, so that, for example, if a Reporting FBO's U.S. operations do not otherwise report any such information, the Schedule E filed by the Reporting FBO would report only "zero" amounts.

F. Schedule F – Certain Ancillary Indicators

The Draft Instructions to line item 3 regarding "non-domestic net revenue" state: "Domestic is defined as the country where the group is headquartered." As applied to Reporting FBOs, this definition would suggest that the information reported in line item 3 should cover not only the Reporting FBO's combined U.S. operations, but also all other operations outside the Reporting FBO's home country. We believe this certainly is not what is intended.

A related point concerns the Draft Instructions to line item 2, which would require Reporting FBOs to report the number of countries where they have either a branch or a subsidiary. This requirement could be read to mean that Reporting FBOs would be required to report the total number of countries outside their home country and the United States where they have a branch or a subsidiary, a result which we believe also is not intended. Further, we question whether any such information is necessary to the purposes of the reporting requirement.³³

We also request clarification of line item 6 as applied to Reporting FBOs. As an initial matter, we question the need to obtain this information from Reporting FBOs given the purposes of Form FR Y-15. If such information is required, then we request clarification as to how the Reporting FBO should report its peak market capitalization. For example, it is unclear whether it is intended that the report be based on the Reporting FBO's closing share price on the principal exchange on which its shares are traded or in some other manner.

³³ As applied to Reporting FBOs, line item 12 might be read as requiring information regarding countries outside the United States where any of the Reporting FBO's U.S. operations have either a branch or a subsidiary. We do not believe that such information is relevant to the purposes of the reporting requirement even if narrowed in this manner.



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We appreciate the Board's consideration of our comments and would welcome the opportunity to meet with Board staff to discuss further our concerns and recommendations. Please contact the undersigned if we can provide any additional information or assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Coffman', written in a cursive style.

Richard Coffman
General Counsel