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By Electronic Mail

Board of Governors of the Federal Reserve System
2001 C Street, N.W.
Mailstop M-4775
Washington, D.C. 20551

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Re: Proposed Revisions to Form FR Y-7 (OMB No. 7100-0297)

The Institute of International Bankers appreciates this opportunity to comment on the proposal (the "Proposal") of the Board of Governors of the Federal Reserve System (the "Board") to revise the Annual Report of Foreign Banking Organizations ("FBOs") on Form FR Y-7 (the "FR Y-7"). The Institute's members are internationally headquartered banking and financial institutions that are subject to these reporting requirements because they conduct banking operations in the United States through branches, agencies, commercial lending company subsidiaries, Edge corporations and/or U.S. bank subsidiaries.

In its Proposal, the Board proposes to eliminate its long-standing practice permitting FBOs to elect whether to file a single FR Y-7 at the level of the top-tier FBO in a tiered FBO structure or instead to submit separate FR Y-7s for tiered (i.e., parent-subsidiary) FBOs. The Board explained this change as intended to "reduce confusion as to which FBO would be filing in a multi-tiered organization and ensure that information reported is appropriately captured under the ultimate parent FBO."[1]

The Institute continues to support efforts by the Board to reevaluate reporting requirements generally to consider clarifications and improvements to the applicable forms. Especially in light of language differences that affect many international banks' efforts to interpret reporting forms, the Institute appreciates efforts, such as those reflected in portions of the Proposal, to achieve greater clarity in the forms' instructions.

[1] 87 Fed. Reg. 27639, 27640 (May 9, 2022).

However, the Institute urges the Board not to eliminate the flexibility in the FR Y-7 for tiered FBOs to file separately. In our view, the administrative record supporting the proposed change is deficient, and the Proposal does not take into account the significant challenges that the proposed change would create for certain FBOs.

First, in our view the proposed change is not necessary to achieve its stated purpose. In the experience of our members, there has not been significant confusion as to which FBO would be filing in a multi-tiered organization. And the second stated purpose – ensuring that information is captured under the ultimate parent FBO – disregards the purpose of the long-standing flexibility that the Board has provided in the FR Y-7. This second stated purpose is not explained further, and it is not clear to us how the separate filing of FR Y-7s by tiered FBOs may inappropriately capture the information that the Board requires to monitor compliance with the Bank Holding Company Act, as amended (the "BHC Act") and to fulfill the other purposes of the FR Y-7. As discussed below, separate FR Y-7 reporting by certain tiered FBOs arguably provides more reliable data to the Board. The fact that the data is provided separately, and not only by the top-tier FBO, does not diminish its accuracy or reliability. On the contrary, it may in some cases improve the accuracy or reliability of the data. Consequently, we view the proposed change as inadequately explained or supported in the Federal Register notice accompanying the Proposal.

Second, we note that the Board previously proposed this same change in 2005, and ultimately decided not to make the change after commenters, including the Institute, raised serious legal and practical problems with the change.[2] In its Notice, the Board summarized the problems at a high level:

> Because the top-tier FBO may not have control of the minority-owned bank under applicable foreign law, the top-tier FBO might not be able to provide the information required by the FR Y–7 on a consolidated basis. One commenter [i.e., the Institute] specifically noted that the top-tier FBO often does not have any practical ability to control or require the minority interest investment to disclose what is considered confidential, proprietary information.[3]

The Board withdrew the proposed change in light of these concerns.[4] In the current Proposal, the Board has not taken into account this prior policy judgment or explained what has changed since 2005 that would make the concerns that led it to abandon the change at that time no longer relevant.

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[2] *See* 70 Fed. Reg. 40029, 40030 (July 12, 2005).

[3] 70 Fed. Reg. at 40030.

[4] 70 Fed. Reg. at 40030.

Generally, the Institute's members have found the Board's historical practice allowing flexibility on separate FR Y-7 filing for tiered FBOs important in a number of contexts. For example, when one FBO acquires another FBO, especially if the acquisition is consummated near the end of the top-tier FBO's fiscal year, the FBOs may require flexibility to file separate FR Y-7s for at least the first fiscal year-end after the acquisition. Integration of internal reporting mechanisms designed to comply with FR Y-7 reporting requirements takes time and management resources, and it is often not possible to effect the required changes in time to file a single FR Y-7 soon after consummating such an acquisition. This is especially true in a cross-border acquisition, when the international banks in question are headquartered in different jurisdictions (e.g., a European jurisdiction and an Asian jurisdiction).

Even more importantly, the flexibility to file separate FR Y-7s for tiered FBOs has been critical in the context of international banks with minority investments in other international banks that have U.S. banking operations (and thus are FBOs subject to FR Y-7 reporting requirements). In that context, while the relationship between the investing international bank and the investee international bank may amount to "control" for purposes of the FR Y-7, the investing international bank often does not have any practical ability to control the investee or to compel the investee to disclose what is, for many banks, confidential proprietary information. For example, an international bank that acquires a 30 percent voting interest in another international bank is unlikely to be able to require the investee bank to disclose information necessary to complete a single, consolidated FR Y-7 at the level of the investing international bank.

Minority investments by banking organizations in other banking organizations are more common outside the United States than for U.S. bank holding companies. Given the practical realities associated with such investments, and the limitations on the investing bank's access to information at, or influence over, the investee banking organization, international banks that hold such investments would be compelled to either (1) submit an FR Y-7 based on the information available to them (which often will not be complete in relation to the lower-tier FBO), or (2) divest what may be a financially significant investment that was originally made for reasons entirely unrelated to U.S. business considerations and may have had the support of one or more relevant home country supervisors. The Institute would respectfully submit that the former option would unnecessarily detract from the quality of information obtained through the FR Y-7. It would replace complete information submitted by the lower-tier FBO under the current FR Y-7 reporting regime with potentially incomplete information submitted by the top-tier FBO under the proposed FR Y-7 reporting regime. As to the second option, the Institute believes that the Board's reporting requirements should not drive fundamental market practices in European and other non-U.S. banking markets. If the FR Y-7 reporting requirements were effectively to prohibit international banks from making minority investments in other international banks, we believe that such extraterritorial effects would be grossly unfair to international banks and would need to be supported by much more compelling policy considerations than simply reducing confusion as to which FBO in a tiered FBO organization would be required to file.

The Board's proposal to eliminate existing flexibility to submit separate FR Y-7s for tiered FBOs also raises a number of other logistical and interpretive questions. For example, the instructions to the FR Y-7 do not address how an international bank should submit an FR Y-7 when there are multiple top-tier FBOs (i.e., multiple entities that directly "control" (for FR Y-7 purposes) the international bank). The Institute believes these and other questions would need to be considered in greater detail and with greater care before the existing FR Y-7 reporting approach for tiered FBOs were revised.

The fact that there currently may be fewer tiered FBOs in structures in which the parent owns a minority (but controlling for BHC Act purposes) investment in the lower-tier FBO, or tiered FBOs with significant operational independence, than in 2005, should not necessarily dictate the Board's determination of whether to eliminate its long-standing approach to tiered FBOs in the FR Y-7. The prevalence of these structures can fluctuate over time based on international legal, market and other trends, and it is not possible to predict with certainty whether such structures will proliferate in the future. Rather than create the friction associated with needing to later restore the flexibility that currently exists in the FR Y-7 after future trends evolve, the Board should retain its current approach. This is especially warranted by the fact that the Board has not adequately justified its departure from that long-standing approach, or explained what would amount to a reversal of the judgment the Board made in 2005.

The Board Should Harmonize the Perimeter of Reportable Controlling Investments across the FR Y-7 and FR Y-10

Although not directly raised by changes reflected in the Proposal, the Institute respectfully requests that the Board change the FR Y-7 Report Item 2 to align the perimeter of reportable non-bank companies with the perimeter of non-bank companies that are reportable as subsidiaries on the FR Y-10.

The FR Y-7 currently requires FBOs to report certain entities that are not reportable on the FR Y-10—principally, certain nonbanking companies in which the reporting entity controls between five and 25 percent of outstanding shares of any class of voting securities. While the Institute understands that this wider perimeter has served to monitor smaller investments in companies for purposes of evaluating compliance with the BHC Act, the Board inherently makes judgments in designing the FR Y-7 and the FR Y-10 regarding how much information to require as a reporting matter and how much to leave to FBOs' own monitoring (subject to examination by the Federal Reserve Banks in the ordinary course of examinations of Federal Reserve reporting). In the experience of our members, the Federal Reserve Banks have rarely raised questions or concerns about investments in the range that is reportable on the FR Y-7 organization chart but do not involve investments in subsidiaries that are reportable on the FR Y-10. In addition, the information required for such entities on the FR Y-7 organization chart is limited, and it is not clear how useful this limited data has been for the Board and the Federal Reserve Banks. It would thus appear that the Board could meaningfully reduce the reporting burdens associated with the FR Y-7 without materially impairing the usefulness of information that is provided to the Board by aligning the perimeter of reportable nonbank companies between the FR Y-7 organization chart and the FR Y-10.

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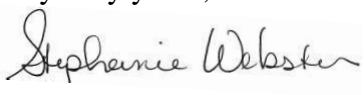
Please contact the Institute if we can provide additional information or assistance.

Very truly yours,



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