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June 3, 2016

regs.comments@federalreserve.gov

Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Proposed Revisions To Federal Reserve Board Form FR Y-7Q
(OMB Control Number 7100-0125)

Dear Mr. Frierson:

The Institute of International Bankers (“IIB”) appreciates the opportunity to comment on revisions to Form FR Y-7Q (The Capital and Assets Report for Foreign Banking Organizations) recently proposed by the Board of Governors of the Federal Reserve System (the “Board”).¹ The IIB’s membership is comprised of banks headquartered outside the United States which engage in a variety of banking and other financial activities in the United States. Each IIB member bank is required to report on Form FR Y-7Q in accordance with its instructions.

The Proposal would add a new Part 1B to FR Y-7Q, consisting of 14 items relating to reporting foreign banking organizations’ (“FBOs”) home country regulatory capital ratios. Of these 14 items, 11 would become effective September 30, 2016, and the remainder on March 31, 2018. Two of these items (Tier 1 capital and total risk-based capital) currently are reported in Part 1 Form FR Y-7Q (which would be renamed Part 1A), and the instructions would be modified to clarify that FBOs subject to the reporting requirement would be required to report these items only in Part 1B if the FBO’s home country methodologies are consistent with the Basel capital framework. The Proposal would not modify the reporting frequency or any other currently-required reporting item.

The Board proposes to determine confidentiality of the proposed items on a case-by-case basis, but solicits comment on whether confidential treatment should be granted on a blanket

¹ 81 Fed. Reg. 19179 (April 4, 2016) (the “Proposal”).



basis to information regarding FBOs' Pillar II buffers and any "other" buffers (Part 1B, items 8b and 8c, respectively).

In general, we support the Proposal as a means to implement the home country capital reporting requirements prescribed under Subparts N and O of the Board's Regulation YY for FBOs with total consolidated global assets of \$50 billion or more ("Covered FBOs").² As discussed below, our comments address three specific aspects of the Proposal:

- we respectfully, but urgently, request timely clarification and guidance regarding implementation of the home country capital adequacy certification requirements;
- with respect to confidentiality of data collected in Part 1B, we believe it would be appropriate for the Board to modify its proposed approach to align it with the practices adopted by a Covered FBO's home country supervisor, so that (i) where a home country supervisor treats an item included in Part 1B as confidential on a blanket basis, the Board likewise would extend blanket confidential treatment of that item to all Covered FBOs supervised by the home country supervisor; and (ii) where a home country supervisor treats an item included in Part 1B as confidential on a case-by-case basis, the Board would automatically treat this item as confidential for any Covered FBO whose home country supervisor has extended such treatment; and
- to avoid unnecessary conflicts of law, we respectfully request the Board to confirm that a Covered FBO would not be required to report any item included in Part 1B where applicable home country law prohibits the Covered FBO from disclosing such item to any person, except an appropriate home country supervisor, regardless of whether the other person would agree to keep such information strictly confidential.

Clarifying Implementation of the Home Country Capital Certification Requirements under Subparts N and O of Regulation YY

The proposed information collection is intended to facilitate the Board's determination of whether a Covered FBO "meets [home country] capital adequacy standards at the consolidated level that are consistent with the Basel capital framework"³ as required by Subparts N and O of Regulation YY. The relevant provisions of Regulation YY require Covered FBOs not only to provide the Board reports of their compliance with home country standards,⁴ but also to certify

² See 12 CFR 252.143(b) (Covered FBOs with combined U.S. assets of less than \$50 billion) and 12 CFR 252.154(b) (Covered FBOs with combined U.S. assets of \$50 billion or more).

³ 81. Fed. Reg. at 19180.

⁴ See supra, footnote 2.



to the Board that it meets such capital standards.⁵ Regulation YY provides that the required reports will be made concurrently with filing the FR Y-7Q, but it does not address implementation of the required certification (*e.g.*, how and under whose signature the certification will be made, with what frequency and as of what date(s)).

The Proposal describes a practical means to implement the Regulation YY reporting requirement, but it does not say anything about the certification requirement. With the July 1 effective date rapidly approaching, the continuing uncertainty surrounding implementation of the certification requirement is a matter of mounting concern for Covered FBOs, which remain at a loss in preparing for compliance with this provision of Regulation YY.⁶ We accordingly respectfully, but urgently, request timely clarification and guidance on this matter, bearing in mind that there may be a need to extend the effective date of this requirement if the process put in place for the certification is more involved than would appear to be the case from the face of the regulation.

Confidential Treatment of Items Included in Part 1B

With respect to disclosure of Pillar II and “other” home country capital buffers, the Proposal acknowledges that “[w]hile some home country supervisors do not accord confidential status to that information or do so only on a case-by-case basis, others treat this information as confidential on a blanket basis under the belief that a more selective confidential treatment could signal an FBO’s financial strength or weakness and could thereby cause substantial competitive harm.”⁷ We agree that these are significant and valid considerations, and we believe the determinations made by home country supervisors on these highly sensitive matters should be respected – just as we believe other home country authorities should respect the Board’s determinations on these matters. The same consideration applies to any other item included in Part 1B for which a home country supervisor accords confidentiality on a blanket basis.

It is our understanding that the requirements prescribed in Regulation YY with respect to supervision and regulation of Covered FBOs on a consolidated basis by their home country authorities, including the home country capital adequacy requirements covered by the Proposal, are not intended to disrupt or interfere with home country authorities’ exercise of these prerogatives. We strongly support this approach. Extending it to the question of confidential

⁵ See 12 CFR 252.143(a) (Covered FBOs with combined U.S. assets of less than \$50 billion) and 12 CFR 252.154(a) (Covered FBOs with combined U.S. assets of \$50 billion or more).

⁶ See also our letter, dated February 1, 2016, on the Board’s proposed revisions to Form FR Y-7 (concerns regarding implementation of the home country capital adequacy certification requirement under Regulation YY are discussed at pages 6-7).

⁷ Quoting page 5 of the “Supporting Statement” accompanying the Proposal.



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treatment of the items included in Part 1B, we believe it would be appropriate to modify the proposed “case-by-case” approach as follows:

- where a home country supervisor treats an item included in Part 1B as confidential on a blanket basis, the Board likewise would extend blanket confidential treatment of that item to all Covered FBOs supervised by the home country authority; and
- where a home country supervisor treats an item included in Part 1B as confidential on a case-by-case basis, the Board would automatically treat this item as confidential for any Covered FBO whose home country supervisor has extended such treatment.

The Proposal does not address the situation in which a Covered FBO is prohibited under applicable home country law from disclosing an item included in Part 1B to any person other than its home country supervisor, regardless of whether the other person would agree to keep such information strictly confidential (such item a “Prohibited Item”). Consistent with the foregoing considerations, and to avoid unnecessary conflicts of law, we respectfully request that the Board confirm that in these circumstances a Covered FBO would not be required to include a Prohibited Item in its FR Y-7Q submissions. A Covered FBO should not be placed in a situation of having to choose between violating a home country legal prohibition and a U.S. regulatory reporting requirement; such situations are better resolved through direct discussions between the Board and the relevant home country supervisor, whether pursuant to an information-sharing memorandum of understanding or some other mutually satisfactory bilateral process or protocol. More generally, to minimize the occurrence of home-host legal conflicts in connection with regulatory reporting requirements, we encourage bank supervisors to utilize home-host direct, bilateral exchanges of supervisory information to the greatest extent possible.

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In addition to the concerns expressed in this letter regarding the uncertainty surrounding the home country capital adequacy certification requirement under Regulation YY, we note that FBOs have equally significant concerns with respect to the implementation of other home country-focused requirements under Regulation YY. We have addressed these concerns in our comment letter on the Board’s proposed revisions to Form FR Y-7, a copy of which we attach with this letter for your reference. The need for clarification and guidance on all of these implementation questions is an increasingly urgent matter as the July 1 Regulation YY effective date draws ever nearer.

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We appreciate the Board's consideration of our comments and would welcome the opportunity to discuss them further. Please contact the undersigned if we can be of further assistance.

Sincerely,

Richard Coffman
General Counsel

Attachment

IIB FR Y-7 Comment Letter (Feb. 1, 2016)

cc: Jack Jennings
Kwayne Jennings
Board of Governors of the Federal Reserve System
Division of Banking Supervision and Regulation

Kevin Stiroh
Patricia Meadow
Linda Avery
Federal Reserve Bank of New York