



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

DIVISION OF BANKING
SUPERVISION AND REGULATION

SR 01-21 (GEN)
September 6, 2001

**TO THE OFFICER IN CHARGE OF SUPERVISION
AT EACH FEDERAL RESERVE BANK**

SUBJECT: Communications with Foreign Bank Regulatory and Supervisory Authorities

The Board's General Counsel has subdelegated to the Director of the Division of Banking Supervision and Regulation his authority to share confidential supervisory information relating to the U.S. activities of foreign banking organizations with foreign bank regulatory and supervisory authorities, subject to certain conditions. The confidential information includes correspondence, reports of examination, examination work papers, and follow-up non-public informal supervisory actions. It can also include oral communications. The ability to communicate with "home" country supervisors about matters relating to a U.S. branch's, agency's, or subsidiary's operations or problems in the United States is critically important.

This SR letter advises you about the subdelegation. It also establishes coordination requirements applicable to communications with foreign banking agencies involving the transmittal of confidential information about the U.S. operations or condition of foreign banking organizations by the Federal Reserve, as "host" country, to a "home" country foreign bank regulator or supervisor. The procedures differ somewhat depending on whether the foreign supervisory authority has entered into a formal arrangement with the Federal Reserve covering the coordination of supervisory efforts and the sharing of pertinent information.

Background

Part 261 of the Board's regulations (the Rules Regarding Availability of Information) generally prescribes the circumstances under which Federal Reserve staff can share confidential supervisory information concerning a supervised domestic or foreign banking organization with the other federal banking agencies and state bank regulators, as well as with other federal agencies (including law enforcement authorities), litigants and the public. As you know, no member of the staff of the Board or a Reserve Bank is permitted to provide confidential supervisory information to anyone unless the Board has delegated authority to the individual pursuant to Part 261, or the Board's General Counsel has exercised his authority under Part 261 and authorized the individual's transmittal of confidential information. For example, parts of section 261.20 permit the Director of the Division of Banking Supervision and Regulation and the Reserve Banks to share confidential supervisory information concerning state member banks, bank holding companies and the U.S. branches and agencies of foreign banks with the OCC, FDIC and state banking departments when

necessary.

There is no provision in Part 261 directly allowing the Director or a Reserve Bank to share confidential information about matters relating to the U.S. operations of foreign banks with foreign banking authorities. Rather, such sharing is provided for in the International Banking Act and authority to make the determinations required by that law has been delegated to the Board's General Counsel (see section 265.6(b)(2) of the Board's Delegation Rules). ¹

Delegation to the Division Director

Both the Board's General Counsel and the Director of the Division of Banking Supervision and Regulation believe that supervisory officials should be able to communicate on a host-to-home basis with their colleagues at foreign bank supervisory agencies generally in the same manner that they can now do with regard to U.S. regulators. To accomplish this goal, the General Counsel subdelegated to the Director of the Division of Banking Supervision and Regulation and his designees the General Counsel's authority to authorize communications about matters relating to the U.S. activities of foreign banking organizations with foreign bank regulatory and supervisory authorities.

The subdelegation is subject to the following conditions that will be monitored by Division staff:

1. As appropriate, or where no disclosure precedent exists, the Director or his designees will consult with the Legal Division regarding disclosures made pursuant to the subdelegation. In instances involving the potential disclosure of examination reports, the Director or his designee will also consult with the Legal Division.²
2. To the extent that documents are provided to a foreign banking authority, the Director or his designees must maintain a copy or a list of the documents with an indication to whom they have been produced.³

Consultation and Coordination Requirements Concerning Foreign Supervisory Authorities Who Have Not Entered Into Formal Arrangements

In order to effect the delegation from the General Counsel and ensure compliance with the aforementioned conditions, Bill Ryback and Steve Hoffman, the Senior Associate Director and Associate Director responsible for the Division's Foreign Banking Organizations Section and other supervision functions, will be responsible for coordinating communications by Board and Reserve Bank staffs involving confidential supervisory information relating to the U.S. activities of foreign banking organizations with foreign bank regulators and supervisors who have not executed formal arrangements with the Federal Reserve.⁴ The staffs of the Division of Banking Supervision and Regulation and a Reserve Bank may transmit confidential supervisory information to this category of foreign banking authority **only** in accordance with the following protocols:

1. Routine Written Communications

At the present time under the existing FBO supervision program, foreign supervisory agencies routinely receive only one category of written communications from the Federal Reserve. These are the summaries of U.S. operations. Because Division staff has already consulted with the Legal Division and obtained approval to transmit the summaries, Reserve Banks may continue to send them, provided that they maintain a record keeping system to keep track of the submissions, which should include copies of all summaries provided to foreign supervisors.

As the foreign supervision program moves forward, there may be other categories of written information that we determine should be regularly shared with foreign authorities. Division staff will work with the Reserve Banks to identify these types of communications and then seek appropriate approvals for their routine dissemination from the Board's Legal Division.

2. *Ad Hoc Requests*

In order to fully achieve the goals of the FBO supervision program, the staffs of the Division and the Reserve Banks need to be able to communicate about emerging problem situations, law enforcement matters, and systemic issues in a timely manner with their counterparts in foreign bank supervisory agencies that are not parties to formal arrangements with the Federal Reserve. These communications may be oral or in writing.

Regardless of the format of the communication, we want to establish a protocol that meets the supervisory objectives of the FBO program in an effective and efficient manner. To this end, each Reserve Bank should do the following:

- a. A senior supervision official should be appointed to receive foreign supervisors' requests for confidential supervisory information and to be responsible for the establishment and oversight of the procedures described below.
- b. Requests by home country supervisors for written confidential supervisory information, including reports of examination and inspection and other documents and reports produced by the Federal Reserve System in the exercise of its supervisory responsibilities, must be in writing and sent either to the Reserve Bank or to Mr. Ryback or Mr. Hoffman. (Requests received by the Reserve Bank should be forwarded to either Mr. Ryback or Mr. Hoffman.) Electronic mail messages will be considered written requests if a copy is maintained in the record keeping system. Division staff will review the request and will consult with the Board's Legal Division pursuant to the conditions of the General Counsel's subdelegation.
- c. Procedures should be established to ensure that (i) a request for confidential supervisory information is from a legitimate foreign bank supervisory authority, (ii) the requesting agency provides a description of the reasons why the information is being requested, and (iii) the foreign supervisor has agreed to use the information only for supervisory purposes and to keep the requested information confidential to the extent possible. In this regard, if the Federal Reserve does not already have information on the requesting country's laws relating to the foreign bank supervisor's ability to maintain the confidentiality of oral and written communications made by the Federal Reserve, such information should then be obtained from the requesting supervisory authority.
- d. All customer information must be redacted from any materials provided to a foreign bank supervisory authority unless the foreign bank supervisory authority specifically requests such information and the Division, in consultation with the Legal Division, determines that such information may be provided to the foreign bank supervisory authority.
- e. A record keeping system should be implemented to keep track of all forms of communications with foreign bank supervisory authorities where confidential supervisory information is involved. If written materials are involved, copies of all submissions should be retained.

Once the senior supervision official is appointed and the required procedures are put into place, the Director of the Division of Banking Supervision, acting pursuant to the General Counsel's subdelegation, will authorize the individual, in writing, to communicate about matters relating to the U.S. activities of foreign banking organizations with foreign bank regulatory and supervisory authorities. After appointment, the Reserve Bank senior supervisory official should then coordinate all oral and written communications involving confidential supervisory information that are on an *ad hoc* basis with either Mr. Ryback or Mr. Hoffman, or their designees.

Staff in the Foreign Banking Organizations Section of the Division will maintain records consistent with the General Counsel's disclosure conditions, and will be responsible for consulting with the appropriate Legal Division staff prior to any disclosures to foreign banking authorities.

Consultation and Coordination Requirements Concerning Foreign Bank Supervisors Who Have Entered Into Formal Arrangements with the Federal Reserve

In the event that written confidential supervisory information needs to be shared with a foreign bank supervisory authority that is a party to a formal arrangement with the Federal Reserve, the senior Reserve Bank supervision official referenced in the "Ad Hoc Request" section above may provide the information directly to the foreign supervisor with prior notification to Division staff provided that he or she first determines that disclosure is appropriate and will not prejudice the interests of the United States. All customer information must be redacted from any materials provided to a foreign bank supervisory authority unless the foreign bank supervisory authority specifically requests such information and the Division, in consultation with the Legal Division, determines that such information may be provided to the foreign bank supervisory authority. If disclosure is made under these circumstances, the Reserve Bank must maintain the same records described above (e.g., a tracking system and copies of all submissions).

Notwithstanding the foregoing, if the information to be communicated relates to a non-routine matter (e.g., an enforcement action or compliance with financial holding company eligibility standards), such communications must be coordinated with Mr. Ryback or Mr. Hoffman.

"Home" to "Host" Communications Regarding U.S. Banking Organizations

The policies set forth in this SR letter relate only to the communication of information about the activities of foreign banking organizations in the United States, such as those conducted through direct offices and nonbank subsidiaries. In the event that Federal Reserve staff has to communicate with a foreign banking authority about the activities or condition of a U.S. banking organization ("home" to "host" country communications), staff should continue to comply with procedures set forth in applicable formal arrangements or submit a request for approval to transmit the confidential supervisory information to the Board's Legal Division under the current procedures established by Part 261 of the Board's Rules Regarding Availability of Information.

Gramm-Leach-Bliley Act

With the passage of the Gramm-Leach-Bliley Act, staff will be reviewing the Board's rules regarding the availability of information and its delegation rules (Parts 261 and 265) to ensure that they are consistent with the new law. It is expected that any new rules will include the authority of the Director of the Division of Banking Supervision and Regulation relating to foreign supervisory authorities that is described above and, in a broader sense, reflect the Board's umbrella supervision responsibilities and the information sharing obligations attendant to those responsibilities.

In the event that you have any questions concerning this matter, please contact Mr. Ryback at (202) 452-2722 or Mr. Hoffman at (202) 452-5271. Reserve Banks should advise

Herbert A. Biern, Senior Associate Director, at (202) 452-2620, regarding the senior supervision official designated to be responsible for information sharing-related issues with foreign banking authorities.

Richard Spillenkothen
Director

cc: General Counsel at each
Federal Reserve Bank

Notes:

1. This section provides the Board's General Counsel with the following authority: *"To make determinations required for disclosure of information to a foreign bank regulatory or supervisory authority, and to obtain, to the extent necessary, the agreement of such authority to maintain the confidentiality of such information to the extent possible under applicable law."*
2. The staffs of the Division of Banking Supervision and Regulation and the Legal Division have on a few occasions established certain categories of confidential supervisory information that could be routinely shared with foreign regulators and supervisors without prior consultation with the Board's Legal Division. This was done, for example, in connection with the Federal Reserve's Year 2000 compliance program, allowing Reserve Banks to send copies of Year 2000 deficiency letters to foreign bank supervisors.
3. The Director of the Division of Banking Supervision and Regulation is also required to submit periodic reports on disclosures to foreign banking authorities to the Legal Division upon request.
4. At this time, the Federal Reserve has executed memorandums of understanding or statements of cooperation with bank supervisory authorities in the United Kingdom, Chile, Argentina, Canada, Germany, and Hong Kong.