



# INSTITUTE OF INTERNATIONAL BANKERS

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December 8, 2009

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street, N.W. and Constitution Avenue  
Washington, DC 20551

Re: Proposed Guidance on Sound Incentive Compensation Policies  
Docket No. OP-1374

Dear Ms. Johnson:

The Institute of International Banks (the “Institute”) appreciates the opportunity to comment on the Federal Reserve’s “Proposed Guidance on Sound Incentive Compensation Policies” (the “Proposal”).<sup>1</sup> The Institute supports the objective of providing guidance to banking organizations to help them develop compensation arrangements that do not encourage employees to commit the bank to transactions that are inconsistent with the organization’s risk tolerance profile. The proposed guidance appropriately focuses on the U.S. operations of foreign banks with branches, agencies, or commercial lending subsidiaries in the United States,<sup>2</sup> but the Proposal raises certain questions regarding how “active and effective” oversight of those operations’ incentive compensation programs should be structured, especially inasmuch as the U.S. operations are a component of a larger, global organization.

One such question concerns the relationship between a foreign bank’s board of directors and its senior management in the United States that is contemplated by the guidance. We believe that clarification of this matter will strengthen the efficacy of the guidance by providing helpful direction to banks and examiners alike in assessing a foreign bank’s U.S. incentive compensation programs.

Internationally headquartered banking organizations utilize a broad spectrum of governance structures for their overseas operations in general, and the Institute applauds the Federal Reserve for refraining from prescribing any particular governance structure

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<sup>1</sup> 74 Fed. Reg. 55227 (Oct. 27, 2009).

<sup>2</sup> Id. at 55231 n.1.



for banking organizations. The Proposal appropriately emphasizes the need for a banking organization’s board of directors to play an active role in overseeing the organization’s incentive compensation arrangements, but it is unclear regarding how that responsibility should be exercised in the context of internationally headquartered organizations whose operations in the United States, although in many cases substantial, do not account for a predominant part of an organization’s global activities. For example, the Proposal states that “the board of directors should directly approve the incentive compensation arrangements for senior executives,” and the board also is called upon to review both backward-looking and forward-looking scenario analyses for senior executives apart from other employees, but the Proposal could be misinterpreted to require that a member of a foreign bank’s U.S. management team (such as the president of a U.S. subsidiary, should be treated as a “senior executive” for these purposes even where the size and scope of the U.S. operations makes such designation clearly inappropriate.<sup>3</sup>

The Proposal recognizes that the assessment that is called for by the guidance is an assessment of the management of the U.S. operations of a foreign bank, and not of the management of the foreign bank as a global entity, and that this assessment should take into account the size and complexity of those operations.<sup>4</sup> We note, however, that this statement of how the management of U.S. operations will be assessed appears only in the introductory discussion of the guidance and has not been incorporated into the formal guidance itself. This statement provides a very helpful perspective on how the guidance is intended to be applied to foreign banks’ U.S. operations, and we respectfully urge that in finalizing the Proposal the substance of the statement be included in the actual guidance.

The Proposal also recognizes that the U.S. operations of a foreign bank cannot be viewed in isolation and that proper account must be taken of the fact that they are in certain key ways integrally related to the larger, global organization that operates subject to requirements prescribed under home country law. Specifically, the Proposal notes the following:

In the case of the U.S. operations of foreign banks, the organization’s policies, including management, review, and approval requirements, should be coordinated with the foreign bank’s group-wide policies developed in accordance with the rules of the foreign bank’s home country supervisor and should be consistent with the foreign bank’s overall corporate and management structure as well as its framework for risk management and internal controls.<sup>5</sup>

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<sup>3</sup> *Id.* at 55236.

<sup>4</sup> *See id.* at 55229 n3.

<sup>5</sup> *Id.* at 55232 n.7.



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In finalizing the Proposal, it would be helpful to clarify further the duties that under the guidance are vested with a foreign bank's board of directors and those that may be exercised by senior management of the bank's U.S. operations and in particular any limits that might apply to the ability of a foreign bank's board of directors to delegate to U.S. management – and particularly risk management functions – authority to implement the principles embodied in the Proposal with respect to incentive compensation policies.

We believe that in striving to achieve the appropriate degree of coordination with group-wide policies and consistency with a foreign bank's overall corporate and management structure in the manner contemplated by the Proposal a balance must be struck between what may be undertaken by management in the United States, who will be most familiar with the U.S. personnel and the nature of the business risks they are undertaking on behalf of the institution, and what rightly must be reserved for the board of directors. We appreciate that the details of how that balance is drawn will depend on the circumstances of each institution, and also will be influenced by applicable home country corporate governance requirements, but it would be helpful to clarify that participation of U.S. management is not only permitted but encouraged, as long as it is a component of and consistent with group-wide policies and practices.

Please contact the undersigned or the Institute's General Counsel Richard Coffman if we can provide any additional information or assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Lawrence R. Uhlick".

Lawrence R. Uhlick  
Chief Executive Officer