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By Electronic Mail

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Re: Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996: OCC Docket ID OCC–2023–0016; Federal Reserve Docket No. OP-1828; FDIC RIN 3064-ZA39

Ladies and Gentlemen:

The Institute of International Bankers ("IIB") appreciates the opportunity to provide comments on the following three categories of regulations currently under periodic review as required by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA"): Applications and Reporting; Powers and Activities; and International Operations (the "Initial Categories").[1]

[1] Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve ("Federal Reserve"), and Federal Deposit Insurance Corporation ("FDIC"), *Regulatory Publication and Review Under the*

The IIB represents internationally headquartered financial institutions from over 35 countries around the world doing business in the United States. The IIB's members consist principally of international banks that operate branches, agencies, bank subsidiaries and broker-dealer subsidiaries in the United States ("International Banks"). Our members are important to the competitive landscape of the U.S. financial system. In addition, our members inject billions of dollars each year into state and local economies across the country through direct employment, capital expenditures and other investments. IIB members hold more than $4 trillion in assets across the United States, employing approximately 200,000 people in the United States. IIB members represent more than half of U.S. primary dealers (55%) and made $679 billion in commercial and industrial loans in the United States in 2023 alone.

The IIB supports the Agencies' efforts to review their regulations and reduce unnecessary burdens imposed on insured depository institutions and their affiliates, including burdens imposed on IIB members. Consistent with the goals of EGRPRA, we believe there are numerous opportunities for the Agencies to eliminate overlapping regulatory requirements or modify regulations in the Initial Categories that impose requirements that are no longer consistent with the way business is conducted. This includes, for example, simplifying reporting requirements, clarifying or rationalizing the powers available to International Banks, and making other improvements to the Agencies' regulation and supervision of IIB members. The IIB also looks forward to engaging with each respective Agency as part of any additional notice and comment process associated with revising the applicable regulations or reporting forms referenced in the Initial Categories.

I. Applications and Reporting

The IIB continues to support the Agencies' efforts to improve their reporting forms and to reduce unnecessary and undue reporting. In addition to generally reiterating its prior comments regarding regulatory reporting on the FR Y-7[2] and FR Y-7Q,[3] the IIB offers the following specific comments.

A. The Federal Reserve Should Eliminate the Requirement to Report Ownership of Nonbanking Companies in Which a Reporting Entity Controls More than Five Percent, but Less than 25 Percent, of the Outstanding Shares of Any Class of Voting Securities

The Federal Reserve requires foreign banking organizations ("FBOs") to file numerous reporting forms. Among these is the FR Y-7 (Annual Report of FBOs), which currently requires an FBO to report certain entities that are not reportable on the FR Y-10. This includes reporting interests held by an FBO in certain nonbanking companies operating in the United States in which the FBO controls more than five percent, but less than 25 percent, of the outstanding

Economic Growth and Regulatory Paperwork Reduction Act of 1996, 89 Fed. Reg. 8084 (Feb. 6, 2024). Together, the OCC, the Federal Reserve, and the FDIC are the "Agencies."

[2] *See* IIB, Comment Letter on Proposed Revisions to FR Y-7 (July 8, 2022), https://cdn.ymaws.com/www.iib.org/resource/resmgr/2022_comms/2022FINAL_IIB_Comment_on_FR_.pdf.

[3] *See* IIB, BPI, Joint Comment Letter on Proposed Revisions to FR Y-7Q (July 26, 2022), https://cdn.ymaws.com/www.iib.org/resource/resmgr/2022_comms/2022Final_IIB_BPI_Letter_FR_.pdf.

shares of any class of voting securities.[4] We respectfully request that the Federal Reserve remove this unnecessary and unduly burdensome reporting requirement.

While not fully articulated by the Federal Reserve, the IIB understands that this FR Y-7 reporting requirement is designed to assist in evaluating compliance with the Bank Holding Company Act of 1956 (the "BHC Act"). However, the Federal Reserve can and does evaluate compliance with these requirements during the course of its normal supervision and examination processes, so the added utility of making International Banks report these non-controlling investments appears to be quite limited. Indeed, in our members' experience, the Federal Reserve and the individual Federal Reserve Banks have rarely raised any questions or concerns about these non-controlling investments that are reportable on the FR Y-7 but not reportable on the FR Y-10. On the other hand, however, the burden on International Banks to monitor and ensure correct reporting of these investments on an individual basis imposes a meaningful reporting burden and has the potential to distract personnel from focusing on other compliance matters that, without appropriate attention, may pose greater risk to the International Bank.

As mentioned, the Federal Reserve does not require FBOs to report the acquisition of such minority-owned, non-controlled nonbanking companies on the FR Y-10 (Report of Changes in Organizational Structure), which requires much more detailed information than the FR Y-7. Presumably, the Federal Reserve determined that it does not need the same detailed information on these investments as required on the FR Y-10 because of their passive, non-controlling nature and, as the Federal Reserve noted when implementing Section 4(c)(9) originally, to avoid "undue interference with foreign banking operations in other countries that are likely to have only incidental effects in the United States."[5]

The information that the Federal Reserve requires and receives for these type of non-controlling investments on the FR Y-7 is limited, and it is not clear how useful this limited data is for the Federal Reserve and/or Federal Reserve Banks. The Federal Reserve could do away with this FR Y-7 reporting requirement without significantly reducing the information available to it because, as mentioned, the Federal Reserve may still obtain this information through the supervision and examination processes. Eliminating the requirement to report these non-controlling investments on the FR Y-7 would have the added benefit of rationalizing the reporting requirements across the FR Y-7 and FR Y-10, thereby making it easier for International Banks to track and comply with their regulatory reporting requirements. As mentioned by the IIB previously, it thus appears that the Federal Reserve could meaningfully reduce the reporting burdens associated with the FR Y-7 without materially impairing the usefulness of information that is provided, or otherwise available, to the Federal Reserve by aligning the perimeter of reportable nonbank companies between the FR Y-7 organization chart and the FR Y-10.[6]

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[4] *See* Form FR Y-7 Instructions at RI-3 ("Additional entities reportable on the FR Y-7 Organization Chart", subitem (1)).

[5] *See* Federal Reserve, *Nonbanking Activities and Interests*, 36 Fed. Reg. 11944 (June 23, 1971).

[6] *See* IIB, Comment Letter on Proposed Revisions to FR Y-7, *supra* note 2, at 3.

B. The Federal Reserve Should Eliminate the Requirement to File a Separate FR 2052a for Each Material Entity

The Federal Reserve currently requires, among other entities, an FBO with $100 billion or more in combined U.S. assets ("CUSO") to file the FR 2052a (Complex Institution Liquidity Monitoring Report) for the FBOs' CUSO and for each "material entity," defined as "each consolidated bank, branch or non-bank entity that is a material contributor to a firm's funding and liquidity operations, based on factors including size, complexity, business activities, and overall risk profile."[7] For an FBO, a material entity almost always includes, among other entities, a U.S. branch of a foreign bank. We respectfully request that the Federal Reserve modify its reporting obligations to only require an FBO to file a single FR 2052a with respect to its CUSO, and not require separate FR 2052a filings for material entities.

We understand that the Federal Reserve believes that a "single, consolidated view is not sufficient to provide meaningful insight into an institution's liquidity profile."[8] This may be true for U.S. banking organizations, whose main operations occur in the United States and have a greater potential to pose risks to the U.S. financial system. The U.S. operations of International Banks, on the other hand, are often more limited, and less complex and risky, than those of their domestic peers. Additionally, they should not warrant reporting of the same type of onerous, entity-by-entity liquidity information. Furthermore, the U.S. operations of an International Bank benefit from liquidity support from the home country parent entity or head office, thereby reducing the need for granular liquidity supervision by U.S. regulators. This is especially true in light of the fact that International Banks with $100 billion or more of CUSO assets are often subject to comprehensive liquidity supervision by home country regulators.

The fact that U.S. liquidity regulation is different—and often more stringent—than home country regulation complicates liquidity planning across the global operations of an International Bank, something that entity-level liquidity reporting requirements only exacerbate. For example, the Office of the Superintendent of Financial Institutions in Canada permits Canadian banking organizations to include bonds of individual Canadian provinces (*e.g.*, Ontario, Quebec or Manitoba) as Level 1 High Quality Liquid Assets when calculating their liquidity coverage requirements.[9] This is not the case in the United States. U.S. liquidity regulations also impose different, and often more onerous, outflow assumption rates than liquidity regulations in other countries. Because of the entity-level FR 2052a filing requirement, an International Bank must account for these differences not only at the CUSO level, but also for each individual material entity, which unnecessarily complicates data collection and liquidity planning.

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[7] Form FR 2052a at 10.

[8] Federal Reserve, "Reporting Forms: FR 2052a" (Mar. 30, 2023), https://www.federalreserve.gov/apps/reportingforms/Report/Index/FR_2052a.

[9] Office of the Superintendent of Financial Institutions, *Liquidity Adequacy Requirements (LAR) (2023) Chapter 2—Liquidity Coverage Ratio* (Jan. 31, 2022) ("Claims on all provincial and territorial governments and agents of the federal, provincial or territorial government whose debts are, by virtue of their enabling legislation, obligations of the parent government, will receive the same risk weight as the Government of Canada . . . ."), https://www.osfi-bsif.gc.ca/en/guidance/guidance-library/liquidity-adequacy-requirements-lar-2023-chapter-2-liquidity-coverage-ratio.

Eliminating entity-level liquidity reporting for FBOs would also serve the crucial—and statutorily mandated—principles of national treatment and equality of competitive opportunity,[10] particularly the requirement that international banks be treated no less favorably than similarly situated U.S. banking organizations.[11] Currently, all FBOs with a CUSO of $100 billion or more in total assets must file the FR 2052a for each material entity. Category IV domestic banking organizations, however, which have between $100 billion and $250 billion in total assets, are not required to file entity-level liquidity information, and instead must only provide consolidated and parent-only information.[12] Thus, FBOs with a CUSO between $100 billion and $250 billion are subject to a liquidity reporting requirement that does not exist for U.S. banking organizations of the same size—a clear violation of the principles of national treatment and equality of competitive opportunity, and a violation that the Federal Reserve should rectify.

C. Technical Changes to the FR Y-14 Group of Forms

Based on the experience of its members, the IIB offers the following suggested technical improvements to the FR Y-14 group of forms (Capital Assessments and Stress Testing). Each of these suggestions is aimed at reducing redundancies in reporting, lessening unnecessary or unduly burdensome reporting requirements, and increasing clarity.

1. FR Y-14A

Banking organizations, including International Banks, are currently required to submit two versions of Schedule C (Regulatory Capital Instruments): a stress capital buffer or “SCB” version that excludes the effects of material business plan changes, and a comprehensive capital analysis and review or “CCAR” version that includes these effects. To reduce duplicative and overlapping reporting, firms that do not have reportable material business plan changes for capital planning purposes should not be required to separately submit a CCAR version of Schedule C.

When a banking organization makes certain capital distributions previously approved pursuant to 12 C.F.R. § 225.8(j)(3) or in excess of its planned distributions under its original FR Y-14A submission, the banking organization must submit an “incremental” Schedule C within 15 days of making that capital distribution.[13] Such a short period between the date of the capital distribution and when it must be reported to the Federal Reserve (which already would be aware of and/or has approved the distribution) is quite burdensome, and does not come with

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[10] Dodd-Frank Act § 165(b)(2) (when applying prudential standards to any “foreign-based bank holding company,” the Federal Reserve “shall . . . take into account the extent to which the foreign financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States”).

[11] *See* 83 Fed. Reg. 61408, 61411 n.27 (Nov. 29, 2018) (“The Dodd-Frank Act requires the Board to give due regard to national treatment and equality of competitive opportunity, which generally means that [international banks] operating in the United States should be treated no less favorably than similarly situated U.S. banking organizations and should generally be subject to the same restrictions and obligations in the United States as those that apply to the domestic operations of U.S. banking organizations.”).

[12] Form FR 2052a at 10.

[13] 12 C.F.R. § 225.8(k); Form FR Y-14A Instructions at 112.

commensurate supervisory benefits, as the distribution is permissible and known to the Federal Reserve. Banking organizations should be permitted to submit such incremental Schedule Cs quarterly. Allowing these filings to be submitted quarterly instead of within 15 days of the event itself would have the added benefit of reducing the number of filings the Federal Reserve must receive and review when multiple such distributions are made in a single quarter, thereby also reducing burden on the Federal Reserve.

2. FR Y-14Q

Schedule A–Retail and Schedule G–PPNR of the FR Y-14Q contain extremely burdensome historical data provision requirements. Specifically, Schedule A requires first-time filers to submit certain retail loan data for each month since January 2007. Schedule G requires new reporters to report data going back to the first quarter of 2009—now a full 60 quarters ago—and if a reporting entity must correct an error in a prior filing, it must resubmit *all* of its filings going back to the first quarter of 2009. Data this old is unlikely to be of significant use to the Federal Reserve, yet it is difficult and unduly burdensome for banking organizations to gather and, in some cases, retain. We respectfully request that the Federal Reserve modify these requirements to only require data going back 5 years from the date of reporting.

Schedule G.2 (PPNR Net Interest Income (NII) Worksheet) and Schedule G.3 (PPNR Metrics) require reporting of certain metrics related to pre-provision net revenue. Similar data is reported on the FR Y-9C (Consolidated Financial Statements for Holding Companies) but generally at a less granular level. For example, Schedule Y-9C requires the reporting of full-time equivalent employees at Schedule HI, Memorandum item 5, but Schedule G.3.A requires the number of employees to be reported at the business-line level (Line Items 11, 27, and 41). We respectfully request that the Federal Reserve adjust Schedules G.2 and G.3 to remove redundancies with the FR Y-9C and to generally revise the line items to match the level of granularity across the forms.

Schedule G.3 contains several line items requiring entities to report industrywide fees and volumes (Line Items 15, 16, 19, 20, 22, 23, 25, and 26). Reporting entities have no more insight into these metrics than the Federal Reserve itself—they often use publicly available data to fill out these line items, which data may be the same as, or less informative, than data otherwise available to the Federal Reserve. The Federal Reserve should remove these line items to remove an unnecessary burden on International Banks and other reporting entities.

D. Other Regulatory Reporting Requests

Submission dates on certain reporting forms do not appear to accommodate weekends and holidays. For example, the Consolidated Reports of Condition and Income on forms FFIEC 031, FFIEC 041, and FFIEC 051, respectively (the "Call Reports"), currently must be submitted no later than 30 days after the report date, with no clear accommodation provided if the submission date falls on a weekend or holiday. To illustrate, if a report date is May 31, 2024, the reporting entity must submit its Call Report by June 30, 2024—even though June 30, 2024 is a Sunday. This is inconsistent with how the submission date of the preponderance of other of the Agencies' regulatory reporting forms is calculated, because those forms generally provide that if the submission deadline falls on a weekend or holiday, the report may be submitted on the first

following business day.[14] We respectfully request the Agencies update the submission dates for all reports, including the Call Reports, to accommodate submission dates that fall on a weekend or holiday and allow submission to occur on the first following business day.

Currently, some of the Agencies' reporting forms require a reporter to submit the form by the 30th calendar day after the report "as-of" date (with accommodations for weekends and holidays).[15] This means submission dates for a particular form may change from month to month or quarter to quarter, and reporting entities must undertake the additional step of individually tracking not only the relevant "as of" date (*i.e.*, the date as of which the information must be determined), but also the relevant submission date (*i.e.*, the date on which the form must be submitted to the relevant Agency(ies)). For example, an FR Y-14M for January 2024 had an "as of" date of January 31, 2024 and a submission date of March 1, 2024, and an FR Y-14M for March 2024 had an "as of" date of March 29, 2024 and a submission date of April 29, 2024. This reporting framework can lead to confusion and imposes an undue burden on reporters and their subsidiaries to track and calculate both the "as of" date—generally the last business day of the period for which information is to be reported—as well as what date is 30 calendar days from that "as of" date. It would be much simpler if these regulatory reports would only require submission on the last calendar day of the month following the period for which information is to be reported. This would eliminate the need to track two floating dates and instead only require a reporter to know what the relevant "as of" date for a report is and then file the report at the end of the calendar month following that "as of" date. We therefore respectfully request that the Federal Reserve simplify the submission dates for the FR Y-14M and other forms with similar "as of" and 30-calendar-day submission dates by requiring a reporter to submit the form on the last calendar day of the month following the reporting "as-of" date (or, if that day is a weekend or holiday, the first following business day, consistent with the preponderance of other Agency regulatory reporting forms).

Furthermore, the Agencies, by requiring or requesting on several reporting forms that reporting entities provide a fax number, impose a requirement that no longer is consistent with the way business is conducted.[16] Use of fax numbers is quite outdated and inconsistent with how International Banks and other regulated entities typically communicate with the Agencies and each other. We respectfully request fax numbers be removed from all reporting forms.

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[14] *See, e.g.*, Form FFIEC 002 Instructions at GEN-2 ("If the submission deadline falls on a weekend or holiday, the report must be received by 5:00 P.M. on the first business day after the Saturday, Sunday, or holiday"); Form FR Y-9C Instructions at GEN-3 ("If the submission deadline falls on a weekend or holiday, the report must be received on the first business day after the Saturday, Sunday, or holiday"); Form FR Y-14Q Instructions at 8 ("If the submission date falls on a weekend or holiday, the data must be received on the first business day after the weekend or holiday").

[15] *See, e.g.*, Form FR Y-14M Instructions at 4-5 (requiring submission by the 30th calendar day after the last business day of the preceding calendar month, with an accommodation for weekends and holidays); Form FR Y-8 Instructions at GEN-2 (requiring submission by the 30th calendar day after the last day of each quarter with an accommodation for weekends and holidays).

[16] *See, e.g.*, Form FR Y-7 at 1 and Form FR Y-10 at 1 (both requiring a fax number for the contact person for the report); *see also* Form FFIEC 002 at 2 (requesting a fax number for the chief financial officer or equivalent signing the report).

II. International Operations

A. The Federal Reserve Should Modernize the QFBO Test Under Regulation K

The qualifying foreign banking organization ("QFBO") test is of particular importance to the IIB, as many members rely on the authorities available to QFBOs under Regulation K to conduct activities and make investments both inside and outside the United States. While the vast majority of the IIB's members are QFBOs, the test itself is outdated and unnecessarily challenging to conduct. The IIB believes that the QFBO test should be modernized without significantly changing which organizations would qualify, simultaneously achieving the purpose that Congress and the Federal Reserve sought to achieve through enacting Section 4(c)(9) of the BHC Act while preserving competitive equality and reducing regulatory burdens.

The QFBO test requires international banks to determine whether assets, revenues, and net income derive from a "banking business." The concept of "banking business" under the QFBO test, however, is extremely outdated. As an initial matter, "banking business" is defined by reference to a list of activities in 12 C.F.R. § 211.10(a),[17] which is a list of activities "usual in connection with the transaction of banking" that the Federal Reserve deems permissible to U.S. banking organizations abroad. This list was last updated, however, in 2001, over 20 years ago. There are many activities that clearly constitute the modern business of banking but are not included in this list because the Federal Reserve has not yet determined that those activities are permitted to U.S. banking organizations abroad.[18] The banking business test thus inappropriately applies a list of activities intended to limit the activities in which a *U.S. banking organization* may engage overseas to what an *international bank* may count as a banking activity for purposes of proving it is not a commercial or industrial company. This makes the QFBO test needlessly complicated by forcing an International Bank to analyze its worldwide business in accordance with an outdated list of activities[19] that the U.S. bank regulatory framework rarely applies elsewhere. We respectfully request that the Federal Reserve update the QFBO test to more accurately encompass the banking activities of a modern banking organization. We look forward

[17] 12 C.F.R. § 211.23(b)(iii)(2).

[18] These activities include, for example, the activity of acting as a finder, which is permissible for a national bank (and, whether through "wild card" provisions or other authority under applicable state law, for most state banks) but is not included in the permissible activities listed in 12 C.F.R. § 211.10(a). *See* 12 U.S.C. § 7.1002 (permitting a national bank to act as a finder).

[19] While this list was last updated in 2001, and it was considered relatively narrow even at that time, the business of banking has evolved considerably since then. *See* Federal Reserve, *International Banking Operations; Rules Regarding Delegation of Authority*, 66 Fed. Reg. 54346 (Oct. 26, 2001). The Agencies have often acknowledged that the business of banking changes over time. *See, e.g.*, Michael J. Hsu, Acting Comptroller, OCC, *Modernizing the Financial Regulatory Perimeter* (Nov. 16, 2021) (discussing the "growth and expansion of fintechs and cryptocurrencies" and exploring how "bank regulators and the bank regulatory perimeter [should] adapt"); Jerome H. Powell, Governor, Federal Reserve, *Financial Innovation, A World in Transition* (Oct. 18, 2017) ("As with so many sectors of the economy, technology is transforming the retail banking sector. . . The banking industry is adjusting to this world, and facing significant challenges to traditional banking business models"); Jelena McWilliams, Chair, FDIC, *Fintech: A Bridge to Economic Inclusion* (June 29, 2021) (discussing the importance of fostering financial innovations).

to engaging with the Federal Reserve as part of any efforts to update this definition and the QFBO test through amendments to Regulation K.

Second, the QFBO test only allows assets, revenues, and net income to count as banking business if they are conducted within the FBO's "banking chain"; in other words, if conducted by the foreign bank itself or its subsidiary.[20] However, the financial sector has changed dramatically since 1980, when the Federal Reserve first applied the banking chain concept in the QFBO test.[21] Consistent with adopting a holding company structure, banking and similar financial activity is now often conducted within other legal entities in the overall organization, even if such activity is permissible to the bank itself. For example, it is common for an International Bank with a holding company structure to create a separate entity that is an affiliate, but not necessarily a subsidiary, of the bank to conduct investment advisory activity. However, because of the banking chain requirement currently imposed under Regulation K, no assets, revenues, or net income of that entity would count as banking-related under the QFBO test, even though the activity is clearly part of a banking business. Regulation K should recognize that the business of banking has evolved greatly in the past 40 years and often takes place outside the bank itself. Therefore, we respectfully request that the Federal Reserve remove the outdated and unduly burdensome banking chain requirement, and instead permit banking business conducted anywhere in the foreign banking organization to count toward the QFBO test.

B. The Federal Reserve Should Modernize the Scope of Activities Considered "Incidental" to the Foreign or International Business of QFBOs Under Regulation K

Under various Regulation K authorities, a QFBO and its subsidiaries are permitted to engage in activities in the United States that are "incidental" to their activities outside the United States.[22] Historically, the Federal Reserve has determined the scope of these "incidental activities" by reference to the activities in the United States that are permissible to an Edge corporation.[23] These activities of Edge corporations, however, are mostly of a core banking nature, including certain deposit taking, borrowing, and credit activities.

It is unnecessary and unduly burdensome to limit the scope of activities that are considered incidental to a QFBOs' non-U.S. activities to those activities in the United States permissible for an Edge corporation. For instance, under many home country legal regimes, International Banks and their subsidiaries are permitted to engage in commercial activities. Congress recognized this principle by enacting Sections 2(h)(2) and 4(c)(9) of the BHC Act,

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[20] 12 C.F.R. § 211.23(b)(iii)(2).

[21] *See* 45 Fed. Reg. 81540 (Dec. 11, 1980) (adopting 12 C.F.R. § 211.23).

[22] *See* 12 C.F.R. §§ 211.23(f)(2), 211.23(f)(3).

[23] 12 C.F.R. § 211.6; 66 Fed. Reg. at 54369 ("The Board's longstanding interpretation, for purposes of both Subparts A and B of Regulation K, has been that such incidental activities in the United States are limited to those activities that the Board has determined are permissible for Edge corporations to conduct in the United States.").

which "are intended to limit the extraterritorial effect of the [BHC Act] on foreign banks".[24] Yet, by limiting the scope of a QFBOs' incidental activities to merely those banking-related activities permitted to Edge corporations, the Federal Reserve has unnecessarily and inappropriately limited the ability of International Banks to conduct their otherwise permissible activities in the United States.

We respectfully request that the Federal Reserve modernize and update the scope of activities considered as "incidental" to the international or foreign business of a QFBO by applying a quantitative, rather than a qualitative, standard. Such a standard would provide International Banks with important flexibility to conduct their operations as they see fit in a convenient and useful manner, and better accord with the natural reading of the term "incidental."[25] Specifically, as an "incidental" activity, a QFBO or other non-U.S. company should be permitted to engage, directly or indirectly, in an activity in the United States that does not account for more than 10% of the total assets or revenues of the QFBO or company. Activities exceeding this 10% threshold would not be considered "incidental" and would need to comply with another available authority, *e.g.*, the authorities under 12 C.F.R. § 211.23(f)(5). Applying this quantitative standard would also be more consistent with how the Federal Reserve treats the ability of U.S. banking organizations to make investments abroad: specifically, Sections 211.8(c)(1) and (2) of Regulation K permit a U.S. banking organization to invest in a non-U.S. company where up to 5% of the consolidated assets or consolidated revenues of the company are from impermissible activities for subsidiaries, or up to 10% of the consolidated assets or consolidated revenues of the company are from impermissible activities for joint ventures.[26] Therefore, the Federal Reserve should apply this same type of quantitative standard to the incidental activities and investments of QBFOs, consistent with the principles of national treatment and equality of competitive treatment.

C. The Federal Reserve Should Discontinue Use of SIC Codes in Regulation K

Regulation K currently defines the limits of a QFBO's authority to invest in certain subsidiaries operating in the United States ("Section 2(h)(2) Companies") at least in part by reference to the Standardized Industrial Classification ("SIC") codes.[27] While the IIB understands the historical reason for using SIC codes for this purpose, as well as the Congressional goal of determining the comparability of U.S. to non-U.S. activities and only allowing a Section 2(h)(2) Company to engage in the same general line of business or in a

[24] *See* Federal Reserve, *International Banking Operations; Rules Regarding Delegation of Authority*, 62 Fed. Reg. 68424, 68437-48 (Dec. 31, 1997).

[25] For instance, the term "incidental" as an adjective is defined to mean "accompanying but not a major part of something" or "less important than the thing something is connected with or part of." *See* Encyclopedia.com (May 21, 2018), https://www.encyclopedia.com/social-sciences-and-law/law/law/incidental; Cambridge English Dictionary (2024), https://dictionary.cambridge.org/us/dictionary/english/incidental. Both of these definitions therefore look to whether or not a particular object, such as an activity, is a lesser but related part of the activity, not whether the activity or object fits within a specific type of activity.

[26] 12 C.F.R. §§ 211.8(c)(1), (2).

[27] 12 C.F.R. § 211.23(f)(5)(iii).

business related to the business of the non-U.S. company,[28] use of SIC codes, over 40 years after the adoption of Section 2(h)(2) of the BHC Act, is no longer appropriate under Regulation K.

SIC codes have not been updated since 1987 and do not comprehensively reflect how modern business activities are categorized. Our members often find it challenging to match activities to a SIC code when conducting a Regulation K authority review. For example, numerous technology-related activities do not have a SIC code because those activities did not exist in 1987. In addition, the general lack of familiarity with these outdated classifications, as well as the inherent blurring between lines in some activity areas, often can lead to confusion and delay when International Banks invest in or seek to report their interests in Section 2(h)(2) Companies. This confusion is exacerbated where the International Bank may have control of a Section 2(h)(2) Company for purposes of the BHC Act but still lacks effective control or any practical ability to cause the non-U.S. company or its subsidiary (which may itself only be indirectly controlled for purposes of the BHC Act and through one or more intermediate entities) to provide information, or even undertake additional analysis to confirm, which SIC codes are appropriate for that company's U.S. operations.

We therefore respectfully request that the Federal Reserve discontinue the use of SIC codes altogether for purposes of determining permissible activities of Section 2(h)(2) companies, and instead adopt the North American Industry Classification System ("NAICS") codes for this purpose. The NAICS codes more accurately reflect modern commercial activities as compared to SIC codes and are periodically updated, making them preferable to the outdated and static SIC codes. Changing to the NAICS codes would not only better reflect changes in how business is conducted, but also reduce unnecessary burden because it would better align information required under Regulation K with that information required to be reported on the FR Y-7.[29]

D. The Federal Reserve Should Expand the Scope of Activities Permissible for a Representative Office

International Banks often rely on their representative offices as an integral part of originating and conducting business in the United States. These offices help provide services to customers and support the operations of the parent International Bank.[30] However, the activity limits placed on these offices[31] are unduly restrictive and would benefit from liberalization. We respectfully request that a representative office be permitted to engage in any banking activity otherwise permissible to an International Bank, other than taking customer deposits, providing funding to non-affiliates, or cashing checks. This change will be more consistent with the way

[28] *See*, *e.g.*, S. Rep. No. 1972, p. 16.

[29] FR Y-7, Report Item 2(b), at RI-4.

[30] *See* Federal Reserve, SR 19-15: Revised Examination Guidelines for Representative Offices of Foreign Banks (Dec. 12, 2019) (stating that representative offices may engage in "liaison, marketing, and research functions" as well as "loan production, administrative, and certain trading related functions").

[31] *See* 12 C.F.R. § 211.2(v) (definition of "representative office"); 12 C.F.R. § 211.24(d) (limiting the activities of a representative office).

business is conducted by non-branch offices of U.S. banks,[32] including by offering increased benefits and certainty to customers with whom these representative offices interact.

Allowing a representative office to conduct a more expansive range of customer-facing activities would benefit customers by giving them greater access to the services of the broader International Bank. It would also provide more certainty to a customer when dealing with a representative office, as there would be fewer questions as to what services the representative office may permissibly provide to the customer. This approach would still ensure that loans themselves are funded only through an agency or fully-licensed U.S. branch,[33] and that other core banking activity such as deposit taking only occurs within a U.S. branch.

This change would also allow a representative office to better support the operations of its parent International Bank by allowing the office to enter into inter-affiliate transactions such as executing intragroup loans and accepting intragroup deposits. The ability to enter into such transactions, which are part of the internal operations of an International Bank and non-customer facing, would provide important flexibility to an International Bank's treasury management and back-office processes. This would reduce administrative and other delays, benefiting customers. Importantly, the fundamental restrictions on representative offices as to core banking activity would not change as a result of this revision—as mentioned, representative offices would not be able to accept customer deposits, fund customer-facing loans, or cash checks. Those powers would remain in an agency or fully-licensed U.S. branch, as applicable.

III. Powers and Activities / Other Comments

A. The Agencies Should Not Include the Overseas Operations of International Banks When Conducting Competition Reviews

The OCC and the FDIC have recently released a proposed rule and a policy statement, respectively, regarding their proposed principles for reviewing bank mergers under the Bank Merger Act.[34] The IIB intends to submit substantive comment letters for each of these proposals, including comments regarding how these agencies should review the competition and financial stability factors for any such merger transaction and any potential size thresholds that may trigger additional supervisory scrutiny. As a general matter, however, with respect to competitive or financial stability reviews under the Bank Merger Act or other applicable statutes or regulations, the IIB urges the Agencies to respect principles of international comity and to not

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[32] *See*, *e.g.*, 12 C.F.R. § 7.1029 (confirming that a national bank may operate a deposit production office, a loan production office, and a remote service unit at the same location without such location constituting a branch); *see also* Cal. Fin. Code § 1670(c) (defining a "facility" to mean an office of an out-of-state bank in California at which the bank engages in "noncore banking business," defined to mean all activities permissible for the bank except receiving deposits, paying checks, making loans, and other activities as may be specified by order or regulation).

[33] This is consistent with the Federal Reserve's confirmation in 2001 that representative offices may make credit decisions like a loan production office, so long as "(i) the [International Bank] operates one or more branches or agencies in the United States, (ii) the loans approved by the representative office are made by a U.S. branch or agency of the bank, and (iii) the loan proceeds are not disbursed in the representative office." 66 Fed. Reg. at 54373.

[34] OCC, *Business Combinations under the Bank Merger Act*, 89 Fed. Reg. 10010 (Feb. 13, 2024) (OCC notice of proposed rulemaking); FDIC, *Request for Comment on Proposed Statement of Policy on Bank Merger Transactions* (Mar. 21, 2024), https://www fdic.gov/sites/default/files/2024-04/2024-03-21-notice-dis-b-fr.pdf.

apply competitive or financial stability factors in an extraterritorial manner. Specifically, when considering the competitive effects of a potential merger or similar transaction, as well as considering when a potential transaction may result in heightened scrutiny, the relevant assets and operations of an International Bank should be limited to its combined U.S. assets and operations. In other words, it is not appropriate to consider the activities or assets of an International Bank *outside* the United States when considering the competitive impacts of the International Bank's proposed transaction *within* the United States. To do otherwise would be inconsistent with the preponderance of precedent in how the Agencies have traditionally defined markets for purposes of analyzing competitive effects,[35] and would also discriminate against International Banks.

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[35] Traditionally, the Agencies and the Department of Justice have only analyzed the effects of competition in *U.S. markets*, not on international markets. *See* Department of Justice, *Bank Merger Competitive Review—Introduction and Overview* (1995) (stating that the Agencies look at competition in "predefined markets defined by the Federal Reserve"); Federal Reserve, *Banking Market Information* (Oct. 14, 2022) (providing information on the banking markets used to analyze competitive effects in merger proposals, all of which are domestic), https://www.federalreserve.gov/supervisionreg/afi/market_info htm. The Federal Reserve also has a long history of defining the market for competitive analyses under Section 4 of the BHC Act. *See*, *e.g.*, FRB Order No. 2012-2 (Feb. 14, 2012) (referring to the markets for various nonbanking activities such as securities brokerage and investment advisory services as "regional or national in scope" and without reference to the conduct of such activities outside the United States).

The Agencies' prior merger orders confirm the longstanding practice of focusing on competitive and financial stability effects within the United States. *See* Federal Reserve, Order No. 2023-01 (Jan. 17, 2023) (approving acquisition of BancWest Holding Inc. by BMO Financial Corp.). This order analyzed the competitive effects only in domestic banking markets in Arizona, Kansas, Minnesota, Missouri, Washington and Wisconsin. *Id.* at 8. It also analyzed the effect of the proposed acquisition on the stability of the *United States* banking or financial system, consistent with Section 3 of the BHC Act. *Id.* at 42. *See also* OCC, Corporate Decision #2021-01 (June 2021) (approving the merger of BBVA USA with and into PNC Bank, National Association). This order analyzed the proposed merger under the criteria of the Bank Merger Act, 12 U.S.C. § 1828(c), which explicitly directs the responsible agency to analyze a merger's effects on "the business of banking in any part of the United States" and on competition "in any section of the country." *See also* FDIC, *Order and Basis for Corporation Approval* (Nov. 19, 2019) (approving merger of Branch Banking and Trust Company and SunTrust Bank). This order similarly analyzed the effect of the proposed merger on "the business of banking in any part of the United States" and on "competition in any section of the country," consistent with the Bank Merger Act. *Id.* at 4. This order also considered the effect of the proposed merger on the stability of the *United States* banking or financial system, consistent with the Bank Merger Act. *Id.* at 10.

While prior orders consider the cross-border activities of the proposed combined organization, this is only with respect to the effect of such activities on *United States* financial stability; they do not consider cross-border activities in order to scrutinize competitive effects overseas. *See, e.g.*, Federal Reserve, Order No. 2023-01, at 46-47; FDIC, *Order and Basis for Corporation Approval*, at 13.

We appreciate your consideration of our comments. If we can answer any questions or provide any further information, please contact the undersigned at [redacted], or [redacted].

Very truly yours,

[redacted]

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