



INTERNATIONAL BANKING FOCUS

A Bimonthly Publication of the
INSTITUTE OF INTERNATIONAL BANKERS

Volume XXIX, Number 1
February 14, 2008

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LEGISLATIVE & REGULATORY

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The Institute's mission is to help resolve the many special legislative, regulatory and tax issues confronting **internationally headquartered** financial institutions that engage in banking, securities and/or insurance activities in the United States.

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INSTITUTE SUBMITS COMMENT LETTER ON SEC'S "STATE SPONSORS TERRORISM" CONCEPT RELEASE

The Institute submitted a comment letter dated January 22nd on the SEC's Concept Release on mechanisms to enhance investor access to disclosures regarding companies' business activities in or with countries designated by the U.S. Department of State as "State Sponsors of Terrorism" (SSTs). As previously reported, responding to concerns raised by the Institute and others, including House Financial Services Committee Chairman Barney Frank and Ranking Member Spencer Bachus, last summer the SEC announced its decision to remove an SST link from its web site pending consideration of alternative means to communicate to investors information regarding the extent of listed companies' activities in countries designated by the State Department as SSTs. The Concept Release represents the SEC's current thinking on the subject.

The Institute's letter on the Concept Release expresses serious concerns regarding the SEC undertaking to develop any such mechanism on the grounds that it inevitably will be perceived as a form of "blacklisting" of issuers that engage in such activities – an outcome that would only exacerbate the perception abroad that the U.S. capital markets do not accommodate foreign private issuers. In addition, the letter questions the feasibility of the SEC's proposed "data tagging" approach and urges that, should the SEC determine to pursue such an approach, it do so only after a thorough public rulemaking process. Moreover, to the extent that the SEC were to pursue data tagging on a mandatory basis, the letter urges that any such approach be applied only prospectively following a reasonable implementation period, and not applied retroactively to previously filed disclosure. The letter is available at <http://www.iib.org/associations/6316/files/20080118FinalLetterSST.pdf>.

INSTITUTE SEEKS CLARIFICATION OF INTERPRETIVE QUESTIONS REGARDING "PUSH OUT" PROVISIONS, REGULATION R

In a letter dated January 17th to the Federal Reserve and the SEC, the Institute requested clarification of two interpretive questions arising under the recently promulgated final rules implementing the securities brokerage activities "push out" provisions of the Gramm-Leach-Bliley Act (GLBA) – Regulation R – and the simultaneously promulgated amendments to the SEC's 2003 rules implementing the securities dealing activities "push out" requirements of the GLBA.

The first question concerns the application of Regulation R in the situation where there is more than one applicable exception to or exemption from the "push out" provisions. Regulation R provides that in such cases a bank may elect to rely on any applicable exception or exemption, but these provisions of the regulation are expressly limited to transactions conducted in an agency capacity; Regulation R is silent as to whether this "Elective Principle" applies as well to transactions in which the bank acts as principal (including as riskless principal). The significance of this question is highlighted in particular in the context of determining how compensation derived from Regulation S exempt transactions effected as riskless principal for trust and fiduciary accounts should be treated for purposes of applying the "chiefly compensated" standard under the trust and fiduciary exception.

The second question concerns how the "push out" provisions apply to international banks that conduct securities activities through more than one U.S. branch or agency that is covered by an exception or exemption from the "push out" provisions. This question is especially relevant to application of both the "bank-wide" calculation of the "chiefly compensated" standard set forth in Rule 722 and the "*de minimis*" (500 transactions) exception.

In our January 17 letter, the Institute requested concurrence with our conclusions that (i) the "Elective Principle" applies equally to transactions in which a bank acts as either agent or principal (so that, for

for example, compensation earned from a Regulation S exempt transaction conducted as riskless principal for a trust and fiduciary account may be excluded from calculation of the “chiefly compensated” test) and (ii) both Rule 722 and the De Minimis Exception apply on an office-by-office basis.

The Institute’s letter is available at:

<http://www.iib.org/associations/6316/files/20080117InterpRequest%28Final%29.pdf>.

INSTITUTE PLANS TO COMMENT ON PROPOSED USE OF IFRS IN U.S. BRANCH/AGENCY CALL REPORTS

The Institute plans to file a submission in response to a request for comments by the federal banking agencies on the potential use of International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB), rather than U.S. GAAP, in U.S. branch/agency Call Reports. In this regard, the Institute has also arranged for interested member institutions to meet at the Institute on February 25th with Ken Lamar and his colleagues from the Federal Reserve Bank of New York to discuss some of the broader questions raised by the federal banking agencies’ request, including the prospects for extending IFRS to other regulatory reporting requirements, the possibility of applying IFRS in a form other than as adopted by the IASB, and measures that can be taken to address transitional situations that might arise.

In their request for comments, the federal banking agencies refer to the recent decision by the SEC to allow foreign private issuers to file financial statements prepared using IFRS (as issued by the IASB) without reconciliation to U.S. GAAP. Reflecting the efforts by the Institute and others to highlight the importance of the issue, the agencies also note that they have received a number of questions concerning the potential use of IFRS in regulatory reports generally.

Comments are due by March 17th (see pages 19-20 of the notice posted on the Federal Reserve’s web site on January 14th – <http://www.federalreserve.gov/boarddocs/press/foiadocs/2008/20080111/foia20080111.pdf>).

INSTITUTE EFFORTS IN CONNECTION WITH FinCEN SURVEYS

In early January, FinCEN distributed a questionnaire to U.S. banking institutions (including U.S. branches of international banks) – specifically, those “gatekeeper” institutions that exchange payment instructions directly with non-U.S. institutions – seeking information on the costs they would incur if they were required to report to FinCEN their cross-border wire payments. The final questionnaire posited a cross-border reporting system that is based on the “first in/last out” approach and limited to SWIFT MT 103s. The questionnaire reflected some, but not all, of the comments by the Institute on the draft questionnaires provided earlier by FinCEN that the Institute discussed with interested member institutions in November. The answers to the questionnaire will have an important impact on FinCEN’s cost-benefit assessment of implementing a cross-border wire transfer reporting requirement, and the Institute urged member institutions that received the questionnaire to provide as complete a response as possible.

Separately, FinCEN has contacted the Institute in connection with FinCEN’s plans to conduct a survey of banks’ practices in the United States regarding how and when they obtain beneficial ownership information on accounts held at their institution. The survey would involve a questionnaire, a draft of which FinCEN provided to the Institute and other trade associations, which, when finalized by FinCEN, would be distributed to U.S. domestic banks, as well as U.S. branches of international banks. The Institute circulated the draft questionnaire to interested member banks and transmitted its comments to FinCEN.

INSTITUTE MEETS WITH TREASURY TAX OFFICIALS, SENIOR CONGRESSIONAL STAFF ON KEY ISSUES OF IMPORTANCE TO INTERNATIONALLY HEADQUARTERED BANKS

The Institute and a group of representatives of our member banks held a productive meeting on January 28th in Washington with tax officials at the U.S. Treasury Department regarding several issues of importance to internationally headquartered banks, including in particular (i) the extension of the book/tax conformity safe harbor for valuing securities under the mark-to-market rules of Internal Revenue Code section 475 to financial institutions whose financial statements are not prepared in accordance with U.S. GAAP, (ii) the new Treasury Department position on conformity between treaties and the Code, and (iii) the Treasury Department's recently released report on the "earnings stripping" rules under Code section 163(j).

The Institute also held meetings that day with the senior tax staff for the House Ways and Means Committee and with senior staff for Senators Schumer and Clinton. The purpose of these meetings was to discuss on a high-level basis the significance of internationally headquartered financial institutions to the U.S. economy and the importance of considering the impact on those institutions and the financial markets in general of any proposals to overhaul the U.S. tax system.

Based on our discussions with the Treasury Department, we are hopeful that guidance on the section 475 question will soon be forthcoming. On the treaty consistency issue, we understand that Treasury plans to reformulate the position it has taken in a number of important respects in response to the Institute's concerns. As to earnings stripping, we inquired about the data underlying the statement in the recently released Treasury Department report suggesting that foreign-owned financial institutions may be engaged in earnings stripping, and it was agreed that a separate meeting should be held to discuss this question.

Institute submissions and other documents relating to these issues are available on the Institute's web site at www.iib.org.

INSTITUTE SUBMITS COMMENTS ON DRAFT IRS FORM 8926 RELATING TO EARNINGS STRIPPING RULES

The Institute submitted a comment letter dated January 31st on the draft IRS Form 8926 which corporations will be required to use to report detailed information regarding the calculation of interest expense that is disallowed under the Section 163(j) earnings stripping rules. Reflecting helpful comments following our January 8th conference call with member institutions, the Institute's letter recommends that draft instructions be released for public comment before the Form and instructions are finalized and that taxpayers be required to fill out only those portions of the Form that relate to their calculation of disqualified interest under section 163(j). The Institute's letter is available at: <http://www.iib.org/associations/6316/files/20080131Form8926Letter.pdf>.