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July 8, 2014

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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 622 of the Dodd-Frank Act: Concentration Limits on Large Financial Companies (Docket No.R-1489; RIN 7100-AE-18)

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 XX (to be codified at 12 C.F.R. Part 251) implementing Section 622 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[1] The IIB's membership is comprised principally of banks headquartered outside the United States which engage in a variety of banking and other financial activities in the United States and either are, or are treated as, bank holding companies for purposes of the Dodd-Frank Act. They therefore are "financial companies" for purposes of Section 622 (and, more specifically, "foreign financial companies").[2]

Section 622 prohibits a "financial company" from merging or consolidating with, acquiring all or substantially all of the assets of, or otherwise acquiring control of, another company if the total consolidated liabilities of the acquiring financial company upon consummation of the transaction would exceed 10 percent of the aggregate consolidated liabilities of all financial companies at the end of the calendar year preceding the transaction (the "10% Concentration Limit"). For these purposes Section 622 defines the "liabilities" of a U.S.

[1] 79 Fed. Reg. 27801 (May 15, 2014) (the "Proposal" and, when referring to the provisions of proposed Regulation XX, the "Proposed Rule").

[2] See Section 251.2(g)(6) and (h) of the Proposed Rule. For purposes of discussion in this letter, foreign banks that are subject to Section 622 are referred to as "Covered Foreign Banks".

financial company by reference to its total, adjusted risk-weighted assets and those of a foreign-based financial company by reference to the total, adjusted risk-weighted assets of its U.S. operations. With the prior written consent of the Board, the 10% Concentration Limit will not apply where an otherwise prohibited transaction would result only in a *de minimis* increase in the liabilities of the acquiring financial company.[3] As directed by Congress, the Financial Services Oversight Council ("FSOC") in January 2011 issued its "Study and Recommendations Regarding Concentration Limits on Large Financial Companies" (the "FSOC Report"), which recommended three modifications to the 10% Concentration Limit.[4] Congress further directed that the Board adopt implementing regulations which reflect FSOC's recommendations. The Proposal is issued pursuant to this mandate.

We offer the following specific comments on the Proposal as it applies to Covered Foreign Banks:

- The proposed methodology for calculating the U.S. liabilities of a Covered Foreign Bank set forth in Section 251.3(d) of the Proposed Rules is consistent with and provides a readily available means to implement the requirements of Section 622(a)(3)(B).[5] In response to Question 7 in the Proposal, we do not believe any alternative method should be considered.

- We request clarification of the Board's methodology for including Covered Foreign Banks' U.S. liabilities in the calculation of aggregate financial sector liabilities, and in particular the calculation of those liabilities as of December 31, 2013. The Proposal states that the Board intends to request Covered Foreign Banks to report their liabilities as of December 31, 2013 to facilitate the Board's calculation of aggregate financial sector liabilities as of that date. It

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[3] Section 622 provides two other exceptions to the 10% Concentration Limit, neither of which is addressed in this letter.

[4] The FSOC Report is available at http://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/Study%20on%20Concentration%20Limits%20on%20Large%20Firms%2001-17-11.pdf.

[5] As explained in the Proposal, in the case of a Covered Foreign Bank that is required to establish a U.S. intermediate holding company ("IHC") pursuant to the Board's recently-adopted final regulations implementing the enhanced prudential standards prescribed by Section 165 of the Dodd-Frank Act for large foreign banking organizations (the "FBO Section 165 Rules"), "U.S. liabilities" generally will be the sum (adjusted as provided for in Section 251.3(d)(2)(i) Proposed Rules) of (i) the IHC's total consolidated liabilities as calculated pursuant to Section 251.3(d)(1)(ii) of the Proposed Rules on the basis of the IHC's Form FR Y-9C reports and (ii) the total consolidated assets of the Bank's U.S. branches and agencies as reported on Form FFIEC 002. In the case of a Covered Foreign Bank that is not required to establish an IHC and does not have a top-tier U.S. subsidiary whose U.S. liabilities would be calculated pursuant to Section 251.3(d)(1)(ii) of the Proposed Rules, it is our understanding that "U.S. liabilities" would be equal to the Covered Foreign Bank's "total combined assets of U.S. operations" as reported on Form FR Y-7Q.

Although not relevant to Covered Foreign Banks, we note that the provisions of Section 251.3(d)(2)(ii) refer to "foreign banking organization" instead of "foreign financial company." In addition, it would appear that the introductory clause of Section 251.3(b) should refer to paragraph (a)(1) instead of paragraph (a)(2)(i).

is unclear why such additional reporting is necessary and what it would entail. Regarding the need for such reporting, we believe that the approach taken by the Board in estimating aggregate financial sector liabilities as of December 31, 2013 as described in the Proposal is sufficient for the purpose.[6] As to what such reporting would entail, the Proposal discusses this question in the context of the recent revisions to Form FR Y-7Q requiring foreign banking organizations to begin reporting "total combined assets of U.S. operations," in connection with the reports filed as of March 31, 2014 (in the case of quarterly filers) and the reports filed as of December 31, 2014 (in the case of annual filers). In either case, no information regarding the reporting bank's U.S. operations is reported as of December 31, 2013, although we agree that the new FR Y-7Q report item for total combined assets of U.S. operations is relevant to incorporating Covered Foreign Banks into the calculation of aggregate financial sector liabilities as of December 31, 2014 and thereafter. We recommend that Covered Foreign Banks not be required to undertake any additional reporting in connection with the implementation of the Proposal.[7]

- The Proposed Rules specify "ordinary course business" exclusions from the definition of "covered acquisition' in Section 251.2(f). We support the adoption of these exclusions but believe they are too narrow. We support the recommendations on this aspect of the Proposal set forth in the letter submitted jointly by The Clearing House Association L.L.C., the American Bankers Association and The Financial Services Roundtable (the "Joint Trades Letter").

- Section 251.6(b) of the Proposed Rules prescribes prior notice requirements for covered acquisitions for which the acquiring financial company is not otherwise required to obtain prior approval or provide prior notice. There is no basis for any such requirement in the statute, nor is there any suggestion in the FSOC Report that any such requirement would assist in more effectively implementing the 10% Concentration Limit. Moreover, the proposed $2 billion threshold is at odds with the provisions of Section 163 of the Dodd-Frank Act[8] and Section 4(k)(6)(B)(ii) of the Bank Holding Company Act (the "BHC Act"), which establish prior notice requirements for certain nonbank acquisitions based on a $10 billion threshold.

  As described in the Proposal, the prior notice requirement is intended to "allow the Board to monitor compliance with the statute," but it is unclear why such monitoring is necessary.[9]

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6 See 79 Fed. Reg. at 27807 (note 28 and the accompanying text).

7 As set forth in Section 251.6(a)(ii) of the Proposed Rules, Covered Foreign Banks are not subject to the proposed new Form FR Y-17 reporting requirement.

8 12 U.S.C. § 5363(b).

9 Quoting 79 Fed. Reg. at 27808.

We respectfully submit that the Board has more than ample supervisory authority to monitor compliance with the statute without requiring financial companies to prepare and submit, and Board staff to review, prior notices.[10] As a practical matter, the prior notice requirement, as applied to Covered Foreign Banks, would be limited at most to some small subset of those required to establish an IHC – specifically, those that might exceed the proposed "8 percent of the financial sector liabilities" threshold. The intense oversight to which the U.S. operations of these Covered Foreign Banks otherwise are subject, coupled with the requirement that any acquisition of a U.S. financial company would have to be effected through the IHC, should be more than sufficient to ensure that their acquisition activities are appropriately monitored. Moreover, inasmuch as the 10% Concentration Limit is an outright legal prohibition against covered acquisitions that would exceed the Limit, there is a very strong element of "self-policing" by Covered Foreign Banks reinforcing compliance with the statute.

- The proposed $2 billion limit for *de minimis* transactions proposed in Section 251.4(a)(3) of the Proposed Rules is unnecessarily restrictive.[11] The FSOC Report states that in implementing the statutory *de minimis* exception the Board "should ensure that the exception does not permit transactions that would be inconsistent with the spirit and purpose of the concentration limit."[12] The Report provides no further guidance, and the Board appears to have derived the figure from its 2012 order under Section 4 of the BHC Act approving the acquisition of ING Bank, fsb by Capitol One Financial Corporation on the basis that a $2 billion limit "is unlikely on its own to raise financial stability concerns."[13] We respectfully submit that reference to a single order that addressed financial stability considerations in the context of a specific transaction under Section 4 of the BHC Act which clearly did not present questions with respect to the 10% Concentration Limit[14] is an insufficient basis for

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[10] The impact of the prior notice requirement would be magnified to the extent that the "ordinary course business" exclusions are not expanded. In addition, the proposed thresholds for submission of prior notices are far broader than appears necessary to facilitate meaningful compliance monitoring. Regarding this latter consideration, and in response to Question 12 in the Proposal, we would support the alternative thresholds proposed in the Joint Trades Letter, but we reiterate that there should be no such requirement in the first place.

[11] We note that the limits imposed on Covered Foreign Banks' U.S. operations by the FBO Section 165 Rules significantly diminish the prospect that an acquisition by a Covered Foreign Bank as a practical matter would be subject to the *de minimis* limit (see below at page 5). This consideration aside, given an estimate of approximately $18 trillion dollars in aggregate financial sector liabilities as of December 31, 2013, the proposed $2 billion limit would permit a financial company that is subject to the 10% Concentration Limit (in this scenario, $1.8 trillion) to increase its liabilities through an acquisition by only approximately one-tenth of one percent (0.1 percent). As with respect to the prior notice requirement, the impact of such a restrictive limit would be magnified to the extent that the "ordinary course business" exceptions are not expanded.

[12] FSOC Report at p. 7 n13.

[13] See 79 Fed. Reg. at 27809, note 35 and the accompanying text.

prescribing an industry-wide standard under Section 14, and we urge the Board to undertake further empirical analysis of this question.

In closing, we address whether Section 622 might give rise to potential competitive dynamics with respect to Covered Foreign Banks that would present any policy concerns. As discussed below, there is no basis for any such concern.

The Board has recognized the important role that Covered Foreign Banks play in the United States and highlighted the competitive and countercyclical benefits they bring to U.S. markets.[15] The FSOC Report raised the prospect that Section 622 could introduce "the potential for disparate regulatory treatment of mergers between the largest U.S. and foreign firms, depending on which firm is the acquirer or target,"[16] but the FSOC ultimately concluded that the 10% Concentration Limit "likely will not seriously limit the ability of U.S. financial firms to compete effectively with foreign financial firms."[17]

Indeed, the FSOC Report explained that in the near term the 10% Concentration Limit would affect not more than four financial institutions, each of which is headquartered in the United States.[18] The prospect that over time Section 622 might increase the degree to which the largest financial firms operating in the United States would be foreign-owned is considerably diminished by the limitations imposed on the growth of Covered Foreign Banks' U.S. non-branch operations as a result of the regulatory "ringfence" erected around those operations by the FBO Section 165 Rules. Moreover, the Board has broad authority independent of Section 622 to regulate acquisitions by Covered Foreign Banks in the United States, including, for example, through its prior approval authority under Section 3 of the and the prior notice requirements (referenced above) prescribed by Section 163 of the Dodd-Frank Act and Section 4(k)(6)(B)(ii) of the BHC Act.

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14 In approving the acquisition, the Board concluded that "although the combined organization would be large on an absolute basis, its shares of the U.S. financial system's] assets, liabilities, leverage exposures, and deposits would remain modest, and its shares of national deposits and liabilities would fall well below the 10 percent limitations set by Congress" (quoting the order at page 32).

15 See 77 Fed. Reg.at 76629 (Dec. 28, 2012).

16 See FSOC Report at p. 11.

17 Id. at p. 12.

18 Id. at p. 8.

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We appreciate the Board's consideration of our comments on the Proposal. Please contact the undersigned if we can be of further assistance.

Sincerely,

Richard Coffman
General Counsel