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Re: Comment on Basel II Joint Notice of Proposed Rulemaking Regarding a Standardized Framework – Board Docket No. R-1318; OCC Docket No. 2008-0006; FDIC RIN 3064-AD29; OTS No. 2008-0002

Ladies and Gentlemen:

The Institute of International Bankers appreciates the opportunity to comment on the Joint Notice of Proposed Rulemaking to implement a risk-based capital framework based on the standardized approach for credit risk and the basic indicator approach for operational risk as described in the Basel II Capital Accord (the “U.S. Basel II Standardized Proposal” or, simply, the “Proposal”).¹ The Institute and its member organizations are committed to supporting international efforts to achieve consistent implementation globally of Basel II, and we welcome the opportunity to submit comments on the U.S. Basel II Standardized Proposal.

The Institute has long been active in addressing the impact of the United States’ implementation of Basel II on internationally headquartered institutions with U.S. banking operations and in supporting the achievement of a closer conformity of the U.S. Basel II approach to the provisions of the Capital Accord as agreed upon by the Basel

¹ 73 Fed. Reg. 43981 (July 29, 2008).



Committee. The Institute welcomes the Proposal as consistent with and in furtherance of this goal.

The Proposal recognizes that some banking organizations may prefer to remain under the existing (Basel I) risk-based capital framework without revision and, moreover, indicates that the agencies intend to permit banks in the United States not applying the U.S. Basel II advanced approaches to elect at their option to continue to use the existing Basel I system rather than the proposed standardized framework.

The Institute strongly supports this optionality for U.S. banks, including U.S. bank subsidiaries of international banks, that either are not “core banking organizations” (*i.e.*, those institutions that are required to apply the U.S. Basel II advanced approaches) or do not elect to be treated as core banking organizations for purposes of applying U.S. Basel II. We believe it is particularly important for international banks that are subject to home country Basel II on a consolidated basis but that are not required and do not intend to apply the U.S. Basel II advanced approaches in the United States to have the flexibility to elect to continue to apply Basel I or to apply the proposed Basel II standardized approach to their U.S. subsidiary banks.

The Proposal requests comments on whether or to what extent core banking organizations should be able to use the proposed standardized framework.² The Institute strongly supports such an option, which we believe would be especially appropriate for those intermediate U.S. bank holding companies of international banks that have substantial U.S. securities (or other nonbanking) activities but relatively small U.S. banking activities and, as a result, are required to apply the U.S. Basel II advanced approaches to both their banking and nonbanking activities in the United States, absent an exemption from the Federal Reserve.³

Compliance by these institutions with the U.S. Basel II advanced approaches can be quite burdensome and expensive, a situation that is only compounded in those cases where the international bank itself is applying home country advanced methodologies to implement Basel II on a global consolidated basis. The availability of the option to apply the proposed standardized framework instead of the U.S. Basel II advanced approaches

² See 73 Fed. Reg. at 43986.

³ As discussed further in the Appendix to this letter, the Institute has serious reservations regarding both (i) requiring intermediate U.S. bank holding company subsidiaries of international banks to apply the U.S. Basel II advanced approaches if, on a consolidated basis, they meet the asset threshold for treatment as a core banking organization regardless of the size of their subsidiary bank(s), and (ii) the consistency of this requirement with the policy set forth in Federal Reserve Board SR Letter 01-01 (January 5, 2001). We strongly support the position articulated in SR 01-01 and believe the treatment of intermediate U.S. bank holding company subsidiaries of international banks under the U.S. Basel II rules should be reconsidered. In any event, we urge the Federal Reserve to give due regard to the considerations discussed in the Appendix in exercising its discretion when acting on exemptive requests from intermediate U.S. bank holding company subsidiaries of international banks.



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would considerably reduce the burden and expense involved in complying with the U.S. requirements. While institutions may request the Federal Reserve to grant an exemption from these requirements, that process itself is burdensome and expensive, and there is no assurance that relief will be granted.⁴

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

Lawrence R. Uhlick
Chief Executive Officer

⁴ We note that the Proposal contemplates that a core banking organization that obtains an exemption from the U.S. Basel II advanced approaches would then have the option to apply the proposed standardized approach. *See* 73 Fed. Reg. at 43986 n. 8. Making this option available to such institutions from the outset without first having to obtain an exemption would result in considerable savings of time, effort and money by all parties involved in the process. In any event, the reservation of supervisory authority underlying the U.S. risk-based capital framework (*see, e.g.*, 73 Fed. Reg. at 43986) permits the Federal Reserve to make such adjustments to the risk-based capital requirements of an intermediate bank holding company and/or its U.S. subsidiary banks as it determines to be appropriate in the circumstances.



APPENDIX:

**APPLICATION OF THE U.S. BASEL II ADVANCED APPROACHES
TO INTERMEDIATE U.S. BANK HOLDING COMPANIES OF
INTERNATIONALLY HEADQUARTERED BANKING INSTITUTIONS**

For many years the Federal Reserve has recognized that intermediate U.S. bank holding company subsidiaries of international banks that are themselves well capitalized and well managed on a comprehensive consolidated basis should be exempted from U.S. capital requirements. *See* Federal Reserve Board SR Letter 01-01 (January 5, 2001). The Institute believes this is the correct policy and strongly supports its continued application. However, under the final U.S. Basel II rules application of the U.S. Basel II advanced approaches is mandatory for any intermediate U.S. bank holding company subsidiary of an international bank that (i) qualifies as a core banking organization (regardless of the size of its subsidiary bank) and (ii) is subject to SR 01-01 (a “Covered U.S. BHC”). *See* 72 Fed. Reg. 69287, 69299 (Dec. 7, 2007).

Thus, under the current U.S. Basel II rules, and consistent with SR 01-01, a Covered U.S. BHC *is not required* to maintain the minimum capital ratios at the U.S. consolidated holding company level, but, “as a technical matter” (quoting 72 Fed. Reg. at 69299), *is required* to adopt the U.S. Basel II advanced approaches and compute and report its capital ratios accordingly.

The Institute firmly believes that there is no countervailing justification for mandatory application of the U.S. Basel II advanced method by Covered U.S. BHCs, in particular in the case of Covered U.S. BHCs whose international bank parents themselves apply home country advanced methodologies to implement Basel II on a global consolidated basis. Furthermore, no overriding risk management or other supervisory benefits are served by any such burdensome capital calculation requirement at the U.S. intermediate holding company level.

In our view, the capital calculation based on the U.S. Basel II advanced approach required at the Covered U.S. BHC level under the current rules adds no meaningful value to (and is duplicative of) the U.S. host country review of the parent bank’s consolidated capital based upon home country Basel II standards under the existing bank holding company standard.

Accordingly, we believe it would be appropriate to either rescind the mandatory application of the U.S. Basel II advanced approaches to Covered U.S. BHCs or make such application optional. We would favor combining such optionality with the option to apply the proposed standardized approach so that Covered U.S. BHCs would be permitted to elect to apply (i) the U.S. Basel II advanced approach, (ii) the proposed standardized approach or (iii) the Basel I approach.