



INSTITUTE OF INTERNATIONAL BANKERS

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July 2, 2010

Sam L. Abram
Secretary of the Banking Board
New York State Banking Department
One State Street
New York, NY 10004-1417

Dear Mr. Abram:

The Institute of International Bankers appreciates the opportunity to assist in identifying existing regulations of the Banking Department (Title 3 of the New York Code of Rules and Regulations) that impose unnecessary, burdensome or excessive costs, paperwork, reporting or other requirements and to suggest appropriate remedies that the Department may undertake to eliminate or amend regulations that are unnecessary, unbalanced, unwise, duplicative or unduly burdensome. The Institute's members are internationally headquartered financial institutions which conduct extensive banking operations in the United States through branches and agencies and insured depository institution subsidiaries. As of March 31, 2010, foreign banks' branches and agencies in New York held in the aggregate in excess of \$1.6 trillion in assets, representing almost 90% of all assets booked in foreign bank branches and agencies in the United States. Our members accordingly have a substantial interest in the State's regulatory improvement initiative.

Reducing unnecessary regulatory burden is fundamental to sustaining New York's role as a preeminent international financial center and benefits the public by improving the competitive environment for both domestic and internationally headquartered banking organizations. The Institute strongly supports the purposes underlying the invitation for public comment.

As an initial matter, we would like to emphasize that the Banking Department does an excellent job of liaising with the industry and its representatives, including the Institute, to obtain feedback on an ongoing basis regarding ways to reduce regulatory burden in order to enhance the attractiveness of operating pursuant to a New York banking charter or license. We nevertheless welcome the opportunity to suggest the following items for consideration as a means to reduce the burden of the Banking Department's existing regulations without diminishing the effectiveness or quality of its oversight.

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.



Asset Pledge Requirements (Part 322 of the Superintendent’s Regulations)

We greatly appreciate the revisions the Banking Department has made to the asset pledge requirement over the years. These changes not only have substantially reduced the impact of the asset pledge on New York-licensed branches and agencies of foreign banking organizations (FBOs), especially those of “well rated” banks, but also have streamlined the associated reporting requirements.

The purpose of the asset pledge is to ensure sufficient liquid funds are available to the Superintendent of Banks (the “Superintendent”) to cover the Banking Department’s out-of-pocket expenses, including outside legal fees, in the event of the liquidation of a branch or agency. We believe it would be consistent with this purpose if the following modifications were made to the exiting asset pledge requirements codified at Part 322 of the Superintendent’s Regulations:

- Exclude liabilities arising from borrowings from the Federal Reserve from the calculation of the asset pledge requirement.

Under the current regulations (Section 322.1(c) of the Superintendent’s Regulations), liabilities arising from “qualified financial contracts” (as that term is defined in Section 618-a.2(e) of the Banking Law) are excluded from the calculation to the extent they are secured by collateral within the meaning of Section 618-a.2(d) of the Banking Law. This provision reflects the sound policy judgment that it is not necessary to require any further pledge of assets by a branch or agency to the extent its liability is already secured – the creditor will be protected to the extent of the collateral securing the credit in the event of a liquidation of the branch or agency. Credit extended by the Federal Reserve is by law fully collateralized, and thus there likewise is no need to require any additional pledge of assets relating to such liabilities.

- The same rationale would support exclusion of all other third-party liabilities to the extent they are secured by collateral considered satisfactory by the Superintendent.
 - We note, moreover, that the existing regulation prescribes generally applicable minimum asset pledge requirements; the Superintendent in all cases retains the discretion to require a greater amount of pledged assets where he considers such action warranted by the circumstances of a particular branch or agency. Our suggestions do not contemplate any change to this aspect of the asset pledge requirement.
- Modify Section 322.7 of the Superintendent’s Regulations to provide in effect that a sufficient but not necessary condition for designation as a “well-rated” institution is a successful election to operate as a financial holding company (FHC) under the Bank



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Holding Company Act and that so long as an institution maintains its status as an FHC it will be considered “well-rated” for asset pledge purposes.

The eligibility criteria for designation as a “well-rated” institution under Section 322.7(a) are similar to those under Section 225.90 of the Federal Reserve’s Regulation K (12 C.F.R. § 225.90) that are applicable to FBOs seeking to qualify (and maintain their status) as FHCs.¹ Qualification as an FHC authorizes an FBO to engage in the United States through nonbank subsidiaries in the expanded financial activities permissible under the Gramm-Leach-Bliley Act such as underwriting and dealing in securities and merchant banking. We believe that the determination that the overall condition of an FBO can support such activities should be sufficient to qualify it as a well-rated institution for asset pledge purposes.

However, we do not believe that qualification as an FHC should be necessary to designation as a well-rated institution. While we do not question the criteria applied under Section 322.7 for making “well-rated” determinations, we strongly believe that an FBO can satisfy these criteria without achieving FHC status, and we note that not all institutions that would satisfy the well-rated criteria necessarily will elect to operate as an FHC regardless of whether they are eligible to do so.

Further, we believe such a situation – qualification as “well-rated” but not as an FHC – would be entirely consistent with the purposes of the asset pledge requirement. The prospect of a New York-licensed branch or agency of an FBO that satisfies the well-rated criteria becoming subject to a liquidation proceeding under the Banking Law is at best remote, and there is no reason why such a branch or agency should not benefit from the limitations on the amount of the asset pledge provided for under Section 322.1(f).

- As a corollary to the foregoing, loss of FHC status should not necessarily result in loss of the “well-rated” status, although we would expect that the Superintendent rightly would be concerned should an FBO lose its FHC status and would want to reassess the appropriateness of maintaining the “well-rated” designation. Accordingly, we suggest that the provisions of Section 322.7(b) be modified to include a requirement that a well-rated FBO promptly notify the Superintendent upon loss of its FHC status.
- To allow for the possibility that there may be some aspect regarding an FBO’s condition that might be of concern to the Superintendent, notwithstanding its capital

¹ It is worth noting that several of the factors which Section 322.7 requires the Superintendent only to “consider” when determining whether an FBO is well-rated (*e.g.*, whether the parent bank has a tier 1 and total risk-based capital ratio of 6 and 10 percent, respectively) are mandatory requirements for purposes of qualifying as an FHC. *See, e.g.*, 12 C.F.R. § 225.90(a)(1).



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levels, SOSA rating and the composite rating of its New York branch/agency, our proposal contemplates that in all cases an FBO would be required to obtain a determination from the Superintendent that it is well-rated. However, in making this determination, there would be a presumption, rebuttable by the Superintendent, that an FBO that has qualified as an FHC is well-rated.

- We further suggest that Section 322.7 be revised to prescribe a limit on the amount of time the Superintendent has to make a well-rated determination, with cases subject to the presumption described above subject to a shorter period (perhaps not greater than 14 days) than those that are not. Especially for branches and agencies with substantial third-party liabilities, the potential benefits of achieving the “well-rated” designation are substantial, and we believe no purpose is served in needlessly delaying a determination. We recognize, however, that there may be unusual cases in which the circumstances justify a longer review period, and suggest that the regulation take this possibility into account.
- More generally, we suggest that the Banking Department give further consideration to reducing the amount of the asset pledge requirement so that it is more closely calibrated to the estimated out-of-pocket expenses (including outside legal fees) of a liquidation of a branch or agency, albeit leaving in place a sufficiently large “cushion” to absorb unforeseen expenses.

Especially in the case of a well-rated FBO whose New York-licensed branch/agency has substantial third-party liabilities subject to the asset pledge, the amount of the pledge prescribed under the existing regulations strikes us as significantly more than what reasonably might be expected to be necessary to cover the out-of-pocket expenses of liquidation, notwithstanding the reductions that have occurred over the years.

The importance of further reducing the amount of the pledge requirement lies in the opportunity costs associated with having to deploy funds in support of the pledge that could be more profitably utilized for other business purposes. We do not question the sliding scale methodology provided for in Section 322.7(f), but we believe the maximum amount provided for thereunder – \$100 million – should be substantially reduced. In addition, we suggest that the sliding scale be adjusted in a manner that reduces the amount of assets required to be pledged by well-rated FBOs that operate under the cap.

For those institutions that are not well-rated and whose branches/agencies are subject to the provisions of Section 322.1(a)(1), we believe it would be appropriate to adopt some type of sliding scale similar in concept (but calibrated differently) to what is in place for well-rated institutions and likewise subject to a cap (in an amount to be determined).



Notification of Name Change (Banking Department Supervisory Procedure 104)

Upon a name change, an FBO operating a New York-licensed branch or agency is required by the Banking Department’s Supervisory Procedure 104.2 to notify the Superintendent by submitting, among other items, certified copies (with translations into English if applicable) of (i) resolutions adopted by the FBO’s board of directors authorizing the name change and (ii) a statement from the home country authorities that they approve or do not object to the name change.

In some instances, FBOs have been required to obtain an apostille for certain of the requested documents, a process that can be time-consuming and result in unnecessary burden and delay. We urge the adoption of a more flexible approach in the implementation of this Supervisory Procedure, one which as a general matter permits the submission of documents that on their face do not raise any question regarding their authenticity (for example, a corporate secretary’s certificate attesting to the bona fides of the directors’ resolution or a statement on the letterhead of the appropriate home country authority). Under this approach, an apostille would be required only in exceptional circumstances.

Notification of Change of General Manager, Deputy Manager, Representative or Individual Designated to Receive Process (Banking Department Supervisory Procedure 105)

The Banking Department has a legitimate and readily understandable interest in knowing and being kept up-to-date regarding changes in the identity of the General Manager of a branch or agency, the chief representative of a representative office and any individual designated to receive process forwarded by the Superintendent. Banking Department Supervisory Procedure 105.1 requires prior notice to the Department regarding any proposed changes to a General Manager, Deputy Manager, representative or designated recipient of process. Supervisory Procedure 105.2 specifies the documents required in connection with such prior notice.

This prior notice process can be burdensome and result in delays in appointments that unnecessarily complicate an FBO’s management of its branch/agency personnel. To mitigate these concerns, while ensuring that the Banking Department obtains the information needed to assist in its assessment of the key personnel at an FBO’s New York office(s), as well as knowing to whom process should be forwarded, we suggest that Supervisory Procedure 105 be modified as follows:

- Exclude Deputy Managers from the prior notice requirement and clarify that in the case of a representative office the requirement applies only to the individual designated as chief representative (or co-chief representative, if such is the case). At a minimum, greater clarity should be provided regarding the level of responsibilities that would trigger designation of an individual as a “Deputy Manager” for these purposes. Should the



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Banking Department conclude that it is important for its supervisory purposes to be informed of changes in a Deputy Manager or representative (as opposed to the chief representative), we believe it should be sufficient that it receive a simple written notice within a prescribed period of time (perhaps 30 days) after any such change takes place.

- For those individuals covered by the prior notice requirement, we believe the documents required by Supervisory Procedure 105.2(a) can be simplified without any diminution to the Department's supervisory prerogatives. Specifically, we suggest the following:
 - The existing regulation requires submission of a copy of a resolution of the FBO's board of directors authorizing (i) either the designation of the "person who is to be in charge of the business and affairs of the bank's New York-licensed branch or agency" (*i.e.*, the General Manager) or, as the case may be, its representative, and/or (ii) designation of the individual to whom the Superintendent should forward any process (Supervisory Procedure 105.2(a)(1)). Alternatively, the resolution may evidence that the board has designated a person in the bank who is authorized to appoint such positions (as well as "Deputy General Manager"²), in which case the FBO also must provide a certificate (in English) signed by the duly designated individual which appoints the named individual to the particular position (Supervisory Procedure 105.2(a)(2)).

It is not always the case that an FBO's board of directors will directly appoint an individual subject to the prior notice requirement or even expressly designate an officer of the bank to specifically make any such appointment, and requiring board action in all cases can needlessly complicate and delay the appointment process. Rather, such authority may be vested as a matter of ordinary course in a senior executive of the bank with responsibilities that encompass the operations of the branch/agency/representative office (for example, the head of either the International Division or the North American/Americas Division). Supervisory Procedure 105.2(a) should be modified to accommodate these situations and permit FBOs greater flexibility in their personnel appointments. In any case, for the reasons discussed above, we see no need for its requirements to apply to the appointment of Deputy Managers (or Deputy General Managers (see footnote 2)).

- The existing regulation further requires that the FBO in all cases provide a certified copy of the document relied on with respect to the appointment sworn to before a U.S. consular official or accompanied by an apostille. As discussed above, we believe such formality is not necessary and suggest that Supervisory

² Supervisory Procedure 105.2(a)(2) refers to "deputy general manager" whereas the rest of Supervisory Procedure 105.2 and all of Supervisory Procedure 105.1 refer to "deputy manager". If retained in the regulation, the same term should be used throughout and the scope of the responsibilities it encompasses should be explained.



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Procedure 105.2(a) be modified to permit use of documentation that on its face does not raise any question regarding its authenticity. As in the case of Supervisory Procedure 104, under this approach an apostille would be required only in exceptional cases.

Call Reports (Section 23.1 of the Banking Board's General Regulations)

Section 23.1 of the Banking Board's General Regulations permits the use of the reports of condition ("Call Reports") filed with the federal banking agencies to satisfy the reporting requirements of Section 14(l)(1) of the Banking Law. In the case of New York-licensed branches and agencies of foreign banks, this provision permits reliance on the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S) (collectively, the "Branch/Agency Call Reports"), both of which are prepared in accordance with U.S. generally accepted accounting principles (U.S. GAAP).

Reliance on the Branch/Agency Call Reports results in considerable savings and efficiency as it precludes the need to maintain separate books and records to satisfy the Banking Law's reporting requirement. Even so, we believe that additional savings could be achieved, without any detriment to an institution's safety and soundness, if branches and agencies were permitted to prepare their Call Reports in accordance with International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board, and we urge the Banking Department to work with the Federal Reserve (the primary federal supervisory authority for New York-licensed uninsured branches and agencies) toward achieving this goal.

The benefits of permitting FBOs to use IFRS in their Branch/Agency Call Reports would be significant. Many FBOs use IFRS in their global, consolidated financial statements and with few exceptions those that do not prepare their global financial statements on the basis of IFRS use their home country accounting principles. The requirement to prepare Branch/Agency Call Reports in accordance with U.S. GAAP results in maintenance of separate systems, books and records that is very costly to a reporting bank and complicates oversight of its operations on a comprehensive, consolidated basis by its home country supervisory authority.

However, because not all institutions use IFRS in preparing their global financial statements, the use of IFRS in the Branch/Agency Call Reports should be optional and not mandatory, but those institutions which opt to use IFRS should be permitted to do so without reconciliation to U.S. GAAP. In addition, we recognize that the Branch/Agency Call Reports require the provision of certain information that is useful for supervisory purposes but strictly speaking is not required under U.S. GAAP, and we would anticipate that such information would continue to be required upon conversion to IFRS.



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Application Requirements

We strongly support efforts to streamline application requirements in general, and we believe there are very real opportunities to achieve greater efficiencies regarding branch/agency and representative office license applications (Supervisory Procedure FB 101 and Supervisory Procedure SB 102) and bank change in control transactions (Supervisory Procedure CB 117) in particular. Inasmuch as an FBO typically is required to obtain the approval of both the Banking Department and the Federal Reserve in order to establish a New York-licensed branch/agency or representative office or to acquire control of a New York-chartered bank, the Banking Department should continue to work together with the Federal Reserve to make their information requests as consistent as possible so that an applicant's response to the Banking Department can be used in substantial part as its response to the Federal Reserve and vice versa. In addition, we encourage the Banking Department to review its application requirements, whether or not there is a corresponding Federal Reserve requirement, to determine whether information requirements could be reduced.

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We appreciate the Banking Department's consideration of our suggestions. Please contact the undersigned or our General Counsel Richard Coffman (rcoffman@iib.org; 646-213-1149) if we can provide any further assistance.

Very truly yours,

A handwritten signature in black ink that reads "Lawrence R. Uhlick". The signature is written in a cursive, flowing style.

Lawrence R. Uhlick
Chief Executive Officer