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Via rule-comments@sec.gov

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Proposed Amendments to Financial Responsibility Rules for Broker-Dealers (Release Nos. 34-66910, 34-55431; File No. S7-08-07)

Ladies and Gentlemen:

The Institute of International Bankers (the "IIB") appreciates this opportunity to provide the Securities and Exchange Commission (the "Commission") with comments on the Commission's proposed amendments (the "Proposed Amendments") to its financial responsibility rules for broker-dealers under the Securities Exchange Act of 1934 (the "Exchange Act"), as set out in Release No. 34-55431 (the "Proposing Release").[1] The IIB, which represents internationally headquartered financial institutions from over thirty-five countries from around the world,[2] would like to comment on one element of the proposed amendments that would directly impact U.S. branches of non-U.S. banks.

Exchange Act Rule 15c3-3,[3] among other things, requires broker-dealers to maintain cash or qualified securities in a "Special Reserve Bank Account for the Exclusive Benefit of Customers" (a "Reserve Account") in an amount determined by a formula set forth in Exhibit A

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1 72 Fed. Reg. 12862 (Mar. 19, 2007).

2 Collectively, the U.S. branches, agencies, banking subsidiaries, securities affiliates and other nonbank operations of the IIB's member institutions are an important source of credit for U.S. borrowers and enhance the depth and liquidity of U.S. financial markets. IIB members also inject billions of dollars each year into the economies of major cities across the country in the form of employee compensation and other operating and capital expenditures.

3 17 C.F.R. § 240.15c3-3.

to Rule 15c3-3.[4] Reserve Accounts must be maintained at "banks" as defined in Rule 15c3-3, and a significant number of Reserve Accounts are maintained at U.S. branches of non-U.S. banks that qualify as "banks" under that definition.[5]

To mitigate the risk that the impairment of the reserve deposit at a single bank would have a material negative impact on the broker-dealer's ability to meet its obligations, the Commission has proposed to prevent broker-dealers from depositing cash into a Reserve Account with a bank that is out of proportion to the bank's capital base by limiting a broker-dealer's cash deposits in Reserve Accounts at any one bank to 10% of the bank's equity capital.[6] Under the Proposed Amendments, a bank's "equity capital" for purposes of this limit is "as reported by the bank in its most recent Call Report or Thrift Financial Report," which, as the Commission notes, "includes a line item for equity capital."[7] However, it is not universally true that a bank's "equity capital" is reported in a Call Report or a Thrift Financial Report.

The Call Reports for U.S. branches of non-U.S. banks do not have a line item for "equity capital." This is due to the fact that a branch of a bank (whether U.S. or non-U.S) is not a separately incorporated legal entity from the bank itself — a branch's capital *is* the capital of the bank. The equity capital of the non-U.S. bank (or a more conservative capital measure) can be obtained from a variety of sources, for example:

(i) the Form FR Y-7 (Annual Report of Foreign Banking Organizations) filed annually with a Federal Reserve Bank with respect to all non-U.S. banks with

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[4] Rule 15c3-3(e), 17 C.F.R. § 240.15c3-3(e). The Proposed Amendments would also require reserve deposits in respect of "PAB accounts," computed in accordance with a similar formula. Proposing Release, 72 Fed. Reg. at 12863-64.

[5] As defined in Rule 15c3-3, "bank" includes any "bank" as defined in Exchange Act section 3(a)(6). In addition to national banks, federal savings associations and member banks of the Federal Reserve System, section 3(a)(6) defines as a bank:

> any other banking institution …, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to section 92a of title 12, and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of [the Exchange Act].

Exchange Act Section 3(a)(6)(C), 15 U.S.C. § 78c(a)(6)(C). The Commission has recognized that a U.S. branch of a non-U.S. bank that is supervised and examined by a federal or state banking authority can be a "bank" within the meaning of section 3(a)(6), although the determination of whether any particular financial institution meets the requirements of Section 3(a)(6) is the responsibility of the institution and its counsel. SEC Rel. No. 34-27017 (July 11, 1989), 54 Fed. Reg. 30013, 30015 n.16 (July 18, 1989).

[6] Proposing Release, 72 Fed. Reg. at 12864.

[7] Proposed Rule 15c3-3(e)(5)(ii), Proposing Release, 72 Fed. Reg. at 12895.

U.S. branches includes the bank's financial statements, with balance sheets that generally have a line item for equity capital (or shareholders equity, or the equivalent);

(ii) the Form FR Y-7Q (Capital and Asset Report for Foreign Banking Organizations) filed quarterly with a Federal Reserve Bank with respect to virtually all relevant non-U.S. banks with U.S. branches includes a line item for the bank's Tier 1 capital, which is always less than or equal to its equity capital;[8]

(iii) the Form 6-K (Report of Foreign Private Issuer Pursuant to Rule 13a-16 or 15d-16 under the Exchange Act) filed with the Commission by non-U.S. banks that are "foreign private issuers" reports financial statements the bank periodically (generally semiannually) makes public in its home country or distributes to its security holders; or

(iv) other financial statements filed by the bank with a banking or securities regulator in the United States (*e.g.*, a Form F-20 filed by a bank with American depositary shares) or in the bank's home country should include a line item for the bank's equity capital or other, more conservative, capital measures.

Not all of these documents are filed with respect to every non-U.S. bank with a U.S. branch, and, in some cases, the documents are filed on a confidential basis. Accordingly, we believe that a broker-dealer that maintains a Reserve Account at a U.S. branch of a non-U.S. bank should have flexibility in how it determines the non-U.S. bank's equity capital for purposes of applying the 10% limitation. We recommend that a broker-dealer be permitted to determine a bank's equity capital from any one of the foregoing documents, or determine the bank's equity capital by (for example) periodically obtaining a certificate from the U.S. branch of the non-U.S. bank specifying the equity capital of the bank (or, if the exact equity capital is confidential, certifying that the bank's equity capital is in excess of a specified amount).

Our recommendation could be easily implemented by the following revision to proposed Rule 15c3-3(e)(5)(ii):

> (ii) The amount of the deposit exceeds 10% of the bank's equity capital **(**as reported by the bank in its most recent Call Report or Thrift Financial Report **if such report includes a line item for "equity capital")**.

The explanation of this revision in the adopting release should make it clear that, if the bank at which a Reserve Account is maintained does not file a Call Report or Thrift Financial Report that includes a line item for "equity capital," then the broker-dealer would be responsible for

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[8] Since Tier 1 capital cannot exceed equity capital, a broker-dealer which limits its Reserve Account deposits to 10% of the bank's Tier 1 capital can be confident that the deposit does not exceed 10% of the bank's equity capital.

determining the bank's equity capital for purposes of applying the limit and that any of the sources described above could be used to satisfy that responsibility.

If the Commission does not make such a technical revision to proposed Rule 15c3-3(e)(5)(ii), the rule as proposed could have the unintended consequence of barring broker-dealers from making cash reserve account deposits with a U.S. branch of a non-U.S. bank (because their Call Reports do not report equity capital), notwithstanding the fact that they are "banks" as defined in Rule 15c3-3(a)(7).[9] We understand that significant reserve account deposits are currently maintained with U.S. branches of non-U.S. banks. Removing significant participants from the business of accepting these deposits could have a materially adverse effect on competition for such deposits and potentially reduce the return on such deposits received by the broker-dealers. We respectfully suggest that, prior to finalizing the proposed rule, the Commission consider the possible impact the Proposed Amendment may have on broker-dealers who maintain Reserve Accounts at U.S. branches of non-U.S. banks and on competition for reserve account deposits.[10]

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[9] Every indication in the Proposing Release is that Call Reports and Thrift Financial Reports were referenced because of the Commission's belief that these reports contained a line item for "equity capital" and therefore would provide a convenient way to apply the proposed 10% limit, not because there was any intent by the Commission to bar cash reserve account deposits at U.S. branches of non-U.S. banks. Indeed, there was no discussion of the use of these sources other than a footnote listing the entities required to file the Call Report or Thrift Financial Report and noting that the reports include a line item for equity capital and can be obtained from a FDIC website.

[10] We note that Exchange Act Sections 3(f) and 23(a)(2) require the Commission to consider the effect of the proposed rule on competition and not to adopt any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

We thank the Commission for the opportunity to submit this comment letter. We would be happy to discuss any of the comments above or any other matters that would be helpful in the evaluation of the Proposed Amendments. If you have any questions regarding our comments, or would like to discuss them further, please do not hesitate to contact the undersigned or the IIB's General Counsel, Richard Coffman (646-213-1149; rcoffman@iib.org).

Sincerely,

Sarah A. Miller
Chief Executive Officer

cc: Mary L. Schapiro, Chairman
Luis A. Aguilar, Commissioner
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