



June 30, 2011

Mr. Kenneth Lamar
Senior Vice President
Federal Reserve Bank of New York
33 Liberty Street
New York, New York 10045-0001

Re: Treasury International Capital (“TIC”) reports

Dear Mr. Lamar:

The Clearing House Association L.L.C. (“The Clearing House”)¹ appreciated the opportunity to meet with you and your staff on May 26, 2011 (the “May 26 Meeting”) to discuss regulatory reporting issues, including the TIC reports. As requested during the May 26 Meeting, The Clearing House is pleased to provide specific comments below on the TIC reports.

Executive Summary

The Clearing House supports the Federal Reserve Bank of New York’s (the “FRBNY”) goal to improve the quality of the United States’ balance of payments statistics. To assist with this goal, The Clearing House recommends that the Treasury clarify the instructions to the reports so that the information reported will be consistent and comparable across reporting entities. Specifically, The Clearing House:

¹ Established in 1853, The Clearing House is the nation’s oldest banking association and payments company. It is owned by the world’s largest commercial banks, which collectively employ 1.4 million people in the United States and hold more than half of all U.S. deposits. The Clearing House Association is a nonpartisan advocacy organization representing – through regulatory comment letters, amicus briefs and white papers – the interests of its owner banks on a variety of systemically important banking issues. Its affiliate, The Clearing House Payments Company L.L.C., provides payment, clearing and settlement services to its member banks and other financial institutions, clearing almost \$2 trillion daily and representing nearly half of the automated-clearing-house, funds-transfer and check-image payments made in the U.S. See The Clearing House’s web page at www.theclearinghouse.org.

- *Recommends* that the TIC instructions be revised to provide uniform definitions of defined terms and clarify (i) reporting for a bank's "own foreign office" and (ii) the definitions of other terms used in the instructions to the TIC reports; and
- *Recommends* that the TIC B instructions' Consolidation/Combination Rules be clarified with respect to where on the TIC B reports a reporting entity should consolidate a subsidiary.

We provide further detail on each of the above points below.

I. We support the FRBNY's efforts to provide uniform definitions of defined terms and clarify reporting for a bank's "own foreign office" and the definition of other terms used in the instructions to the TIC reports.

We appreciate and are fully supportive of the FRBNY's efforts to provide uniform definitions and clarify the definitions of certain terms and the reporting of certain arrangements with respect to a bank's "own foreign office". For example, the definitions in the TIC instructions for a "Foreign Resident/Foreigner" are not identical for the TIC B series and Form S.² The Clearing House is concerned that reporting entities could define a "Foreign

² Definition of Foreign Resident in Glossary of instructions for TIC B series: "Any individual, corporation, or other organization located outside the United States. A corporation incorporated outside the United States is a foreign resident even if it has no physical presence outside the United States. Foreigners/Foreign Residents include:

- Foreign governments and any subdivision, agency or instrumentality thereof, including all foreign official nonbanking institutions, even if located in the United States (e.g., an embassy, consulate, or other diplomatic establishment of a foreign country). (However, all U.S. subsidiaries of foreign corporations are U.S. residents.)
- Entities that have filed an IRS Form W-8, indicating that the individual or entity is a nonresident alien or foreign entity not subject to certain United States information return reporting or to backup withholding rules.
- Any corporation or other organization located outside the United States, including the branches, subsidiaries, and other affiliates of U.S. entities located abroad.
- Individuals, including citizens of the United States, residing outside the United States.

EXCEPTION: Official international or regional organizations or subordinate or affiliated agencies thereof, created by treaty or convention between sovereign states, even if located in the United States, including the International Bank for Reconstruction and Development (IBRD or World Bank), the International Monetary Fund (IMF), and the United Nations (UN), are also considered foreign residents."

Definition of Foreign Resident in Glossary of instructions for Form S: "Any individual, corporation, or other organization or other entity legally established outside the United States, regardless of the actual center of economic activity of the entity. A corporation incorporated outside the United States is a foreign resident even if it has no physical presence outside the United States. Foreign Residents include:

- Foreign governments and any subdivision, agency or instrumentality thereof, including all foreign official nonbanking institutions, even if located in the United States (e.g., an embassy, consulate, or other diplomatic establishment of a foreign country). However, all U.S. subsidiaries of foreign corporations are U.S. residents.

Resident/Foreigner” differently based on the different definitions in the B series and Form S. The Clearing House recommends that the FRBNY provide a uniform definition of “Foreign Resident/Foreigner” to be used for all TIC reporting purposes in order to eliminate the possibility of inconsistent reporting. At our May 26 Meeting, the FRBNY advised that the Treasury is revising the instructions for these reports so that the definitions will be standardized for March 31, 2012 reporting. As another example, in the title of the BQ-2/Part 1, we believe that the term "vis-à-vis" is confusing since "vis-à-vis" can be interpreted in multiple ways. We would appreciate it if the FRBNY would revise its instructions to eliminate terms that can be interpreted in more than one uniform way. We appreciate your acknowledgement of the issue at the May 26 Meeting and your prompt efforts to resolve it. We would welcome the opportunity to continue to work with you to complete this project.

The Clearing House also is concerned that the reporting instructions to the TIC Report BL-1, Report of U.S. Dollar Claims of Depository Institutions, Bank Holding Companies/Financial Holding Companies, Brokers, and Dealers on Foreigners, are not clear as to how they apply to a member bank’s “own foreign office.” For example, we would appreciate your confirming that when a U.S. parent bank has a “due to” liability to its Cayman office branch, and does not accrue or pay interest on this amount, this liability should be reported on the TIC Form BL-1 in Column 4 and in Memorandum Line 8130-2 as a non-interest bearing liability.

II. We request that the Treasury provide clarification as to where on the TIC B reports a reporting entity should consolidate a subsidiary.

The current TIC B instructions’ Consolidation/Combination Rules are unclear as to where on the TIC B reports a reporting entity should report a consolidated/combined subsidiary (i.e., at the bank or bank holding company level). Therefore, The Clearing House requests that the TIC B instructions’ Consolidation/Combination Rules be revised to explicitly state where on the TIC B reports subsidiaries should be consolidated. The Clearing House has provided recommended language to address this issue in Appendix A (clean and blacklined versions attached). In addition, The Clearing House would appreciate it if the Treasury states in the instructions specific exclusions from the Consolidation/Combination Rules and other sections of the TIC reports.

-
- Any corporation or other organization legally established outside the United States, including the branches, subsidiaries, and other affiliates of U.S. entities legally established abroad.
 - Individuals, including citizens of the United States, residing outside of the United States. This includes individuals that have filed an IRS Form W-8, indicating that the individual is a nonresident alien. However, if an IRS Form is not available, the mailing address can be used to determine residency.
 - International or regional organizations or subordinate or affiliated agencies thereof, created by treaty or convention between sovereign states, even if located in the United States, including the International Bank for Reconstruction and Development (IBRD or World Bank), the International Monetary Fund (IMF), and the United Nations (UN).”

We would be happy to discuss these comments further with you. We appreciate the opportunity to provide our input and look forward to future opportunities to do so. If we can help to facilitate further discussions with you on these matters or assist you in any other way, please contact me at (212) 613-9883 (email: david.wagner@theclearinghouse.org) or Gail Haas at (212) 612-9233 (email: gail.haas@theclearinghouse.org).

Sincerely yours,



David Wagner
Senior Vice President
Financial and Tax Affairs
The Clearing House

cc: Dwight Wolkow
Administrator, International Portfolio Investment Data Systems
Office of International Monetary and Financial Policy
Department of Treasury

Carol Bertaut
Chief, Global Financial Flows Section
Division of International Finance
Federal Reserve Board

Anthony Cirillo
Assistant Vice President
Statistics Function
Federal Reserve Bank of New York

Alex Santana
Staff Director
Statistics Function
Federal Reserve Bank of New York

Lessa Gomez
Staff Director
Statistics Function
Federal Reserve Bank of New York

Karen Nelson, Wells Fargo Bank, N.A.
Chairperson, Regulatory Reporting Committee
The Clearing House Association L.L.C.

Ms. Gail Haas
Financial Specialist
The Clearing House Association L.L.C.

Appendix A

Consolidation/Combination Rules

U.S.-resident depository institutions (Banks) should consolidate all of their United States resident branches and subsidiaries including their International Banking Facilities (IBFs) except for their Bank subsidiaries, securities brokers and dealers, and insurance underwriting subsidiaries. Trusts and Variable Interest Entities (VIEs) for which the reporter is the trustee or primary beneficiary should be included as governed by FIN 46-R.

- (1) Banks for the purposes of these consolidated/combination rules are defined as follows:
 - (a) Commercial banks
 - (b) United States branches and agencies of foreign banks
 - (c) Trust companies that conduct commercial banking business
 - (d) Industrial banks, private or unincorporated banks
 - (e) Banking Edge Act and Agreement corporations
 - (f) New York State Article XII corporations
 - (g) Mutual or stock savings banks, building or savings and loan associations, cooperative banks, credit unions, homestead associations, and other similar depository institutions
 - (h) Non-deposit and limited purpose trust companies

U.S. bank holding companies (BHCs)/U.S. financial holding companies (FHCs) should consolidate all of their U.S.-resident subsidiaries except their Bank subsidiaries, securities brokers and dealers, and insurance underwriting entities. (Positions of Bank subsidiaries and security brokers and dealers are reported on separate TIC "B" forms; positions of insurance underwriting subsidiaries are reported on the TIC C reports.) Trusts and Variable Interest Entities (VIEs) for which the reporter is the trustee or primary beneficiary should be included as governed by FIN 46-R.

Securities brokers and dealers, including those securities brokers and dealers owned by a BHC, FHC, or Bank, should prepare consolidated B reports for their securities broker or dealer entities and their non-Bank subsidiaries in the United States. Trusts and Variable Interest Entities (VIEs) for which the reporter is the trustee or primary beneficiary should be included as governed by FIN 46-R.

Banking Edge Act and Agreement corporations should report for all of their branches and subsidiary companies including their International Banking Facilities (IBFs), excluding the parent organization. For further information, see the consolidation rules in the General Instructions of the FR 2886b, (the Quarterly Consolidated Report of Condition and Income for Edge and Agreement Corporations). (Available at <http://www.federalreserve.gov>).

United States branches and agencies of a foreign bank located in the same state and within the same Federal Reserve District should submit a consolidated report for these offices, including their

International Banking Facilities (IBFs), to the Federal Reserve Bank in whose District they operate. U.S branches and agencies of a foreign bank that are located in either different states or different Federal Reserve Districts, should submit separate reports to the Federal Reserve Bank(s) in whose District they operate.

Appendix A

Consolidation/Combination Rules

U.S.-resident depository institutions (**Banks**) including commercial banks, thrifts, trusts and similar entities owned by a bank holding company (BHC) or financial holding company (FHC) should consolidate all of their United States banking offices resident branches and subsidiaries including their International Banking Facilities (IBFs) except for their Bank subsidiaries. Any depository institution owned by a securities broker ~~or~~ and dealers, and insurance underwriting subsidiaries, should submit B forms separate from the securities broker or dealer. Any depository institution that is not owned by a holding company or securities broker or dealer should file one consolidated report for all of its United States banking offices. Trusts and Variable Interest Entities (VIEs) for which the reporter is the trustee or primary beneficiary should be included as governed by FIN 46-R.

(1) Banks for the purposes of these consolidated/combination rules are defined as follows:

(a) Commercial banks

(b) United States branches and agencies of foreign banks

(c) Trust companies that conduct commercial banking business

(d) Industrial banks, private or unincorporated banks

(e) Banking Edge Act and Agreement corporations

(f) New York State Article XII corporations

(g) Mutual or stock savings banks, building or savings and loan associations, cooperative banks, credit unions, homestead associations, and other similar depository institutions

(h) Non-deposit and limited purpose trust companies

(i) Non-bank banks

(j) The Federal Reserve Bank of New York

U.S. bank holding companies (**BHCs**)/**U.S.** financial holding companies (**FHCs**) should consolidate ~~their own claims and liabilities and those of any~~ all of their U.S.-resident subsidiaries except **their Banking** subsidiaries, securities brokers and dealers, and insurance underwriting entities. (Positions of **Banking** subsidiaries and security brokers and dealers are reported on separate TIC "B" forms; positions of insurance underwriting subsidiaries are reported on the TIC C reports.) Trusts and Variable Interest Entities (VIEs) for which the reporter is the trustee or primary beneficiary should be included as governed by FIN 46-R.

Securities brokers and dealers, including those securities brokers and dealers owned by a BHC, FHC, or **Bank**, should prepare consolidated B reports for their securities broker or dealer entities and their non-

Banking subsidiaries in the United States. Trusts and Variable Interest Entities (VIEs) for which the reporter is the trustee or primary beneficiary should be included as governed by FIN 46-R. ~~Non-broker and dealer parent companies that are not BHCs/FHCs should submit consolidated C reports for themselves and the entities that are not securities brokers and dealers.~~

Banking Edge Act and Agreement corporations should report for all of their branches and subsidiary companies including their International Banking Facilities (IBFs), excluding the parent organization. For further information, see the consolidation rules in the General Instructions of the FR 2886b, (the Quarterly Consolidated Report of Condition and Income for Edge and Agreement Corporations). (Available at <http://www.federalreserve.gov>).

United States branches and agencies of a foreign bank located in the same state and within the same Federal Reserve District should submit a consolidated report for these offices, including their International Banking Facilities (IBFs), to the Federal Reserve Bank in whose District they operate. U.S. branches and agencies of a foreign bank that are located in either different states or different Federal Reserve Districts, should submit separate reports to the Federal Reserve Bank(s) in whose District they operate.

Note: Additions are shown in bold and are underlined; deletions are shown as strikethroughs.