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Via Electronic Delivery

Office of the Comptroller of the Currency ("OCC")
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System ("Federal Reserve")
20th Street and Constitution Avenue, NW
Washington, DC 20551

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation ("FDIC")
550 17th Street, NW
Washington, DC 20429

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision ("OTS")
1700 G Street, NW
Washington, DC 20552

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

Re: Proposed Rules on Incentive-Based Compensation Arrangements (OCC Docket ID OCC-2011-0001; Federal Reserve Docket No. R-1410 and RIN No. 7100-AD69; FDIC RIN No. 3064-AD56; OTS Docket No. OTS-2011-0004; SEC File Number S7-12-11)

Gentleman and Ladies:

Pursuant to Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), the OCC, the Federal Reserve, the FDIC, the OTS, the National Credit Union Administration, the SEC and the Federal Housing Finance Agency (collectively, the "Regulators") have jointly issued substantially identical proposed rules on incentive-based compensation arrangements (the "Proposed Rules"). The Institute of International Bankers submits this letter to the Regulators listed above, each of whom serves as the "appropriate Federal regulator" (as defined in the Proposed Rules) for one or more members of the Institute, in response to the Regulators' request for comments regarding the Proposed Rules. The Institute appreciates the opportunity to comment on the Proposed Rules. The Institute represents internationally headquartered financial institutions from over 35 countries from around the world; our members include international banks that operate branches and agencies, bank subsidiaries and broker-dealer subsidiaries in the United States. International banks provide an important source of credit for U.S. borrowers and enhance the depth and liquidity of U.S. financial markets, and their U.S. operations contribute billions of dollars each year to the economies of major cities across the country through the employment of over 250,000 U.S. citizens and permanent residents and through other operating and capital expenditures.

As the Regulators are well aware, there has been a global convergence in recent years with respect to remuneration practices at financial institutions in a number of jurisdictions. This process began in 2009 with the Financial Stability Board's (the "FSB") publication of its Principles for Sound Compensation Practices and Implementation Standards for those Principles (collectively, the "FSB Guidelines"). Subsequently, in 2010 and 2011, the FSB has initiated two rounds of peer reviews with respect to compensation practices. Many jurisdictions outside the United States have implemented rules and regulations regarding compensation based on the FSB's guidelines, including EU member states (pursuant to the guidelines published by the Committee of European Banking Supervisors ("CEBS") under CRD III), Hong Kong and Switzerland. Additionally, in December 2010, the Basel Committee on Banking Supervision published its own proposed disclosure requirements regarding financial institution remuneration.

Against this backdrop, the Institute commends the Regulators for their mandate to coordinate the compensation arrangements of the U.S. operations of foreign banking organizations ("FBOs") with the supervision of home country regulators. The Proposed Rules provide that:

> In addition, for U.S. operations of [FBOs], the organization's policies, including management, review, and approval requirements for its U.S. operations, should be coordinated with the FBO's group-wide policies developed in accordance with the rules of the FBO's home country supervisor. The policies of the FBO's U.S. operations should also be consistent with the FBO's overall corporate and management structure, as well as its framework for risk management and internal controls.

The Proposed Rules call for FBOs to coordinate their U.S. remuneration policies with those group-wide policies developed by the parent company in accordance with its home-country regulation. Consequently, given the convergence of remuneration principles described above, we suggest that the Regulators clarify that, absent unusual circumstances, an FBO's incentive compensation arrangements in respect of its U.S. operations, as well as the incentive compensation arrangements of any FBO subsidiary that is a "covered financial institution," will be deemed to comply with the Proposed Rules (and no additional identification of "covered persons" will be required) to the extent that (1) they are subject to supervision by a home country that is a member of the G-20 or has otherwise implemented incentive compensation regulation that is substantially comparable to the FSB Guidelines and (2) they are compliant with that home country regulation. This approach would provide for efficient coordination by supervisors in multiple jurisdictions, which appears to be a key area of focus for the FSB.[1] For example, the CEBS Guidelines on Remuneration Policies and Practices, published in December 2010, state that they "should apply to any subsidiary of an EEA parent institution that is located offshore, including in a non-EEA jurisdiction." Furthermore, other industry groups have stressed to the Regulators the need for a primary Regulator in the context of a controlled group with multiple covered financial institutions. This approach is logically consistent with those suggestions in that it essentially provides for an FBO's home country regulator to serve as the FBO's "primary" regulator with respect to incentive compensation arrangements. This is particularly important given that financial institutions almost uniformly design compensation programs at the holding company level.

With respect to the annual reporting requirements under the Proposed Rules, the Regulators should clarify that an FBO or subsidiary thereof that is a "covered financial institution" may satisfy any such disclosure requirement by providing a certification that its incentive compensation arrangements are subject to substantially comparable review and supervision by a foreign financial regulatory body in the institution's home country. Such a requirement is consistent with the overall principle of deference to home country regulators set forth in the Proposed Rules, the worldwide convergence of remuneration practices described above and the key principle that multijurisdictional institutions should not be subject to duplicative disclosure requirements addressing the same issue. Alternatively, rather than a certification option, the Regulators could provide that an FBO would be able to satisfy the reporting requirements in the Proposed Rules by providing to its Regulator the same information with respect to its U.S.-based covered persons that it provides to its home country regulator.

Finally, the Regulators should clarify the definition of "covered financial institution" as applied to FBOs to make clear that the Proposed Rules do not apply extraterritorially to any employee of an FBO or subsidiary thereof who is located outside the United States. For FBOs that are treated as bank holding companies under the International Banking Act (the "IBA")—

[1] *See, e.g.*, questions 5.1 and 5.3 in the FSB's most recent peer review questionnaire, *available at* http://www.financialstabilityboard.org/press/pr_110518.pdf.

e.g., because they operate a U.S. branch or agency—the Proposed Rules make clear that only their U.S. operations are treated as a "covered financial institution." However, some FBOs are regulated as bank holding companies because they own one or more U.S. bank subsidiaries and therefore are bank holding companies as defined in the Bank Holding Company Act (the "BHC Act"). Because the Proposed Rules separately define "covered financial institution" to include bank holding companies with total consolidated assets of $1 billion or more, this creates an uncertainty regarding the treatment of FBOs that are bank holding companies. We assume that for such FBOs, like FBOs that are "deemed" bank holding companies under the IBA, only their U.S. operations would be a "covered financial institution" subject to the Proposed Rules. Read literally, however, with respect to an FBO that is a bank holding company under the BHC Act, the Proposed Rules appear to apply to the FBO's executive officers, regardless of where they are located.

We do not believe that this was the Regulators' intent for several reasons. First, there would be no reason to treat the non-U.S. operations of FBOs differently under the Proposed Rules depending on whether the FBO is a bank holding company or is treated as a bank holding company under the IBA. Second, the general treatment of FBOs in the Proposed Rules would be inconsistent with such a distinction. For example, the Proposed Rules' definition of "board of directors" in respect of FBOs is limited to the relevant oversight body for the FBO's U.S. operations, rather than the FBO as a whole. Consequently, we think that it would be inconsistent for the definition of "covered person" to capture individuals who are not located in the United States. Third, there is no support in the preamble to the Proposed Rules for extending Section 956 of the Dodd-Frank Act to FBOs' non-U.S. operations, and such a policy would be inconsistent with general limitations on the extraterritorial reach of U.S. laws.

To clarify this point, we would suggest that the Regulators revise the definition of "covered financial institution" as follows:

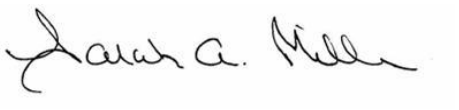
- In new §236.3(c)(ii) of 12 CFR Chapter II (as proposed in the Proposed Rules), insert "U.S." before "bank holding company."

- Revise new §236.3(c)(iv) of 12 CFR Chapter II (as proposed in the Proposed Rules) to read: "The U.S. operations of a foreign bank that is a bank holding company or that is treated as a bank holding company pursuant to section 8(a) of the International Banking Act of 1978…."

In the event that the Regulators determine that the Proposed Rules should apply to FBOs to any extent, we generally support the comments submitted by organizations such as the Securities Industry and Financial Markets Association and the Financial Services Roundtable. We urge the Regulators to strongly consider their comments and questions in reviewing and finalizing the Proposed Rules.

We thank you for the opportunity to submit this comment letter. We would be happy to discuss with you any of the comments described above or any other matters you feel would be helpful in your evaluation of the Proposed Rules and the comments you receive. Please do not hesitate to contact the undersigned if you would like to discuss these matters further.

Sincerely,



Sarah A. Miller
Chief Executive Officer

cc: Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Alfred M. Pollard
General Counsel
Attention: Comments/RIN 2590-AA42
Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552