The Clearing House
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May 19, 2015

Mr. Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Proposed Agency Information Collection Activities; Comment Request: Proposal to Collect the Legal Entity Identifier for Banking and Nonbanking Legal Entities Reportable on the FR Y-10, FR Y-6 and FR Y-7 Reports. (OMB Control Number: 7100-0297).

Mr. Frierson:

The Clearing House Association L.L.C.[1] ("**The Clearing House**") appreciates the opportunity to comment on the Board of Governors of the Federal Reserve System's (the "**Federal Reserve**") proposed revisions (the "**Proposal**") to the *Annual Report of Holding Companies* ("**FR Y-6**"), the *Annual Report of Foreign Banking Organizations* ("**FR Y-7**"), the *Report of Changes in Organizational Structure* ("**FR Y-10**"), and the *Supplement to the Report of Changes in Organizational Structure* ("**FR Y-10E**", and together, the "**Reports**"). The proposed changes to the Reports would collect the Legal Entity Identifier (the "**LEI**") for all banking and nonbanking legal entities to the extent that an LEI has already been issued for the reportable entity at the time of collection.

The Clearing House continues to be very supportive of the development of a uniform, global LEI solution as a tool to help promote industry and supervisory efforts to monitor and evaluate systemic risk and to enhance financial stability.[2] Similarly, The Clearing House appreciates and supports the Federal

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[1] Established in 1853, The Clearing House is the oldest banking association and payments company in the United States. It is owned by the world's largest commercial banks, which collectively hold more than half of all U.S. deposits and which employ over one million people in the United States and more than two million people worldwide. The Clearing House Association L.L.C. is a nonpartisan advocacy organization that represents the interests of its owner banks by developing and promoting policies to support a safe, sound and competitive banking system that serves customers and communities. Its affiliate, The Clearing House Payments Company L.L.C., which is regulated as a systemically important financial market utility, owns and operates payments technology infrastructure that provides safe and efficient payment, clearing and settlement services to financial institutions, and leads innovation and thought leadership activities for the next generation of payments. It clears almost $2 trillion each day, representing nearly half of all automated clearing house, funds transfer and check-image payments made in the United States. *See* The Clearing House's web page at www.theclearinghouse.org.

[2] *See,* April 2011 comment letter "Enhancing Supervisory and Industry Ability to Monitor and Evaluate Systemic Risk" available at, https://www.theclearinghouse.org/issues/banking-regulations/international-

Reserve's efforts to implement a line item for the LEI on the Reports, as we agree with the Proposal's assertion that "as the usage of LEI becomes more prominent, it would enable examiners, economists, and financial analysts to perform improved analyses, particularly during stressed market conditions."[3]

As more fully described below, however, The Clearing House is concerned with several technical and administrative aspects of the Proposal, including the timing of the one-time information collection exercise to populate existing LEI data for all FR Y-10 reportable entities (the "**One-Time Collection**") and the means for submitting such collection. In addition, we would like to use this opportunity to address several other outstanding issues with the Reports, particularly with the FR Y-6 and FR Y-10, which are not addressed in the Proposal but have been communicated to Federal Reserve staff in the past. Each of these concerns and issues are more fully described below.

I. The Federal Reserve Should Provide Sufficient Time and a Proper Format for the Submission of the One-Time Collection.

A. The effective timing for the One-Time Collection to populate existing LEI data for all FR Y-10 reportable entities should be concurrent with the initial FR Y-6/FR Y-7 submissions required to include LEI information (i.e., 90 days following the fiscal year-end).

The Proposal currently includes a One-Time Collection to populate existing LEI data for all FR Y-10 reportable entities (excluding branches) as of June 30, 2015, which would be required to be submitted by September 30, 2015. While we remain wholly supportive of the LEI as a matter of policy, we are concerned that the proposed implementation date for the One-Time Collection is too early in light of several key practical considerations.

First, the existing infrastructure for checking existing LEIs provided by the Global LEI Foundation ("**GLEIF**") has many shortcomings and requires certain additional enhancements. In particular, small differences in the name used to search for an entity when checking whether an entity has an LEI can lead to false negatives. Many reporting institutions ("**Reporters**") would therefore need to source this information from their own systems for the One-Time Collection. At least initially, matching LEIs to the, in some cases, thousands of entities in current data bases would be very manually intensive since naming conventions are frequently different and the matching is not always obvious. Second, because Reporters are often not the majority interest holders for a reportable entity, and thus not responsible for registering the LEI for these entities, they do not have the advantage of firsthand knowledge about the entity. Obtaining LEI's for these legal entities would require contacting each majority interest holder separately to ascertain if the entity has an LEI and if so, what it is. Third, given the sheer volume of such a collection, the review/validation process itself is a significant undertaking that will require the implementation of internal operating procedures detailing the One-Time Collection effort and the start to end ongoing process which will need to be communicated and vetted internally. Implementing proper procedures will allow Reporters to assess and measure performance to help determine if the process is appropriately followed and will serve as the foundation for process improvements in the future.

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regulation/financial-stability-board/20110412-recommends-g20-support-uniform-global-legal-entity-identifier-solution.

[3] 80 Fed. Reg. 15009 (March 20, 2015).

We therefore believe that it would be more feasible to require the reporting of LEI information on the FR Y-10 reports starting as of January 1, 2016 with the One-Time Collection due concurrently with the initial FR Y-6/FR Y-7 submission that contains LEI information. This solution would retain the current implementation of the Proposal for the FR Y-6/FR Y-7 with the One-Time Collection due, for many banks, at the latest in March 2016 (90 days after the fiscal year-end) – effectively, a six-month delay.

Additionally, while we expect that over time the accuracy of reporting will improve, we note that because of the issues posed by initial reporting of LEIs described above, it is likely that misidentifications may occur from time to time as new reporting processes are implemented. We therefore also request that while banks develop and implement the requisite data quality processes for reporting and reviewing submissions, and while the GLEIF updates their systems and processes, reporting of LEIs in the initial periods of implementation should formally be allowed to be made on a "best efforts" basis.

B. The format for the submission of the One-Time Collection should be designed to allow for an efficient submission.

We appreciate that the Proposal indicates the Federal Reserve "would provide a means for institutions to provide their one-time submission data in a format easier than individual FR Y-10 submissions." We encourage the Federal Reserve to choose a simple format that would allow institutions to streamline the One-Time Collection in a consistent manner with minimal operational complexities. We therefore suggest that similar to past ad-hoc collections, such as that of Taxpayer Identification Numbers,[4] the Federal Reserve provide a simple Excel document that lists all eligible legal entities by name in one column, RSSD numbers (or other existing identifying codes) in another column, and a third open column for the banks to insert existing LEI information. We would be more than happy to work with the Federal Reserve to develop a format for the One-Time Collection so that it can be mutually efficient for both the Federal Reserve and Reporters.

II. The Federal Reserve Should Use This Opportunity to Update the Reports More Generally and Address Certain Outstanding Issues with the Reports.

A. Clarification for Business Organizational Types.

The Instructions for Preparation of the FR Y-10[5] (the "**Instructions**") require the selection of a "Business Organization Type."[6] This selection is straightforward for most entities formed in the United States, but is challenging for entities formed under the laws of foreign jurisdictions. Reporters maintain internal mapping documents to identify foreign Business Organization Types according to their U.S. counterparts, and these mapping documents often conflict across institutions. For example, the same entity might be reported as a corporation, an LLC, or "Other" by three different Reporters pursuant to such mapping documents. Reporting a different Business Organization Type for the same entity will also

[4] A collection for Taxpayer Identification Numbers was due by March 31, 2009 (with an "as of" date or December 31, 2008); to facilitate this collection, the Federal Reserve provided an Excel template, similar in format to what is suggested above, pre-populated with the Research Statistics Supervision Discount ID ("**RSSD**"), Popular Name and other identifying information for each entity, and an empty column for the Reporter to enter each Taxpayer Identification Number. *See,* 73 Fed. Reg. 31684 (June 3, 2008).

[5] Available at, http://www.federalreserve.gov/reportforms/forms/FR_Y-1020141031_i.pdf.

[6] FR Y-10: Item 10 of Banking, Nonbanking and Savings and Loan Schedules.

cause a discrepancy in the Ownership Type, since a Reporter is required to report a member type for LLCs but a percentage interest for a corporate entity. This inconsistency can create unnecessary confusion for Reporters.

In order to limit this potential uncertainty and inconsistent reporting, we respectfully request that the Federal Reserve create a mapping document of various foreign Business Organization Types drawn from those included on the FR Y-10. The U.S. Internal Revenue Service has made such a mapping document available on various tax forms,[7] and the U.S. patent office also offers mapping guidance.[8] Alternatively, we request that the Instructions be modified to clarify the legal characteristics of a company that should be reported as an LLC. The current definition in the Instructions defines an LLC as "[a] company organized pursuant to a limited liability company provision under state law in which none of the members are liable for the company's debts, liabilities, or other obligations."[9] This definition leaves unclear how to report certain entities with characteristics similar to LLCs. For example, it is unclear whether an entity with characteristics similar to a LLC formed outside the United States should ever be reported on the FR Y-10 as an LLC since it will clearly not be "organized pursuant to a … provision under state law." Moreover, both LLCs and corporations provide their owners with limited liability, both have ownership interests that are shares or similar to shares, and both have similar requirements for a governing board (i.e., a corporation is required to have a board of directors, while a limited liability company may have a management board that does not include its owners).

Inclusion in the Instructions of specific legal criteria and examples so that Business Organization Type can be applied more consistently to foreign organizations also would be very helpful. For example, many jurisdictions have one corporate form for entities with an unlimited number of potential shareholders, and a different form for entities that may not have more than a certain number of shareholders (e.g., 50). It is unclear whether a limit on the number of entity holders is sufficient in and of itself to distinguish between an LLC and a corporation, since certain Reporters currently report, or may report, Swiss S.A R.L., Brazilian FIP, Finnish Oy, Spanish SL, and Malaysian Ltd entities differently.

B. Reporting interests in LLCs when the governing documents do not specifically designate a "Managing Member."

The lack of clear guidance on the designation of Managing Member or Non-Managing Member for LLCs in the Instructions[10] can result in inconsistent reporting between Reporters in identifying and reporting positions in LLCs, particularly in the context of foreign LLCs. The process for this designation is unclear when the legal operating agreement is silent regarding the designation of a Managing Member. A suggested solution to this gap in the Instructions is described below.[11]

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[7] IRS Tax Form 8832 (Entity Classification Election) lists which foreign entities should be classified as corporations for Federal income tax purposes; *see* http://www.irs.gov/pub/irs-pdf/f8832.pdf (p. 7).

[8] The U.S. Patent and Trademark Office's "Trademark Manual of Examining Procedure" provides guidance for foreign entity legal forms in Appendix D, "Foreign Entity Appendix." Available at, http://tmep.uspto.gov/RDMS/detail/manual/TMEP/current/TMEP-Dd1e1.xml#/manual/TMEP/current/TMEP-Dd1e1.xml.

[9] *See,* glossary definition of "Limited Liability Company" in the Instructions (p. GL-5).

[10] *Interests in Partnerships or LLCs*: Item 13.D of Banking and Saving and Loan Schedules; Item 13.C of Nonbanking Schedule.

[11] A flowchart is also provided in Annex A (the "**Flowchart**") to illustrate these proposals.

If, under the LLC operating agreement, the member has the authority to direct day-to-day entity operations (e.g., bind the company by entering into contracts on behalf of the LLC) the LLC would be deemed to be directly managed by the member by virtue of its active engagement in the day-to-day operations. The above conclusion also would apply if the member holds 25% or more of the voting interests in the LLC because the LLC is generally deemed to be indirectly managed by its members by default under state law.[12] Lastly, the LLC also would be deemed to be indirectly managed by the member if the LLC has established a board of managers and the member elects a majority of the managers on the board.

We respectfully propose that if the direct holder of the reportable entity (a) holds an ownership interest in the LLC, *and* (b) manages the LLC either directly or indirectly (as determined immediately above), the interest in the reportable entity should be reported as a "Managing Member" (Example 1 in the Flowchart). In situations where either of the above is not true for a member's interest, the interest should be reported as "Non-Managing Member" (Example 2 in the Flowchart).

Moreover, a situation may exist where an entity is designated as a Manager of the LLC or actively manages the day-to-day operation of the LLC, but has no ownership interest. The LLC would thus be deemed to be directly managed by the entity even though the entity does not hold any ownership interest in the LLC. In this case, the entity should be considered a "Non-Member Manager" and we propose that the membership interest field be left blank on the FR Y-10 because the entity is not a member of the LLC (Example 3 in the Flowchart). This will require an enhancement to the online FR Y-10 system so that if the field is left blank an error message will not appear.

C. Withdrawing reports.

There is currently no uniform formal procedure established by the Federal Reserve to withdraw a previously filed FR Y-10. In certain cases, when a filing is made in error, the ability to correct the filing is not sufficient, since the report should not have been filed. Currently, there are informal Federal Reserve procedures to facilitate the withdrawal of an erroneous report. However, these informal procedures can impair subsequent research efforts since they are often inconsistent and can make discerning the true source of data divergences more difficult. Furthermore, these informal procedures require both the Federal Reserve and the Reporter to manually track which reports have been withdrawn and should be constructively erased. Establishing a consistent formal process for withdrawing reports would obviate the need to keep manual logs and enhance data quality. We suggest that a "withdraw event" tick-box be added to the FR Y-10 similar to the current correction tick-box.

D. Technical enhancements.

i. Option for electronic filing of the Organizational Chart of the FR Y-6

On occasion, the Federal Reserve requests electronic versions of the Organization Chart and the list of branches for the FR Y-6. While the filed version of the Organization Chart is a paper copy delivered to the Federal Reserve, Reporters are often requested to submit a copy of the paper report electronically. We request that Reporters be given the option to make this submission electronically to facilitate easier processing and better record-keeping.

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[12] *See*, e.g.,Delaware Limited Liability Company Act, § 18-402 ("Management of Limited Liability Company"); New York Limited Liability Company Law § 401 ("Management of the Limited Liability Company by Members").

ii. Straight-through processing of the FR Y-10

The FR Y-10 is a manual form requiring a Reporter to type information from a Reporter's internal systems into the online interface. We request that the Federal Reserve implement more efficient functionality to allow straight-through processing either directly from internal systems or through a data load process. Manual entry can be a substantial source of data entry errors, since a Reporter may mistype information. Similarly, data errors can be, and have been, made when the Federal Reserve staff processes a report and must retype the data into the Federal Reserve's systems. Straight-through processing would resolve many of these unnecessary errors.

iii. Indication of when an event has been processed

There is currently no uniform process to inform Reporters whether a previously submitted FR Y-10 has been reviewed and processed by Federal Reserve staff. As a consequence, Reporters must track discrepancies manually. This allows many old discrepancies to remain in the system because the Reporter filed a report and, from its perspective, is waiting for the report to take effect (when in fact the report has taken effect, but not as expected). Creating a notification or a flag for previously submitted reports that indicates when a report has been processed would alleviate this problem. This would also allow faster retrieval of an RSSD after the Federal Reserve assigns it.

iv. Foreign branch technical error

Foreign branches of foreign subsidiaries are often not included in any report a Reporter may access from the FR Y-10 online system. These entities, reported and processed correctly, are omitted from the Organization Chart, which requires the Reporter to request the information from Federal Reserve staff periodically to compare it manually. The omission can cause confusion if an entity is no longer reportable, since the Reporter cannot verify, without assistance from the Federal Reserve, that the branch has been removed. We request that these entities be included in the FR Y-10 online system.

v. System cannot have different data for the same entity but different Reporters

A situation can arise in which two Reporters own an indirect interest in an entity through the same intermediate company, but the interest is exempt for one Reporter though not for the other. This can occur, for example, if Reporter A and Reporter B both hold an interest in HoldCo 1, which owns Sub X. Sub X may be an exempt Public Welfare Investment for Reporter A, but not exempt for Reporter B. Currently, Sub X would appear on Reporter A's Organization Chart even though Reporter A never reported the investment (since it is exempt). This creates discrepancies between the reports filed by Reporter A and Federal Reserve data, since the information was added to the Federal Reserve data without any action by or notice to that Reporter. Furthermore, it creates a discrepancy between the Federal Reserve data and the FR Y-6 even though the information reported on the FR Y-10 matches because the entity is listed in the Organization Chart. We request that the Federal Reserve recognize that different Reporters may both own an interest in a holding company, but those companies' holdings may differ in how they are reported and therefore only the filings on the FR Y-10 should affect a Reporter's Organization Chart.

vi. LEI validation logic

The FR Y-10 online system provides the following error message stipulating that for all LEIs: "first 4 positions are numeric (0-9), positions 5-6 are reserved characters set to 0, positions 7-18 are alphanumeric (A-Z or 0-9) and positions 19-20 are numeric check digits (0-9). (edit# 5808)." This formatting is not true for many LEIs, particularly for those issued prior to 2012 for certain bank holding companies. This validation inaccuracy creates errors on every FR Y-10 filing for such bank holding companies due to the current requirement that the LEI be included on the cover page and likely will create additional system error prompts if included in the Proposal without change. We respectfully request that this formatting error be corrected in order to avoid further confusion and unnecessary additional research into already-accurate LEIs.

vii. RSSD search malfunction

Each FR Y-10 event pertains to at least one reportable legal entity and all reported legal entities are assigned an RSSD. Although RSSDs can be searched online, this search is inherently unreliable and may miss many events which pertain to the same legal entity. Because the RSSD search is unreliable, Reporters are limited to using the entity name to find the entire reporting history of a particular legal entity. If the legal entity name was at any point corrected or changed, this search would have to be performed multiple times (once for each name variation) to attain a complete history. This system flaw requires additional training and time for all cases in which using the RSSD search would be convenient, and could potentially cause a Reporter to miss a relevant FR Y-10.

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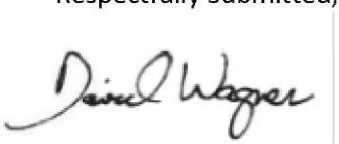
The Clearing House appreciates the opportunity to provide comments on the Proposal and the additional comments included herein. We greatly appreciate your consideration of our comments and would welcome the opportunity to discuss them further with you at your convenience. If we can facilitate arranging for those discussions, or if you have any questions or need further information, please contact me at (212) 613-9883 (email: david.wagner@theclearinghouse.org).

Respectfully Submitted,



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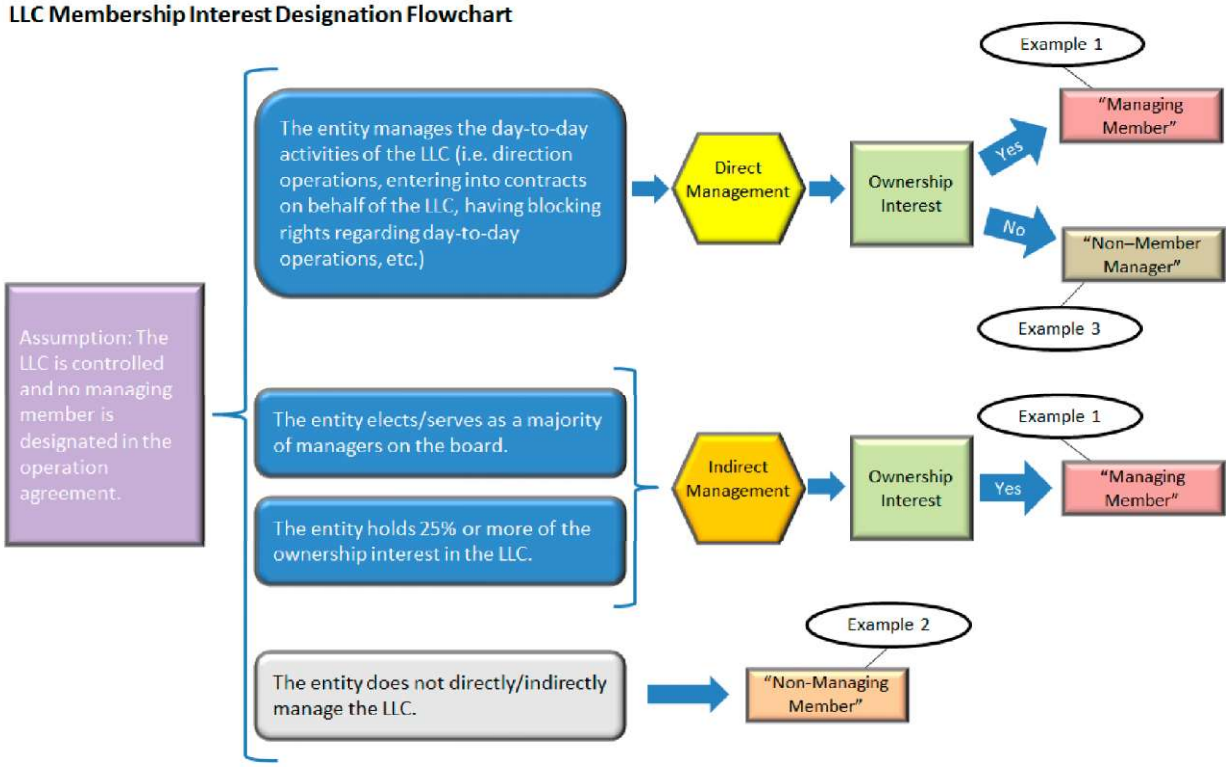
LLC Membership Interest Designation Flowchart