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

Re: Notice of Proposed Rulemaking under Section 318 of the Dodd-Frank Act (Docket No.R-1457; RIN 7100-AD-95)

Dear Mr. Frierson:

The Institute of International Bankers ("IIB") appreciates the opportunity to comment on the recent proposal by the Board of Governors of the Federal Reserve System (the "Board") to adopt new Regulation TT (to be codified at 12 C.F.R. Part 246) implementing Section 318 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[1] The IIB's membership is comprised principally of foreign banks headquartered outside the United States, many of which own or control U.S. bank subsidiaries. Virtually all IIB members that own or control a U.S. bank subsidiary have $50 billion or more in total consolidated assets worldwide and therefore would be assessed companies under the Proposal.[2]

Comments on Proposed Regulation TT

The proposal to apply the assessment to top-tier Foreign Bank Holding Companies ("FBHCs") and to calculate their total assessable assets on the basis of the total combined assets

[1] 78 Fed. Reg. 23162 (April 18, 2013 (the "Proposal" and, when referring to the provisions of proposed Regulation TT, the "Proposed Rule"). In connection with the Proposal the Board has proposed revisions to the Capital and Asset Report for Foreign Banking Organizations (Form FR Y-7Q). Because of their integral relationship to the Proposal, we have incorporated into this letter our comments on the Form FR Y-7Q proposed revisions.

[2] See Section 246.3(a)(2) of the Proposed Rule. Capitalized terms in this letter have the meanings defined in the Proposal unless otherwise noted or required by the context. Except where otherwise noted, references in this letter to Sections mean sections of the Dodd-Frank Act.

of their U.S. operations is consistent with the statutory requirements of Section 318. Our comments on the Proposal are directed at (i) the need for greater transparency in the determination of the assessment basis, coupled with the recommendation that assessments commence no earlier than with respect to the 2013 assessment period; (ii) the means by which FBHCs that file Form FR Y-7Q filings on an annual basis are determined to be assessed companies; (iii) the calculation of an FBHC's total assessable assets; and (iv) the delivery and content of assessment notices.

The Need for Greater Transparency in the Determination of the Assessment Basis.[3] Section 318(c) requires that assessments cover "the total expenses the Board estimates are necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board with respect to [assessed companies]." The lack of transparency in the proposed methodology for determining the assessment basis precludes informed comment on whether it is consistent with the statutory "necessary or appropriate" standard and, as required by Section 318, is appropriately limited to expenses attributable to the Board's role as consolidated supervisor of assessed companies.[4]

For example, it is proposed that the assessment basis would include the Board's expenses in connection with "providing ongoing supervision" and "implementing a macroprudential supervisory approach", but the Proposal provides no explanation regarding what comprises such expenses or how they are priced for assessment basis purposes. Similar vagueness characterizes the proposal to include an allocated portion of expenses that are not directly attributable to specific assessed companies but are determined by the Board to be "associated with activities integral to carry out the supervisory and regulatory responsibilities of the Board" – among other things, the Proposal does not explain how the "relative proportion of [such] expenses that are attributable to assessed companies" will be determined.

In addition, the assessment basis would include expenses that are not unique to assessed companies, such as expenses associated with "developing, administering and explaining

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[3] We also draw to your attention the positions taken in comment letters to be submitted to the Board by the American Bankers Association, The Clearing House Association, The Financial Services Roundtable and the Securities Industry and Financial Markets Association that (i) the Board should provide more transparent and detailed disclosure of the Board's expenses included in the assessment basis and (ii) the Board should consider postponing the commencement of its assessment program until 2014 for expenses incurred by the Board during 2013.

[4] Footnote 23 in the Proposal helpfully clarifies that the assessment basis does not include the Board's costs associated with respect to supervising state member banks and the U.S. branches and agencies of foreign banks because such costs are not attributable to its role as consolidated supervisor of parent assessed company. This aspect of the proposed assessment basis methodology is appropriate and should be extended as well to other subsidiaries of assessed companies such as national banks, state non-member banks, securities broker-dealers and futures commission merchants – *i.e.*, those that are functionally regulated by another agency, including those that are the primary responsibility of an agency that imposes its own assessment to cover its expenses. The Proposal does not address how such subsidiaries are treated, and we respectfully request clarification on this point.

regulations, laws, and supervisory guidance adopted by the Board." These expenses are included in the list of expenses that are considered to be directly attributable to the Board's consolidated regulation and supervision of assessed companies, yet the Proposal does not explain how the portion of those activities that are properly attributable to assessed companies will be identified and measured. Moreover, the assessment basis includes certain expenses, such as those attributable to conducting competitive analyses of bank and bank holding company mergers, acquisitions and other similar transactions and processing consumer complaints, whose connection to the Board's consolidated oversight responsibilities with respect to assessed companies (as opposed to other responsibilities exercised by the Board that may relate in some part to assessed companies) is not adequately articulated in the Proposal.

To address these concerns and promote greater transparency in the assessment process the Board should clarify with greater specificity and publish for further comment the methodology it plans to utilize to (i) identify and measure expenses directly related to its consolidated oversight of assessed companies and (ii) allocate to the assessment basis expenses that are not directly related to its consolidated oversight of assessed companies (to the extent such allocated expenses are properly within the scope of Section 318). Further, we recommend that the Board, in connection with its delivery of assessment notices provide each assessed company a list of the aggregate amount of each expense category included in the assessment basis. In addition, in advance of notifying assessed companies of the assessment for each assessment period subsequent to the initial period the Board should notify assessed companies of any material changes to the composition of the assessment basis and provide them a reasonable opportunity to comment.

Finally, in light of the need for further clarity regarding the assessment basis and the lack of adequate opportunity for assessed companies to budget for the proposed initial assessment payable in the next few months, we respectfully request that the Board commence assessments only on a prospective basis and commence assessments no earlier than with respect to the 2013 assessment period.

Identification of FBHCs as Assessed Companies. Under the Proposal, FBHCs are identified as assessed companies based on the average of their worldwide assets as reported on Form FR Y-7Q during the relevant assessment period. This approach appears to assume that the proposed revisions to the reporting frequency for Form FR Y-7Q would be in effect from the effective date of the Proposed Rules; it does not account for FBHCs that, prior to the adoption of the proposed change in frequency of FR Y-7Q reporting, submit Form FR Y-7Q on an annual basis.[5]

[5] It is our understanding that currently not all top-tier FBHCs file quarterly reports on Form FR Y-7Q. If that understanding is incorrect, we would then question the need to adopt the proposed revision to the frequency of filing Form FR Y-7Q in order to implement the requirements of Section 318 (see also the discussion below at pages 5-6).

To place such FBHCs on a footing comparable to both FBHCs that file their FR Y-7Q reports on a quarterly basis and U.S.-headquartered bank holding companies, we recommend that the determination of the status of such FBHCs be based on the average of their total consolidated assets as reported in their FR Y-7Q for the assessment period and the year immediately preceding the assessment period.[6]

Calculating an FBHC's Total Assessable Assets. Section 246.6(e)(2)(B) of the Proposed Rule prescribes the adjustments that should be made to avoid double counting of U.S. branch and agency assets when calculating an FBHC's total assessable assets for the 2012 and 2013 assessment periods. In general, the Proposal limits intercompany adjustments during the first two assessment periods to those that are specifically determinable from the various reports proposed to be used for the calculation of total assessable assets. In general, we do not object to basing total assessable assets on the adjusted sum of total assets as reported in the specified reports during the transition period to reliance on "total combined assets of U.S. operations" as reported on revised Form FR Y-7Q. However, we believe it is appropriate also to exclude during the transition period any balance reported in Form FFICE 002, Schedule M, Part III, Item 1 (amounts outstanding from "related nondepository majority-owned subsidiaries in the U.S.") from the calculation of the assessable assets of an FBHC's U.S. branch or agency and recommend that the Board modify Section 246.6(e)(2)(B) accordingly.

Delivery and Content of Assessment Notices. Our comments regarding the proposed notice procedures are informed in substantial part by the experiences of several foreign banks in connection with implementation last year of the Financial Research Fund ("FRF") assessments pursuant to Section 155. As applied to the Proposal, these experiences illustrate the need for (i) advance identification of specific individuals at FBHCs to whom notices should be sent, and (ii) the inclusion in FBHC assessment notices of a comprehensive explanation of how total assessable assets are calculated.

Regarding delivery of notices, we recommend that Regulation TT provide a means to identify well in advance of sending FBHC assessment notices to whom, and in what manner, both the notice and any follow-up communications regarding the notice should be sent (*i.e.*, a "central point of contact"). For example, Regulation TT might create an assessment website and direct an FBHC to self-identify its central point of contact by a specified time in advance of each July 15 with the name and contact information of the individual(s) it designates for all communications relating to the Section 318 assessments, whereupon all communications would be made to and through such person. It also would be useful if the Board staff tested that system, at least initially, by contacting those central points of contact directly so that there will be less likelihood of error in the delivery of the assessments and that the full 30-day appeal period will be available to be used, if necessary.

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[6] Such an approach would be similar to the one adopted for determining a foreign bank's status as an "assessed company" in connection with imposing Financial Research Fund assessments pursuant to Section 155. See 31 C.F.R. § 150.2 (paragraph (1) of the definition of "assessed company").

As to the content of the assessment notice, we note that, in general, the methodology proposed to calculate an FBHC's total assessable assets under Section 318 for the 2012 and 2013 assessment periods appears to be identical to the methodology used to determine foreign banks' total assessable assets under Section 155.[7] We further note that, similar to the procedures in place with respect to FRF assessments, the Proposal contemplates that FBHCs would have only a very limited time to appeal the determination of their total assessable assets.[8] To ensure that an FBHC has a fair opportunity to review, assess and, if it so chooses, appeal the determination of its total assessable assets, we urge the Board to include in Regulation TT the requirement that, until the first assessment period with respect to which total assessable assets are calculated by reference to "total combined assets of U.S. operations" as reported in the revised Form FR Y-7Q, each FBHC assessment notice sent to an FBHC include a comprehensive explanation of how its total assessable assets are calculated – for example, by providing a spreadsheet listing each form, and the amount of total assets derived therefrom (referenced by the appropriate line item in the form), used to make the calculation.

Comments on the Proposed Revisions To Form FR Y-7Q

It is our understanding that the proposed revisions to Form FR Y-7Q are prompted by the Proposal and are intended to facilitate its implementation, including in particular by providing a readily available source for determining an FBHC's total assessable assets that is based on rules of consolidation that produce a figure that more closely corresponds in its derivation to the figures used with respect to the assessment of U.S.-headquartered bank holding companies. We support this aspect of the proposed revisions, but we respectfully request clarification of the proposed revisions' effective date.[9]

We further understand that it is contemplated that *all* top-tier Form FR Y-7Q reporting entities would be required to begin reporting this figure in their FR Y-7Qs *regardless* of whether they are FBHCs. We do not believe the Proposal justifies such an expansion of Form FR Y-7Q

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[7] See 31 C.F.R. § 150.2 (paragraph (2) of the definition of "total assessable assets") and the explanation provided in the Treasury Department's proposal regarding the determination of foreign banks' assessable assets (77 Fed. Reg. 35, 37-38 (Jan. 3, 2012) , which we understand has been applied when implementing the Section 155 final rule.

[8] In the case of the FRF assessments, see 31 C.F.R. § 150.6(b).

[9] An effective date of January 1, 2014, the beginning of the 2014 assessment period, appears to be implicit in the Proposed Rules' determination of an FBHC's total assessable assets as equal to the total combined assets of its U.S. operations as reported in Form FR Y-7Q starting with the 2014 assessment period, but neither the proposed revised Form FR Y-7Q nor the proposed revised instructions specify their effective date, and that question also is not addressed in the discussion of the proposed revisions in the Federal Register notice. In our view, and in particular taking into account the short period of time that would be available even if the Proposal were expeditiously finalized, a January 1, 2014 effective date would not provide foreign banks that are subject to the revised reporting requirements sufficient time to adapt their reporting systems to the new requirements.

reporting requirements and respectfully request that such *mandatory* reporting be limited to FBHCs, with top-tier reporting entities that are not FBHCs permitted to report their total combined U.S. assets on a purely *voluntary* basis.

Likewise, we believe the proposed expanded quarterly filing requirement is overbroad in that it would apply to top-tier reporting entities that are not FBHCs. However, even if limited to FBHCs that are assessed companies, we question whether it is necessary to mandate quarterly filing by FBHCs that are not financial holding companies ("FHCs"), as opposed to making such filings optional. Inasmuch as annual reporting on Form FR Y-7Q currently is limited to entities that are not FHCs, it is likely that annual filers that would become assessed companies under the Proposal have a significantly less complex and smaller footprint in the United States compared to quarterly filers, with concomitantly reduced prospects of significant variations in their results, such that concerns regarding potential volatility would be significantly diminished and could be adequately addressed by relying on the two most recent annual filings instead of requiring a shift to quarterly filing.

We note that the proposed revised instructions to Form FR Y-7Q delete the section captioned "examples of who must report." It is not clear why this material has been deleted, and we recommend that it be retained, albeit updated to reflect the revisions to the form. We further note that the Board estimates "it would take, on average, 15 minutes per submission to report the new data item" (*i.e.*, total combined assets of U.S. operations).[10] If this estimate relates to the amount of time required literally to enter the information into the form and then file the form, then it may be on target, but we believe it misses by a very wide measure the amount of time and effort that an FBHC (much less the even broader group of foreign banks proposed to be made subject to this requirement) would require to actually determine the total combined assets of its U.S. operations in accordance with the Proposal.

Relationship To Financial Research Fund Assessments

As discussed above, there is a very close correspondence between the methodology and approach taken by the Proposal with respect to determining the total assessable assets of FBHCs for the 2012 and 2013 assessment periods and the corresponding provisions of the final rules implementing the FRF assessments as applied to foreign banks. The Federal Reserve provides key assistance to the Treasury Department in calculating foreign banks' total assessable assets for FRF assessment purposes, but there remains uncertainty regarding how those calculations are made. To promote transparency under both Section 155 and Section 318, we urge the Board to clarify the relationship between how it calculates a foreign bank's total assessable assets for purposes of each assessment and specifically identify and explain the rationale for any differences. We believe such clarification also would facilitate a foreign bank's decision whether to appeal its FRF assessment notice.

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[10] See 78 Fed. Reg. at 23168.

We would expect that, once the reporting of "total combined assets of U.S. operations" is included in Form FR Y-7Q, and thereby is incorporated into the Section 318 assessment process, this line item will be the sole source for calculating a foreign bank's total assessable assets for purposes of FRF assessments as well. We recognize the implementing rules under Section 155 are within the purview of the Treasury Department, but would encourage the Board to consult with Treasury regarding the relationship between the Section 318 rulemaking, and the associated revisions to Form FR Y-7Q, on the one hand, and the determination of foreign banks' total assessable assets for purposes of FRF assessments, on the other.

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We appreciate the Board's consideration of our comments on the Proposal and the proposed revisions to Form FR Y-7Q. Please contact the undersigned if we can be of further assistance.

Sincerely,

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General Counsel

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