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Federal Deposit Insurance Corporation

Sent to: Comments@FDIC.gov via email. No paper original will follow.

29 September 2011

Re RIN 3064-AD82

Comments on the Interim Rule 12 CFR 390.267

76 Fed. Reg. 47652 (5 August 2011)

Dear Sir or Madam,

I am writing on behalf of the Institute of International Banking Law & Practice, Inc. which is a not-for-profit 501(c)(3) educational organization dedicated to the harmonization of law and practice in the field of letters of credit. This email follows our earlier telephone conversation with Mr. Ray who is also copied on this email.

The Institute has worked with US and international organizations including the US Department of State, Office of the Legal Advisor for Private International Law, the US Department of the Treasury Bureau of the Public Debt, the United Nations Commission on International Trade Law, the International Chamber of Commerce, BAFT-IFSA, an affiliate of the American Bankers' Association, and numerous international banks and companies. Most importantly, the Institute worked with the Office of the Comptroller of the Currency in developing Interpretative Ruling 7.1016, 12 CFR 7.1016 (on which the proposed interim rule is based), including both the original version and subsequent updates.

Our comment relates to Section 390.267 of the Proposed Regulation and specifically to Footnote 1 of that section. This footnote appears to be based on OCC Interpretative Ruling 7.1016 as originally adopted on 9 February 1996. The Office of Thrift Supervision conformed its regulations regarding independent undertakings to the OCC regulation in effect at that time.

However, the OCC Interpretative Ruling has been amended three times: on 4 November 1999, 17 December 2003, and 24 April 2008. At least two of these amendments updated footnote 1. Apparently, the OTS never updated its rule to conform to the changes in the OCC Interpretative Ruling.

As a result, footnote 1 in the proposed OTS rule is outmoded, obsolete, superseded, and incorrect as well as inconsistent with the OCC's own current Interpretative Ruling at 12 CFR 7.1016.

It contains incorrect contact information, lacks URLs, and refers to outdated versions of the listed international practice rules. It also fails to mention such important international rules as ISP98 which had been developed since 1996 and which are included in the current version of I.R. 7.1016 at footnote 1.

We have two sequential suggestions as to how to address this problem. For your information, we have made similar suggestions to the OCC with respect to their version of the identical rule posted in 76 Fed Reg 48950 (9 August 2011).

Suggestion 1: Simply conform the footnote in the proposed rule to that contained in the current OCC Interpretative Ruling at 12 CFR 7.1016.

The current text 12 CFR 7.1016, footnote 1, is:

1.Examples of such laws or rules of practice include: The applicable version of Article 5 of the Uniform Commercial Code (UCC) (1962, as amended 1990) or revised Article 5 of the UCC (as amended 1995) (available from West Publishing Co., 1/800/328-4880); the Uniform Customs and Practice for Documentary Credits (International Chamber of Commerce (ICC) Publication No. 600 or any applicable prior version) (available from ICC Publishing, Inc., 212/206-1150; <http://www.iccwbo.org>); the Supplements to UCP 500 & 600 for Electronic Presentation (eUCP v. 1.0 & 1.1) (Supplements to the Uniform Customs and Practices for Documentary Credits for Electronic Presentation) (available from ICC Publishing, Inc., 212/206-1150; <http://www.iccwbo.org>) International Standby Practices (ISP98) (ICC Publication No. 590) (available from the Institute of International Banking Law & Practice, 301/869-9840; <http://www.iiblp.org>); the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (adopted by the U.N. General Assembly in 1995 and signed by the U.S. in 1997) (available from the U.N. Commission on International Trade Law, 212/963-5353); and the Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits (ICC Publication No. 525) (available from ICC Publishing, Inc., 212/206-1150; <http://www.iccwbo.org>); as any of the foregoing may be amended from time to time.

We would be pleased to explain the differences between the 1996 version of footnote 1 which is reflected in proposed Section 160.120 and the above quoted (current) version of footnote 1 in 12 CFR 7.1016 but thought this explanation unnecessary since the OCC has already implemented these updates in its current interpretative ruling.

Suggestion 2: The current OCC rule including footnote 1 is itself outdated and outmoded. Some of these matters could be corrected through simple technical amendments, such as (1) changing Publication No. 525 to No. 725 to reflect the revision of the Uniform Rules on Bank-to-Bank Reimbursements; (2) inserting the URL for the UN Convention on Independent Guarantees and Standby Letters of Credit; and (3) clarifying the reference to UCC Article 5 and its source, or inserting the current name, telephone number, and URL from which ICC publications are available. For example, ICC Publishing's US office has been taken over by its US affiliate and it has a different URL and phone number, and the UN Convention has become effective. Unless you prefer to wait until both of your rules can be updated, we urge you to update the footnote by making simple technical changes instead of simply copying the current footnote with its incorrect information, thereby making the texts listed more accessible.

Accordingly, we suggest that the footnote appear as follows:

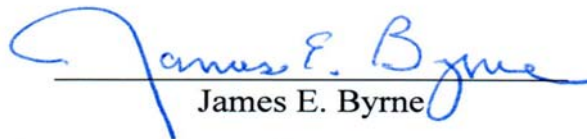
1. Examples of such laws or rules of practice include: The applicable version of Revised Uniform Commercial Code Article 5 (Letters of Credit) (adopted by the Uniform Law Commissioners in 1995 and enacted in every state subsequently) (the text of the Model Code is available from West Publishing Co. at <http://www.west.thomson.com>; 1-800-344-5008 and the version in effect in each of the several states is available in their statutory codifications in connection with

their version of the Uniform Commercial Code); the Uniform Customs and Practice for Documentary Credits (International Chamber of Commerce (ICC) Publication No. 600) (effective 1 July 2007) or any prior version (available from <http://www.iccbooksusa.com>; 1-212-703-5066); the Supplement to UCP600 for Electronic Presentation (eUCP version 1.1) (available from <http://www.iccbooksusa.com>; 1-212-703-5066); the International Standby Practices (ISP98) (ICC Publication No. 590) (available from the Institute of International Banking Law & Practice, <http://www.iiblp.org>; 1-301-869-9840) ; the United Nations Convention on Independent Guarantees and Standby Letters of Credit (adopted by the UN General Assembly in 1995, signed by the US in 1997, and entered into force on 1 January 2000) (available at <http://www.uncitral.org>); the Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits (ICC Publication No. 725) or any prior version (available from <http://www.iccbooksusa.com>; 1-212-703-5066); as any of the foregoing may be amended from time to time.

Additional Comment: It is our understanding that there will be a substantive review of these regulations in the future. The Institute has additional technical suggestions and several substantive suggestions that would address developments in letter of credit practice since the interpretative ruling was originally issued. We would appreciate an opportunity to discuss these areas with you in the future when appropriate.

Should you have any questions, do not hesitate to contact me by email or telephone.

Yours truly,



James E. Byrne