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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: Proposed Amendments to the Capital Plan and Stress Test Rules (Docket No R-1492; RIN 7100-AE 20)

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 amend its capital plan and stress test rules.[1] All foreign banking organizations ("FBOs") to which the Proposal applies are IIB members. At present, nine of those FBOs maintain U.S. bank holding company ("BHC") subsidiaries with total assets of $50 billion or more (each, a "Large BHC Subsidiary") that are, or will become, subject to the capital plan and stress test rules. They and several other FBOs will be required to establish U.S. intermediate holding company subsidiaries ("IHCs") pursuant to the final rules adopted by the Board implementing the requirements of Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") for large FBOs (the "Final FBO 165 Rules").[2]

The Board's Comprehensive Capital Analysis and Review ("CCAR") program and the stress testing required under the Dodd-Frank Act ("DFAST") are integral components of the broader efforts undertaken in the wake of the financial crisis to strengthen bank safety and soundness and enhance financial stability. We agree that capital planning, supported by effective stress testing, must be robust and dynamic. At the same time, in assessing banks' performance under this standard due account must be taken of the significant challenges confronted in

[1] 79 Fed. Reg. 37420 (July 1, 2014) (the "Proposal"). Capitalized terms in this letter have the meanings defined in the Proposal unless otherwise noted or required by the context.

[2] See 79 Fed. Reg. 17240 (March 27, 2014).

connection with developing the management information systems, information technology and validation protocols that are so essential to achieving the desired results.

We appreciate the Board's recognition of these challenges in the Proposal, especially with respect to those institutions that are new to CCAR and DFAST, and, more generally, we appreciate the Board's commitment to applying "differing expectations across the various aspects of BHCs' [capital adequacy processes] for BHCs of different sizes, scopes of operations, activities and systemic importance."[3] Such a calibrated approach is especially appropriate with respect to IHCs, which in general will be completely new to CCAR and DFAST requirements, and to Large BHC Subsidiaries, many of which, as compared to those U.S.-headquartered BHCs ("U.S. BHCs") that trace their involvement in the Board's capital planning and stress testing exercises to the Supervisory Capital Assessment Program ("SCAP"), are still relatively new entrants and several of which, like de novo IHCs, will be entirely new to the program.

We support the proposed shift in the Capital Plan Cycle and Stress Test Cycle and the corresponding shift in the timing of other actions associated with capital planning and stress testing. The one-quarter shift in the submission date for capital plans from January 5th of each year to April 5th is especially welcome as it will relieve the pressure on resources and personnel that is inherent in having the CCAR process coincide with other year-end financial reporting requirements.

We also support elimination of the existing prior approval/prior notice requirements for distributions involving the incremental issuance of qualifying capital instruments (i.e., common equity tier 1, additional tier 1 and tier 2 capital). We agree with the Board's conclusion that removing these requirements will reduce unnecessary efforts by BHCs to submit requests for distributions outside of the capital plan that are associated with beneficial issuances of regulatory capital.[4]

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[3] "Comprehensive Capital Analysis and Review 2014 Summary Instructions and Guidance" (November 1, 2013) at page 1.

[4] Regarding other aspects of the Proposal, we agree with the views expressed in the letter that is being submitted by The Clearing House Association L.L.C. and in the letter being submitted jointly by the American Bankers Association and The Financial Services Roundtable. We note, however, that insofar as we have certain specific questions and potential concerns regarding the implications of the Proposal for Large Bank Subsidiaries and IHCs, to the extent that the Board decides to accelerate the Proposal to provide certainty regarding the general calendar year timetable for CCAR for BHCs already subject to CCAR, we would respectfully request that the issues surrounding phase-in of the deadlines for Large Bank Subsidiaries and IHCs be considered on a separate track to allow for due consideration of our perspectives on those discrete issues.

IIB is also very appreciative of the cooperation that we have received from Board and Reserve Bank staff related to questions our members have raised about the Final FBO 165 Rules. In particular, we found our May 12, 2014 meeting extremely informative, and the willingness of Board and Reserve Bank staff to provide responses to "Frequently Asked Questions", including the initial set of responses issued by the Board on June 26, 2014,[5] to be most helpful.

However, there are certain aspects of this particular Proposal as it relates to FBOs that, taken together with the phase-in requirements of the Final FBO 165 Rules and with No. 22 of the Section 165 FAQs ("Section 165 FAQ No. 22"), have generated additional questions and potential concerns. We have some basic questions regarding the practical implications of the Board's guidance to date, and depending on exactly how the Board intends for the phase-in of CCAR and DFAST for Large BHC Subsidiaries and IHCs to work, we may have specific suggestions for modifying the Board's approach.[6] We recognize that adapting a U.S. BHC-based framework to Large BHC Subsidiaries and to IHCs presents unique complications, and we are eager to work with the Board to develop practical approaches and constructive solutions to some of the more technical timing issues, with the understanding that ultimately IHCs will become the platform for the full CCAR and DFAST stress testing regime for relevant FBOs.

Most of our questions and potential concerns addressed in this comment letter relate to the treatment of Large BHC Subsidiaries, which include BHCs that already are subject to CCAR and DFAST stress testing requirements and BHCs that, due to the Collins Amendment, would first become subject to CCAR and DFAST stress testing in 2016 (aside from any IHC requirements). Of course, some FBOs that will be required to form IHCs do not have subsidiary BHCs at all, and some have BHC subsidiaries that are not Large BHC Subsidiaries. Although the phase-in of CCAR and DFAST stress testing requirements for the eventual IHCs that will be formed by those FBOs do not present the same issues relating to the intersection of U.S. BHC and IHC requirements, we discuss below other questions regarding implementation timing that are relevant to all FBOs that are required to create an IHC.

I. Potential Concerns Regarding the Proposal and Section 165 FAQ No. 22

A. Taken Together, the Proposal and Section 165 FAQ No. 22 Appear to Arbitrarily Incentivize FBOs To Form De Novo IHCs Over Other Structuring Alternatives

[5] See "Frequently Asked Questions: Implementation of Regulation YY Enhanced Prudential Standards for Foreign Banking Organizations" (June 26, 2014) (the "Section 165 FAQs").

[6] We have requested a meeting with Board staff to discuss our questions, and depending on the outcome of that meeting (or responses to questions raised in this letter) we may submit a supplemental comment letter with additional suggestions.

For FBOs with a Large BHC Subsidiary, there are a number of different ways to restructure their operations to create what will ultimately be a single IHC owning all or most of the FBO's U.S. subsidiaries. Some FBOs may choose to designate their existing top-tier BHC to become the IHC ("Designated IHCs"). For most of these FBOs, they will need to transfer ownership of other U.S. non-bank affiliates to the Designated IHC during the period leading up to July 1, 2016. Others may choose to create a new holding company (a "De Novo IHC") to own what was previously the top-tier BHC as well as any other U.S. nonbank subsidiaries outside of the BHC ownership chain. (Within this category, there are a number of alternative corporate steps to create a structure that involves a De Novo IHC owning a Large BHC Subsidiary.) Others may choose to use an existing parent company outside the BHC ownership chain and put the top-tier BHC under that parent company, making the non-BHC parent company the IHC (for purposes of this letter, also a "De Novo IHC"). And within all of these (and other) options, there are a range of options relating to how the FBC could choose to combine its U.S. intermediate holding companies, transfer ownership interests in subsidiaries, merge legal entities, etc. Beyond the spatial dimension of these choices, there is also the timing dimension of when to effect the various share transfers, contributions in-kind, mergers, etc.

All of these choices, which relevant FBOs have been actively studying in connection with preparing their IHC implementation plans are informed by a number of practical considerations. These include corporate governance and corporate legal requirements, strategic considerations, logistics, U.S. and non-U.S. tax consequences, counterparty consent requirements, U.S. and home country regulatory capital considerations, personnel mapping, etc. At this point in time, taking all of these considerations into account, critical decisions are being made by the relevant FBOs and final structures are being decided in an effort to finalize the implementation planning process in the fall. The internal approval processes of FBOs, including board of director review and approval, will dictate the production timing of the IHC implementation plan rather than the January 1, 2015 submission deadline. Therefore, internal drafts of the implementation plan will likely be finalized within the next three months.

Our members took from the Final FBO 165 Rule a message from the Board that, as long as the IHC structure was achieved within the relevant timetable (i.e., by July 1, 2016), the choices of when and how to combine and restructure ownership of entities was largely left to FBOs to decide for themselves, taking into account the various considerations noted above.

For this reason, our central concern regarding the Proposal (and Section 165 FAQ No. 22) is that it would strongly disincentivize FBOs from designating an existing BHC as their IHC, even where practical considerations would otherwise make such a designation the most attractive or logical path to compliance with the IHC requirement. In the Final FBO 165 Rule, the Board specifically clarified that FBOs may designate an existing BHC as their IHC, and further recognized that this option would be attractive to certain FBOs because it mitigates against the punitive minority interest capital treatment that would apply to FBOs that establish De Novo IHCs over an existing BHC that has raised capital from outside investors to fund its US banking operations.[7] In addition, the Board provided a variety of extended transition periods specifically to "mitigate the tax and reorganization costs by providing affected foreign banking organizations additional time to plan and execute the required restructuring in the way that most comports with their tax-planning and internal organizational needs."[8] However, the Proposal, when taken together with the Section 165 FAQ No. 22, appears to undermine the Board's prior stated objective of retaining flexibility for restructuring of U.S. operations to comply with the IHC requirement by effectively driving FBOs toward establishment of a De Novo IHC, as described below.

Read together, footnote 17 in the preamble of the Proposal ("Footnote 17")[9] and Section 165 FAQ No. 22[10] seem to suggest the following dichotomy:

- If an FBO with a Large BHC Subsidiary achieves the IHC end-state by designating its Large BHC Subsidiary as the IHC, and during the runway to July 1, 2016 transfers ownership of all of its U.S. non-bank affiliates not already owned by the Large BHC

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7 79 Fed. Reg. 17275-6.

8 79 Fed. Reg. 17271.

9 Footnote 17 in its entirety states as follows:

If the foreign banking organization designated an existing bank holding company as its U.S. intermediate holding company, that bank holding company would continue to be subject to capital requirements under 12 CFR Part 217 until December 31, 2017, and stress test requirements under subparts F, G, or H of Regulation YY until September 30, 2017. In this event, the intermediate holding company would be required to submit a capital plan for the capital plan cycle beginning January 1, 2017, and the U.S. intermediate holding company would be subject to the CCAR process for that capital plan cycle.

10 Section 165 FAQ 22 in its entirety states as follows:

Do all bank holding company (BHC) requirements immediately apply to the IHC if the FBO designates an existing BHC as the IHC? If an FBO designates an existing BHC as the IHC, can it take advantage of the transition periods set forth in Regulation YY?

If an FBO designates an existing BHC as its U.S. IHC, that U.S. IHC would continue to be subject to the leverage ratio, the capital plan rule, or the Dodd-Frank Act (DFA) stress testing requirements, and would not be able to take advantage of any transition periods under Regulation YY. If and when an FBO moves a subsidiary into the existing BHC, the leverage ratio applied to that BHC would be calculated on the basis of the assets of the BHC, including the assets of the new subsidiary, and stress tests should account for the integration of the new subsidiary's assets into the BHC.

Subsidiary to the Large BHC Subsidiary, then the Large BHC Subsidiary will remain subject to CCAR and DFAST stress testing and the Board's capital planning requirements on the basis of the consolidated operations of the Large BHC Subsidiary, as such operations transform and grow between now and July 1, 2016.[11]

- In contrast, if an FBO with a Large BHC Subsidiary instead decided to create (or use) a De Novo IHC, which would own both the Large BHC Subsidiary and any other non-bank affiliates in the United States, then only the assets of the Large BHC Subsidiary would be subject to CCAR and DFAST stress testing and capital planning, whereas the IHC and any assets of non-bank affiliates owned outside of the Large BHC Subsidiary ownership chain would benefit from the delayed phase-in deadlines for CCAR and DFAST stress testing, which we continue to support.

The Board has not articulated the rationale for this dichotomy in treatment between two FBOs whose ultimate IHC structure will be similar. On one level, we understand that there may have been a perspective that a Large BHC Subsidiary that is currently subject to CCAR and DFAST stress testing should not be given a temporary "reprieve" from those stricter requirements simply because it will become, or will be owned by, an IHC that will become subject to those requirements at a later date. At another level, however, we do not understand why two otherwise similarly situated FBOs should be treated differently depending on a basic choice between two different but equally viable ways of coming into compliance with the Board's IHC framework. We are especially perplexed by this dichotomy because it arises from choices between two ways of coming into compliance with a Board-mandated structure (as opposed to choices of structures to effectuate a voluntary acquisition or merger outside of a regulatory requirement).

By skewing the choice among structural alternatives available to FBOs with Large BHC Subsidiaries, the Board will cause some FBOs to incur tax and restructuring costs that otherwise could be avoided if the choice were neutral in relation to CCAR and DFAST stress testing. Furthermore, because of the internal approval processes of many FBOs, threshold "big picture" questions, such as the viability of using an existing versus a new entity, either already needed to be answered or need to be decided very soon.

If we are correctly understanding the intended guidance that the Board has provided for FBOs planning to use Designated IHCs, it also appears that the Board's guidance is at odds with the general approach to application of heightened standards to BHCs that are undergoing change.

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11 As noted below, a separate category of issues relates to existing BHC subsidiaries of FBOs that are not currently Large BHC Subsidiaries because their total consolidated assets are below the threshold, but that would by definition trip over the threshold if they were Designated IHCs and received transfers of the U.S. non-bank subsidiaries not otherwise owned by the BHC subsidiary.

The practice of providing a transition period to permit a banking organization adequate time to complete a structural change, and accordingly adapt its internal systems and processes to meet new capital adequacy and capital planning standards, is a common regulatory accommodation. Banking organizations that become subject to the advanced approaches as a result of a merger or acquisition involving an entity that is not subject to the advanced approaches are afforded an automatic two-year transition period following consummation of the transaction (with the possibility of an additional one-year extension) before they are required to comply with the advanced approaches.[12] Similarly, under the CCAR and DFAST regulations, a banking organization that becomes subject to supervisory and company-run stress testing as a result of a merger or acquisition that causes it to meet the asset threshold for applicability would generally be eligible for an automatic one-cycle extension.[13] We note these transition periods are provided in the context of purely *voluntary* transactions that cause a banking organization to become subject to enhanced prudential requirements. Moreover, these transition periods are always provided *after* the banking organization crosses the threshold for application of the rule.

B. Possible Alternatives to Mitigate the Potential for Skewed Incentives

Depending on the precise rationale behind the guidance in Footnote 17 and the Section 165 FAQ No. 22 (if we are understanding the guidance correctly), there may be a number of solutions to ameliorate the results of the dichotomy described above.

One alternative would be to adjust the CCAR and DFAST stress testing framework applicable to Large BHC Subsidiaries so that assets transferred (through contributions in-kind, interaffiliate sales, mergers, etc.) into the Large BHC Subsidiary in anticipation of creating the IHC would be left out of the CCAR and DFAST perimeter. We recognize that the exact design of such an adjustment would require additional consideration and thought,[14] but it would be one way to put Designated IHCs on a more comparable footing with De Novo IHCs. In addition, this solution would be consistent with providing an appropriate transition period for the entities and assets that are newly subject to the CCAR and DFAST process, similar to the transition periods in other contexts that we cite above.

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[12] 12 C.F.R. § 217.124

[13] 12 C.F.R. §§ 252.133(b), 252.143(b) and 252.153(b).

[14] There could be any number of possibilities designed to leave the transferred assets out of the CCAR and DFAST perimeter, without having to use a De Novo IHC. As an example, an existing Large BHC Subsidiary could itself create a lower-tier intermediate BHC to which the DFAST, CCAR or other enhanced prudential standards could apply, and these and other requirements would phase-in for the existing Large BHC Subsidiary on a consolidated basis under the transition periods for IHCs set forth in the Final FBO 165 Rules.

Another alternative would be to effectively permit Large BHC Subsidiaries to revert to a capital plan review ("CapPR") framework pending creation of the IHC and adoption by the IHC of a fully-fledged CCAR and DFAST stress testing regime in accordance with the transition periods in the Final FBO 165 Rules. During this interim period, we would expect that the capital planning of a Large BHC Subsidiary would be subjected to strict scrutiny to avoid the possibility that the applicable framework would result in actual reductions in regulatory capital levels or less-than-expected increases in capital adequacy. While, as noted above, this could seem like a reprieve from an already-applicable requirement, it could in our view easily be justified by the fact that the Large BHC Subsidiary will be undergoing what in some cases will be a significant transformation in its business mix, asset base, operations, management information systems, etc. The Board-mandated transformation is a unique event not experienced by other capital plan filers and CCAR/DFAST participants, thus requiring a unique approach to mitigate impediments to flexibility and other restructuring costs.

FBOs subject to the IHC requirement are devoting substantial time, resources and senior management attention to developing and making operational the methodologies, systems, processes and controls required by the Board's capital planning requirements, including in particular with respect to scenario design and testing and building what necessarily must be a robust regulatory reporting infrastructure. As the experience of U.S. BHCs dating back to the SCAP has amply demonstrated, achieving an effective internal capital planning and stress testing regime requires a significant commitment of resources and a strong and deep commitment to this goal. The challenges FBOs face are exacerbated as compared to those facing U.S. BHCs inasmuch as an FBO is required to establish for its U.S. IHC a bespoke program which then must operate in tandem with the program established for assessing the FBO's global operations, whereas U.S. BHCs' programs are established on a wholly integrated, global basis.

We note that when U.S. banks completed the SCAP their submissions contained less detailed data than is currently provided under CCAR, and that the SCAP submissions appeared to also reflect lower qualitative expectations from the Board. In addition, after finalization of the capital plan rule,[15] BHCs that had not previously been subject to SCAP were not required to participate in the full CCAR process, and were given a two-year transition period under the Board's CapPR process. As the Board stated: "Data submissions requested from the CapPR BHCs were not as extensive compared with the CCAR submissions. This reflected a recognition that the firms had not been through such a coordinated exercise before and that time might be needed to build and implement the internal systems necessary to satisfy the rigorous data collection requirements needed for a separate supervisory stress test."[16] Again, we note that this

15 12 C.F.R. § 225.8.

16 Board, "Comprehensive Capital Analysis and Review 2012: Methodology and Results for Stress Scenario Projections" (March 13, 2012) at 7, available at http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20120313a1.pdf. See also Clarke and Ryu, "CCAR and Stress Testing as Complementary Supervisory Tools" (last update Dec. 20, 2013), available at http://www.federalreserve.gov/bankinforeg/ccar-and-stress-testing-as-complementary-supervisory-tools.htm

two-year CapPR transition period was generally granted to entities already in existence and that presumably had consolidated financial management information systems. IHCs and Large BHC Subsidiaries, however, will be undergoing a significant transformation in structure and business, as well as expanding and coordinating management information systems to encompass entities and business lines that in many cases were not formerly consolidated at the U.S. level. Accordingly, the Board should look for ways to provide FBOs with a similar accommodation, and provide a similar runway, to ultimately achieve the heightened qualitative data requirements of CCAR.

Beyond these basic concerns about the treatment of Large BHC Subsidiaries, we would have additional concerns depending on how exactly the Board intended for Large BHC Subsidiaries to comply with the CCAR and DFAST stress testing regime on the runway to becoming Designated IHCs. These concerns are discussed below. We would appreciate an opportunity to discuss these and other questions with Board staff, and, depending on the outcome of those discussions, we may submit a supplemental comment letter with additional suggestions.

II. The Board's Guidance Appears to Have Created an Unwarranted "Early Mover Disadvantage"

FBOs are in the process of making decisions now in relation to their U.S. structure in order to be able to undertake internal operational, accounting, tax and personnel planning. As part of this process, FBOs need to evaluate various timing questions. Generally these timing questions affect a broader group of FBOs than those that may be planning to designate a Large BHC Subsidiary, as they would also affect De Novo IHCs (whether or not the FBO currently has a Large BHC Subsidiary as well). Like the other issues described in this letter, FBOs need to resolve these issues now to make decisions with regard to the structure of their U.S. operations and how to present them in their IHC implementation plan. As described above, there are less than three months until FBOs will be finalizing their draft implementation plans for relevant internal management and board-level approvals.

Although we expect that the Board may not have considered all of the ramifications of the Proposal and Section 165 FAQ No. 22, if the Board were to adhere to its existing guidance as we understand it, it becomes imperative to understand (1) what is an "existing BHC" in the context of Footnote 17 and the Section 165 FAQ No. 22, and (2) when does an "existing BHC" become subject to the various capital and stress testing rules based upon an otherwise involuntary reorganization mandated by regulation?

In relation to both questions, it appears there may be an "early mover disadvantage". For example, if an FBO were to create a De Novo IHC early (say, December 31, 2015) for tax, accounting, home country regulatory or any combination of these or other reasons, and such IHC

("Subsequently, BHCs that met the $50 billion asset threshold of the rule, but had not been part of the SCAP, submitted their capital plans under the capital plan rule; however, their capital plans were assessed under the Capital Plan Review (CapPR), not CCAR, *consistent with phasing-in of CCAR expectations*.") (emphasis added).

were to hold the FBO's existing Large BHC Subsidiary (or even merely hold an existing depository institution that was not a subsidiary of an existing BHC), the question arises whether the IHC would be deemed a BHC. In addition, could such an IHC also be an "existing BHC" within the meaning of Section 165 FAQ No. 22 and Footnote 17? In our view, the internal strategic decisions regarding the creation of an IHC, as required by the Final FBO 165 Rules, made between the release of the Final FBO 165 Rules and July 1, 2016 (and undoubtedly based on a range of factors and considerations), should not generate differing results or penalties depending upon when such decisions are executed. Therefore, we do not believe that the "early" designation of a de novo entity (or an existing non-BHC affiliate) intended to be the FBO's IHC or an early transfer of a depository institution to a De Novo IHC should be deemed an "existing BHC" for purposes of Section 165 FAQ No. 22 and Footnote 17, regardless of whether the IHC is technically a BHC.[17]

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[17] The simplifying assumption in this example is that the Large BHC Subsidiary is already over $50 billion in total consolidated assets, and therefore any De Novo IHC would also cross such threshold upon acquiring the stock of the Large BHC Subsidiary. However, a De Novo IHC that is created early will also be concerned that the combination of assets of an existing BHC subsidiary (or of an existing depository institution subsidiary) and of other subsidiaries not in the existing BHC will cause the De Novo IHC to cross the $50 billion threshold early, as described in the context of an existing BHC in the next paragraph. By definition, the IHC must cross the $50 billion threshold at some point – the question here is whether it becomes a BHC and crosses the threshold earlier than July 1, 2016, potentially making the capital planning rule and stress testing rule applicable to it earlier than expected and without benefit of the Final FBO 165 Rules' transition periods.

We also wish to draw the Board's attention to a similar issue in the Final FBO 165 Rules. Should a De Novo IHC receive sufficient assets to cross the $50 billion threshold, including receiving a BHC or insured depository institution subsidiary, well in advance of July 1, 2016, there is a question as to whether it also becomes a "bank holding company that has total consolidated assets of $50 billion or more . . . controlled by a foreign banking organization" for purposes of 12 C.F.R. § 252.31(e). That section could be read to suggest that an FBO-owned BHC becomes subject to the domestic enhanced prudential standards "beginning on January 1, 2015 and ending on June 30, 2016" without benefit of any transition. The better reading, we believe, would be that such a De Novo IHC should be treated as an entity that has exceeded the $50 billion threshold after the effective date of the Final FBO 165 Rules, and therefore does not apply the enhanced prudential standards in Regulation YY, Subpart D until "the first day of the fifth quarter following the date on which its total consolidated assets equal or exceed $50 billion" (see 12 C.F.R. § 252.31(a)) or the FBO enhanced prudential standards until July 1, 2016, whichever is earlier. We also note that the individual circumstances of some of our members, such as the SR 01-01 BHCs, may require further discussion with the Board about timing of their IHC implementation if it were to occur prior to June 30, 2015. We seek only to minimize, if not eliminate, the differential treatment among IHCs based merely upon the timing of their establishment or of their receipt of assets and subsidiaries.

Furthermore, any FBO that may be considering designating an existing BHC as its IHC inevitably finds itself in the midst of significant strategic planning with regard to how and when entities and related assets may be transferred to the existing BHC. Such decisions are based on a range of factors and considerations, many wholly unrelated to the regulatory requirement for an IHC. In Part I of this comment letter, we highlighted the uncertainty about why a Designated IHC should be treated differently from a De Novo IHC post-July 2016 with regard to any assets that were previously outside of any Large BHC Subsidiary and with regard to the transition periods for IHCs provided in the Final FBO 165 Rules. In this section, however, we highlight the question of whether an FBO should be concerned about pre-July 2016 restructurings that may cause an existing BHC (or a De Novo IHC) to cross asset thresholds much earlier than July 2016, but that would not have been undertaken but for the Final FBO 165 Rules. The main question that arises is whether crossing these thresholds may result in an existing BHC or De Novo IHC becoming a Large BHC Subsidiary and being deemed an "existing BHC" within the context of Footnote 17 and Section 165 FAQ No. 22. Again, we do not believe that an existing BHC or a De Novo IHC should be treated differently or penalized (such as through imposing capital planning and stress testing rules earlier) because it may, on a consolidated basis, cross $50 billion of total consolidated assets prior to July 2016 based on a Board-mandated reorganization.

As FBOs continue to make decisions and plan for compliance with the Final FBO 165 Rules, it is becoming apparent that flexibility in creation of the IHC and in structuring U.S. operations is dwindling. Depending upon the responses to the questions raised in this section, there would seem to be a considerable bias toward executing the creation of an IHC and the transfer of all of the required IHC subsidiaries at the last possible moment prior to or on July 1, 2016, regardless of economic, tax or other consequences. As noted earlier, there is also a considerable bias toward not even undertaking a full reorganization of an FBO's U.S. operations, as the Board seems to be guiding FBOs toward a single structure with a De Novo IHC and a Large BHC Subsidiary, at least temporarily until the distinction is no longer material and a merger (if an FBO would rather have had a single IHC/BHC at the top-tier) could occur in 2018.

Not only are we and our members finding it challenging to understand any appropriate policy reasons for such guidance, but our members are finding it difficult to formulate an implementation plan under extreme time constraints and to devise a definitive execution goal around the plan because of the uncertainty regarding the Board's view of these structural options.

III. Guidance from the Board and From or Through the Reserve Banks Has Raised Questions Regarding the Timeline for Reporting by FBOs, IHCs and Large BHC Subsidiaries, Potentially in a Manner Inconsistent with the Board's Regulations and the Stated Intent of the Final FBO 165 Rules

Not only are implementation planning and execution challenged by the uncertainty caused by the Board's Proposal and the Section 165 FAQs, but impending reporting requirements appear to have been accelerated without warning and without clear policy justification, causing dislocation of FBO resources, unnecessary costs and further confusion about the process and goal of establishing an efficient structure for FBO U.S. operations.

For existing Large BHC Subsidiaries that are currently subject to the Board's capital planning and stress test requirements (apart from any IHC requirements), a capital plan filing in January 2015 is required. The uncertainty created by the Board's guidance raises yet another question about whether and how the capital planning and stress test exercise should take into account potential changes caused by the IHC requirement, as July 2016 is within the nine-quarter planning horizon for this upcoming cycle. Such changes may include transfers of assets/subsidiaries to the existing BHC prior to July 2016, a final transfer of assets on or about July 1, 2016 and other restructuring events such as decreases in assets through transfer to an IHC parent, FBO parent branches or offshore affiliates.

We assume that an existing Large BHC Subsidiary would not reflect the IHC designation and related restructurings in the capital plan it submits in January 2015 and/or April 2016, because such a requirement would effectively accelerate the IHC CCAR and DFAST stress testing requirement in a manner inconsistent with the time table in the Final FBO 165 Rules (i.e., by incorporating the entire IHC structure through the "back door" into the Large BHC Subsidiary's capital plan). We also believe that taking these actions into account is inconsistent with a number of requirements and policy objectives already in place.[18] Among other reasons:

First, an implementation plan is not required to be filed until January 2015. Whether such plan may be modified and enhanced through conversations with Board staff or FBO examination staff is currently unable to be predicted. In addition, whether alternative structures or exclusions of subsidiaries will or will not be approved by the Board remains uncertain and could have a material effect on how a consolidated IHC may look in future quarters.

Second, incorporation into near-term capital plans would be inconsistent with the overall goal, enunciated in the preamble to the Final FBO 165 Rules, of providing a transition "glide path"[19] for the restructuring of an FBO's U.S. operations and for participation in CCAR and DFAST.

Third, forcing a Large BHC Subsidiary to apply appropriately robust policies, procedures and systems to any subsidiaries and assets currently outside the Large BHC Subsidiary would, at a minimum, be extremely difficult and premature, but would also set Large BHC Subsidiaries up for potential qualitative failure of the capital planning process because of a need to incorporate unconsolidated affiliates or affiliate assets in their capital plan and stress test.

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[18] A different intention of the Board with regard to near-term capital plan filings would also exacerbate the incentives toward choosing a De Novo IHC, for no apparent policy reason.

[19] See also Governor Tarullo, "Stress Testing after Five Years", Federal Reserve Third Annual Stress Test Modeling Symposium (June 25, 2014) available at http://www.federalreserve.gov/newsevents/speech/tarullo20140625a.htm ("[M]any firms had a long way to go to meet high standards of capital planning backed by strong risk management when we began CCAR. Given that initial gap, we have allowed time for firms to work toward full achievement of those standards. Thus, what may be perceived as a raising of the bar every year is better understood as our effort to provide a demanding, but still realistic, glide path for firms to reach that goal.")

Fourth, such inclusion in near-term capital planning would not be consistent with FAQ No. 7 of the Section 165 FAQs which states that the implementation plan's pro forma forecast of the IHC's financial statements "should be a realistic forecast of the balance sheet and income statements under expected conditions, using conservative assumptions. The forecast should not be a post-stress analysis."

Fifth, it appears that an existing Large BHC Subsidiary would be prohibited from giving effect to any additional capital that in fact would be contributed or otherwise raised in connection with the designation as an IHC or the transactions leading up to IHC implementation.[20] For any such additional capital to be given effect in the 2015 capital plan and DFAST exercises, it would have to be contributed no later than December 31, 2014 – i.e., the end of the first quarter of the 2015 planning horizon.[21] This precedes even the submission of the IHC implementation plan and, most significantly, would be a full 18 months before its status as a Designated IHC takes effect. We do not believe that this should be required, nor do we believe that this could have been intended. It would not be realistic, economic or practical to anticipate contributions for which the consideration would be stock (or other capital instrument) by requiring an early issuance of such capital instruments.

Therefore, we do not believe that the creation of the IHC should need to be taken into account in capital plan filings in either January 2015 or April 2016 (assuming finalization of the Proposal). The Board will have more than adequate information about the implementation of the IHC through submission of the implementation plan, supervisory discussions with FBOs subject to the IHC requirement, supervisory oversight of the actual implementation of the restructuring plan, and the requirement to submit an IHC capital plan in the first planning cycle following July 1, 2016.

If the Board intends a different result, FBOs would need to understand that now so as to be able to shift resources toward planning and implementing capital forecasting for assets and subsidiaries currently outside of the existing Large BHC Subsidiaries subject to the capital plan and stress test rules. In addition, this will significantly accelerate the need to understand the answers to other questions in this letter so that an IHC implementation plan can be internally approved well before required in January 2015, as it will need to be incorporated into capital planning analyses that Large BHC Subsidiaries will begin in September/October 2014.[22]

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[20] See Proposed 12 C.F.R. § 252.56(b)(2)(iv), 79 Fed. Reg. 37428, 37443.

[21] See 12 C.F.R. § 252.56(b)(1).

[22] Furthermore, we urge the Board to avoid the need for material resubmissions of IHC implementation plans by providing responses in a timeframe that will not force FBOs to make changes to the anticipated structure of U.S. operations after the submission of the original IHC implementation plan in January 2015. Alternatively, we suggest that an FBO should not need to

Other potential questions also arise in connection with a Large BHC Subsidiary's requirement to file a capital plan under currently applicable rules. For example, even if the FBO were planning to create a De Novo IHC above a Large BHC Subsidiary, would that be required to be reflected in the capital plan? We do not believe that such requirements should be imposed on a Large BHC Subsidiary during the planning horizon, but only after such structures are actually in place. Equally unclear is the question of whether the failure to include any information about changes, transfers or other transactions related to the ultimate creation of the IHC will eventually be deemed a material change to previously filed capital plans. Again, we urge that FBOs and their Large BHC Subsidiaries not be penalized for undertaking Board-mandated restructuring transactions proactively and in an orderly manner in advance of the deadline.

IV. The Board's Timing and Process for its Proposed Change to the FR Y-14 Reporting Panel to Include Certain U.S. BHC Subsidiaries of FBOs Evidences a Lack of Appreciation for the Resources Required for FBOs to Adjust to the Board's New Requirements for the U.S. Operations of FBOs

The Board's proposal to amend the FR Y-14 reporting form (the "FR Y-14 Proposal")[23] contemplates that the FR Y-14 reporting panel will be expanded, effective September 30, 2014, to include those BHCs relying upon Supervision and Regulation Letter SR 01-01 (Jan. 5, 2001) ("SR 01-01"),[24] thus significantly accelerating the timeframe for such BHCs to begin reporting capital planning information. We assume the Board reached a judgment that it would be helpful to begin receiving data from SR 01-01 BHCs in advance of their participation in the CCAR and DFAST stress testing process, although the Board's reasoning or weighing of costs and benefits behind this judgment is not included in the FR Y-14 Proposal.

We have several concerns with the FR Y-14 Proposal, which we would be pleased to articulate in a separate comment letter on the FR Y-14 Proposal itself. While we understand the possible rationale for requesting data in advance of the formal participation of the SR 01-01 BHCs in the CCAR process, the possibility of this request was made known to the affected FBOs only through the publication of a proposed change to a reporting form, an event that few if any FBOs monitor in practice, particularly when the reporting form was not heretofore applicable to SR 01-01 BHCs. Moreover, a mere one sentence, without further explanation, is devoted to subjecting the SR 01-01 BHCs to the reporting requirement as of September 30, 2014. The

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resubmit an implementation plan if the changes required are based on the Board's changes to, or timing of, guidance regarding the questions in this letter.

[23] See 79 Fed. Reg. 41276 (July 15, 2014). We note that the comment period for the FR Y-14 Proposal is open until September 15, 2014, and we respectfully request that this letter be deemed a timely comment on such proposal.

[24] See 79 Fed. Reg. 41278.

Board could have advised the affected FBOs directly of this significant event, which was not foreshadowed in the Final FBO 165 Rule, but it did not. In addition, comments on the FR Y-14 Proposal are due September 15, 2014, and the FR Y-14 Proposal is scheduled to be effective September 30, 2014, suggesting that the request for public comment is at best a pro forma exercise.

By accelerating the reporting requirements for SR 01-01 BHCs without warning or effective communication to the affected FBOs and BHCs, the Board has adopted an approach that is arguably inconsistent with the Dodd-Frank Act, as the provisions for application of the generally applicable capital requirements to SR 01-01 BHCs do not even become effective until July 2015.[25] In addition, assuming adoption of the Proposal, this reporting requirement would precede the application of the capital plan and DFAST requirements to SR 01-01 BHCs by 15 months.[26] Moreover, this accelerated deadline is inconsistent with the approach adopted by the Board, through notice and comment rulemaking, in the Final FBO 165 Rules with respect to expanding the FR Y-14 reporting panel to include IHCs.[27]

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25 See Dodd-Frank Act § 171(b)(4)(E).

26 See Proposed 12 C.F.R. § 225.8(c)(2)(i)(A), 79 Fed. Reg. 37430, and Proposed 12 C.F.R. § 252.13(b)(1)(iii), 79 Fed. Reg. 37436. We also note that Proposed 12 C.F.R. § 225.8(c)(2)(i)(B), 79 Fed. Reg. 37430, reserves authority for the Board (or a Reserve Bank with concurrence by the Board) to accelerate compliance with these requirements only in the case of individual companies for which the Board "determines that the requirement is appropriate on a different date based on the company's risk profile, scope of operation, or financial condition." Whether such an acceleration provision would be within the authority of the Federal Reserve given the effective date of the Dodd-Frank Act provision is questionable, but we note that, even if such a standard were applicable, the Board certainly neither has made such a determination with regard to all of the SR 01-01 BHCs nor has it provided "prior notice to the company of the determination" as also required by the proposed rule.

27 See 79 Fed. Reg. at 17304 (the trigger for commencing FR Y-14 reporting is linked to the reporting cycle that follows the IHC's formation).

With respect to FR Y-14 reporting requirements more generally, we note that Section 165 FAQ No. 25 states that Board staff is "in the process of developing a notice that would set forth the initial reporting for all IHC required regulatory reports, including the Capital Assessments and Stress Testing (FR Y-14) reporting series." Clarification of these requirements is of key importance to FBOs' planning and budgeting for the implementation of the IHC requirement. In particular, identifying, aggregating and formatting the historical information required to be included in the initial FR Y-14Q submission is a daunting prospect. We urge that such clarification be forthcoming and that a transition period be provided to facilitate compliance with these filing requirements.

We urge the Board to conform the commencement of FR Y-14 reporting requirements for SR 01-01 BHCs to the revised timing for the capital planning and stress testing cycle beginning January 2016 (assuming adoption of the Proposal), or at least to give affected FBOs the option of delaying the submission of data on FR Y-14 report forms until closer to the implementation deadline for the related regulatory requirements.[28]

V. Other Clarifications are Required to Understand More Fully the Timing and Filing Requirements that Will be Applicable to IHCs

Under both the Final FBO 165 Rule and the Proposal, a De Novo IHC's initial capital plan will not be subject to the full CCAR assessment. Instead, the Board "would conduct a more limited quantitative assessment of the U.S. intermediate holding company's capital plan based on its own stress scenario and any scenarios provided by the Board and a qualitative assessment of its capital planning processes and supporting practices."[29]

In connection with the submission of an IHC's initial capital plans in 2017,[30] FBOs that elect to establish a De Novo IHC will have had varying degrees of prior experience with the Board's capital planning process depending on the structure of their existing U.S. operations. Several will have had no prior experience whatsoever, while others' experience will be limited to that of their Large BHC Subsidiaries. Some may trace their experience to the Board's earlier CapPR process and others may be more recent entrants to the full CCAR assessment process. As a general matter, however, FBOs will have had no prior experience with undertaking a review and assessment of their entire U.S. non-branch operations pursuant to the Board's capital plan rules.

We assume that the Board's statement with regard to a "more limited quantitative assessment" will be similar to the CapPR process, or even a process less exacting but more tailored to subsidiaries of FBOs. We also assume that any public disclosure of information related to the Board's assessment will be quite limited – i.e., similar to or less than that made in connection with the former CapPR process. Should the Board have other intentions with regard

[28] While we firmly believe that FR Y-14 reporting should not commence until after the SR 01-01 BHCs are subject to the capital rules after July 2015, at least the effective date of September 30, 2014 for SR 01-01 BHCs should be pushed back so that these BHCs can prepare for their first filing of monthly, quarterly and semi-annual FR Y-14 series forms in an orderly and efficient manner. A mere 3½ months from the proposal to the first filing of an FR Y-14M is not sufficient time to prepare for this extensive series of reports.

[29] 79 Fed. Reg. at 37427.

[30] We note that, after the finalization of the capital plan rule, 12 C.F.R. § 225.8, BHCs that had not been participants in the SCAP process were provided two years of less rigorous review under the CapPR process.

to such assessment, the process and policies around the assessment should be made clear to FBOs and IHCs well in advance of the need to submit capital plans and undertake stress testing under the Board's and the IHC's scenarios.

In addition, in the case of those FBOs with Large BHC Subsidiaries that will become subsidiaries of De Novo IHCs, we understand that both the De Novo IHC and its Large BHC Subsidiary will submit a capital plan for the 2017 Capital Plan Cycle, but only the Large BHC Subsidiary's plan will be subject to a full CCAR assessment. The Proposal describes the Board's expectations with respect to the relationship between these two plans as follows:

> The Board expects that [the IHC and its Large BHC Subsidiary] could submit certain aspects of the capital plan jointly or in a single capital plan that clearly sets out and explains how the capital plan for the U.S. intermediate holding company builds on the capital plan for the bank holding company. For example, if the U.S. intermediate holding company and the bank holding company subsidiary rely on common stress testing models and practices, both companies could submit the same supporting documentation for these models, provided that the each company's submissions met all of the requirements of the capital plan rule.[31]

We support efforts to streamline the submission of "dual" capital plans during the 2017 Capital Plan Cycle, which will reduce the burden on both the reporting entities and Board staff and thereby provide for a more efficient process. However, in keeping with the common theme of this letter, concrete guidance on how such streamlining will be implemented in practice and what types of streamlining will be acceptable to the Board should be provided to FBOs and IHCs well in advance of the submission date. Moreover, we would not support any streamlining that would result in applying CCAR processes, reporting or review to the IHC's capital plan, merely to coordinate review of, and production of information for, the IHC and Large BHC Subsidiary.

In both of these situations above, our key request is for the Board to provide guidance even further in advance than the general guidance that will be given to all capital plan filers and CCAR participants at the start of a Capital Plan Cycle. This is appropriate as the situations of FBOs, IHCs and Large BHC Subsidiaries will differ considerable during these early cycles (2017 and 2018) from other BHCs participating in the process.

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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.

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[31] 79 Fed. Reg. at 37427.

Sincerely,

Sarah A. Miller
Chief Executive Officer

cc: The Honorable Janet L. Yellen
The Honorable Stanley Fischer
The Honorable Daniel K. Tarullo
The Honorable Jerome H. Powell
The Honorable Lael Brainard
Board of Governors of the Federal Reserve System

William C. Dudley
Federal Reserve Bank of New York

The Honorable Thomas J. Curry
Office of the Comptroller of the Currency

The Honorable Martin J. Gruenberg
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Michael Gibson
Mark van der Weide
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