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VIA ELECTRONIC SUBMISSION

Benjamin W. McDonough
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
publiccomments@frb.gov

RE: Notice of Proposed Rulemaking on Anti-Money Laundering and Countering the Financing of Terrorism Programs, 91 Fed. Reg. 42363 (July 9, 2026); FRB Docket No. R-1835; RIN 7100-AG78

Dear Mr. McDonough:

The Institute of International Bankers ("IIB")[1] welcomes this opportunity to comment on the above-captioned notice of proposed rulemaking (the "**Proposed Rule**") issued by the Board of Governors of the Federal Reserve System (the "**Board**").[2] The Proposed Rule would implement the Board's Bank Secrecy Act ("**BSA**") program rules pursuant to the Anti Money Laundering Act

[1] The IIB is the only national association that exclusively represents internationally headquartered financial institutions from over 35 countries around the world doing business in the United States. The IIB's members are principally foreign banking organizations that operate branches, agencies, bank subsidiaries, and broker-dealer subsidiaries in the United States. Our members are important participants in the U.S. economy, providing significant liquidity to U.S. financial markets and injecting billions of dollars each year into state and local economies across the country through direct employment, capital expenditures and other investments. Many of our institutions are examined by both federal and state examiners. The IIB therefore recognizes the overriding importance of clear regulations to promote consistency in examinations.

[2] Board, Anti-Money Laundering and Countering the Financing of Terrorism Programs, 91 Fed. Reg. 42364 (July 9, 2026).

of 2020 ("**AML Act**") and supersedes a prior proposed rule published in August of 2024.[3] The Proposed Rule's changes are intended to align with changes to the anti-money laundering and countering the financing of terrorism ("**AML/CFT**") program requirements proposed by the Financial Crimes Enforcement Network ("**FinCEN**") to implement provisions of the AML Act and corresponding changes proposed by the Office of the Comptroller of the Currency ("**OCC**"), Federal Deposit Insurance Corporation ("**FDIC**"), and the National Credit Union Administration ("**NCUA**") (collectively, the "**Agencies**") on April 10, 2026, for which the IIB also submitted comments.[4]

The IIB appreciates the Board's consideration of its comments and believes the Proposed Rule marks a significant and laudable step in the Board's efforts to modernize and improve the BSA compliance framework for its supervised banks. The IIB supports, among other things, the Board's central objective of creating an AML/CFT supervisory and regulatory regime that is "more effective in achieving the purposes of the BSA," culminating "in the development of highly useful information related to illicit financial transactions for law enforcement and national security agencies," and the Board's expectation that banks would "recalibrate their AML/CFT programs to concentrate on higher-risk activities and deprioritize lower-risk activities, resulting in greater overall efficiency."[5]

The IIB also welcomes the Board's stated intent that its program requirements for Board-supervised institutions, including branches, agencies, or representative offices of a foreign bank operating in the United States, remain consistent with those imposed by FinCEN and the Agencies.[6] The IIB agrees with the Board's support for a "consistent regulatory text" and acknowledgment that banks should not be "subject to any additional burden or confusion from needing to comply with differing standards between regulatory agencies."[7] The IIB strongly believes alignment between regulatory requirements and supervisory expectations is essential to ensure banks are not subject to conflicting or inconsistent AML/CFT program standards.

In order to provide financial institutions with the regulatory clarity that they need to modernize their AML/CFT programs, and to promote uniform application across federal and state regulatory

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[3] Board, OCC, FDIC, NCUA, Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements, 89 Fed. Reg. 65242 (Aug. 9, 2024).

[4] *See* Letter from the IIB to FinCEN re: Docket No. FINCEN-2026-0034 (June 9, 2026); Letter from the IIB to the OCC, FDIC, and NCUA re: 91 Fed. Reg. 18304 (June 9, 2026).

[5] 91 Fed. Reg. at 42366, 42377.

[6] In this letter, the IIB refers to "banks" and incorporates in this "branches, agencies, or representative offices of a foreign bank operating in the United States." *See id.* at 42379.

[7] *Id.* at 42363.

agencies, we believe that it is necessary to provide additional specificity and detail in the regulatory text itself. In this comment letter, we have suggested areas where the Board should incorporate additional detail in the regulatory text, as well as make other changes to promote clarity.

The IIB's comments to the Proposed Rule follow in Sections I through VII. Below is a summary.

- In Section I, we recommend certain clarifications to the enforcement and supervision policy proposed by the Board, including with respect to what constitutes a "significant or systemic" implementation failure.

- In Section II, we recommend that, if the Board chooses to incorporate into its final rule the FinCEN notice and consultation framework proposed by FinCEN and the Agencies, the Board should implement certain targeted modifications to such framework.

- In Section III, we recommend further encouraging technological innovation in AML/CFT compliance, including the use of artificial intelligence. We propose ways that the Board could offer more clarity on banks' implementation of new technologies and appropriate uses thereof, including by incorporating into the rule text language incentivizing the use of innovative technologies.

- In Section IV, we recommend that the Board clarify certain aspects of the new framework concerning a bank's obligation to "establish" and "maintain" an effective AML/CFT program. We recommend: (i) clarifying the distinction between the requirements to "establish" and "maintain" an effective AML/CFT program and how those requirements will be enforced; (ii) allowing banks adequate flexibility to design and update their risk assessments and make any appropriate changes to their AML/CFT programs; and (iii) providing greater regulatory clarity on expectations for banks' risk-based resource allocations.

- In Section V, we endorse the Proposed Rule's interpretation of the AML Act's requirement for a designated U.S.-based AML/CFT officer and the Board's acknowledgment of the role that non-U.S. personnel and contractors may play in an AML/CFT program.

- In Section VI, we note our support for the Proposed Rule's flexibility regarding who may approve a written program.

- In Section VII, we recommend an effective date of at least 24 months from the issuance of the final rule in light of the time and resources required to implement the required changes and ensure compliance. We also request that supervisory materials concerning how banks will be supervised and examined on their compliance with the final rule be issued or updated well in advance of the effective date. Finally, we request clarification that banks will be considered compliant with the final rule on the effective date so long as they have processes in place to update their AML/CFT programs in accordance with the rule by that date.

Additionally, we note that it is particularly critical that the Board issue or update supervisory materials concerning how banks will be supervised and examined on their compliance with the final rule, including the Federal Financial Institutions Examination Council ("**FFIEC**") BSA/AML Examination Manual (the "**FFIEC Manual**"), well in advance of the effective date of any final rule. We note the FFIEC Manual encourages examiners to take an outcomes-oriented approach in assessing a bank's AML/CFT program, rather than focusing solely on technical compliance with specific rules. To this end, the FFIEC Manual states that "[m]inor weaknesses, deficiencies, and technical violations alone are not indicative of an inadequate BSA/AML compliance program and should not be communicated as such."[8] In accordance with this directive to examiners, we urge the Board to ensure that regulatory and supervisory expectations for AML/CFT programs provide that deficiencies in program implementation that are not significant or systemic do not warrant supervisory action.

I. The Board Should Clarify the Enforcement and Supervision Policy

The Proposed Rule would establish an enforcement and supervision policy that would "articulate the Board's enforcement and supervision policy as it relates to AML/CFT requirements" and provides that "a Board-supervised bank that has properly established an AML/CFT program would not be subject to an AML/CFT enforcement action or to a significant AML/CFT supervisory action based on the program rule" absent "a significant or systemic failure to implement" an AML/CFT program.[9]

The IIB recommends a number of clarifications with respect to the enforcement and supervision policy.

- **Clarifying that the enforcement and supervision policy applies to all Board-supervised institutions:** Under the Proposed Rule, the enforcement and supervision policy applies to "state member bank[s]" and it is enacted through amendments to 12 C.F.R. § 208.63, which regulates "state member banks." However, 12 C.F.R. § 208.63 does not regulate a "branch, agency, or representative office of a foreign bank operating in the

[8] FFIEC Manual, Developing Conclusions and Finalizing the Exam 1 (Mar. 2020), *available at* https://bsaaml.ffiec.gov/docs/manual/05_DevelopingConclusionsAndFinalizingTheExam/01.pdf.

[9] 91 Fed. Reg. at 42374.

United States,”[10] which are subject to regulation for Bank Secrecy Act compliance under 12 C.F.R. § 211.24(j)(1). While the latter regulation incorporates by reference the requirements of 12 C.F.R. § 208.63 in terms of the requirements for a foreign banking organization, the final rule should clarify that the enforcement and supervision policy applies not only to state member banks but to all “board-supervised institutions,” including foreign banking organizations.

- **Defining a “significant or systemic” implementation failure**: Under the Proposed Rule, the “significant or systemic” standard determines whether an implementation deficiency at a bank with a properly established program may result in an AML/CFT enforcement action or a significant AML/CFT supervisory action. Given the import of that standard, the IIB suggests that the Board clarify which implementation failures rise to the level of a “significant or systemic failure” in the final rule. The Board should explain in the final rule text that “significant or systemic” implementation failures are those that (i) materially affect multiple business lines or risk areas, (ii) persist over time without remediation, and (iii) undermine the program's ability to manage material risks. Including these concrete parameters in the final rule text would lend material regulatory clarity and promote consistent compliance, supervision, and enforcement. Likewise, the preamble to the Proposed Rule notes that supervisory and enforcement focus should rest on significant or systemic failures “rather than on isolated, technical, or immaterial implementation issues”[11]; we urge the Board to include this additional content in the text of the final rule. The Board could accomplish this by updating the text of proposed 12 C.F.R. § 208.63(d) to say the following:

> *AML/CFT program implementation*. A Board-supervised institution implements an AML/CFT program in accordance with this paragraph if the Board-supervised institution implements, in all material respects, the AML/CFT program required under paragraph (c) of this section. **Only a significant or systemic failure to implement the AML/CFT program required under paragraph (c) of this section shall be considered a violation. A significant or systemic failure to implement the AML/CFT program required under paragraph (c) of this section is one that (i) materially affects multiple business lines or risk areas, (ii) persists over time without remediation, and (iii) undermines the program’s ability to**

[10] “[O]ther than a Federal branch or agency or a state branch that is insured by the FDIC.” *Id.* at 42379 (citing to 12 C.F.R. §§ 208.63, 211.5(m), and 211.24(j)).

[11] *Id.* at 42366. Such language mirrors longstanding agency guidance that “minor weaknesses, deficiencies, and technical violations” are not indicative of inadequate policies and procedures. *See* FFIEC BSA/AML Exam Manual *available at* https://bsaaml.ffiec.gov/manual/AssessingComplianceWithBSARegulatoryRequirements/01.

manage material AML/CFT risks. A failure will be significant or systemic only where the bank has failed to identify and/or mitigate a significant AML/CFT risk that has actual, material impact on the financial institution or its customers. Isolated, technical, or immaterial deficiencies do not qualify; rather, significant or systemic implementation failures constitute only the most serious deficiencies in the bank's implementation of its AML/CFT program.[12]

Alternatively, some or all of the previous paragraph could be articulated as a rule of construction. This change would not only offer greater regulatory clarity, but also promote more consistent examination and supervisory outcomes across Board-supervised institutions, which are supervised by a variety of federal and state regulators.

- **Specifying implementation failures that are not "significant or systemic"**: The Board should provide more information in the text of the final rule about implementation failures that may draw appropriate regulatory concern but would not be considered "significant or systemic." For instance, the Board should state in the final rule that issues such as isolated control deficiencies, model or scenario tuning gaps, temporary backlogs, issues that the bank has identified and is actively remediating, and issues stemming from good-faith judgment calls (e.g., risk-segmentation decisions), would not constitute "significant or systemic" implementation failures. Likewise, given the highly technical nature of implementing an AML/CFT program, we suggest that the Board clarify that where a bank uses reasonable efforts to maintain a technical control, a failure of that technical control would not be considered to be a "significant or systemic failure." We are concerned, for example, that "systemic" could be interpreted to apply to any failure of a technical control (because a failed technical control likely applies "systemically" across numerous transactions), but, properly understood, a systemic failure should also satisfy a threshold of materiality or significance.

- **Avoiding hindsight-based determinations**: Consistent with the Board's statement that the Proposed Rule does "not contemplate second-guessing of a bank's reasonable determinations regarding appropriate resource allocation or conclusions regarding specific risks,"[13] the Board should state in the final rule that examiners are expected to avoid hindsight-based determinations regarding whether a potential implementation failure meets the "significant or systemic" standard and instead should make such determinations

[12] The extent to which any violation would be subject to a civil monetary penalty should continue to rely on the processes that currently exist under 12 U.S.C. § 1818 and 31 U.S.C. § 5321.

[13] 91 Fed. Reg. at 42371-72.

premised on information that was reasonably available to the bank at the time of the event in question rather than after the fact.

- **Clarifying that the enforcement and supervision policy applies to actions taken pursuant to delegated Board authority:** The preamble to the Proposed Rule states that the enforcement and supervision policy "is only intended to affect actions by the Board."[14] As a matter of ordinary course, the Board's supervisory staff and the Federal Reserve Banks may undertake supervisory actions and certain enforcement actions under delegated authority from the Board. As such, the IIB recommends that the final rule clarify that the enforcement and supervision policy applies to actions taken pursuant to authority delegated by the Board.

II. The FinCEN Consultation Framework, if Adopted, Should Incorporate Targeted Modifications.

The IIB appreciates the Board's request for comment on the FinCEN consultation framework proposed by FinCEN and the Agencies in the NPRMs published in April 2026. Should the Board adopt this framework in the final rule, we offer certain proposed modifications, as we previously noted in our comment letters to FinCEN and the Agencies. Specifically, we recommend that (i) banks have the option to initiate the notice and consultation process; (ii) banks be permitted to submit their views as part of the process; and (iii) the Board provide additional clarification on which significant supervisory actions may trigger notice and consultation.

- *First*, if a consultation framework is implemented, the IIB suggests that the final rule not require that notice and consultation occur in every instance, but instead provide banks with the *option* to request that the Board notify and consult with FinCEN prior to initiating a significant AML/CFT supervisory or enforcement action. In some instances, there may be no disagreement between the bank and the Board about the proposed action, and making the consultation optional could make the process more timely and efficient in such circumstances. Making the process optional at the election of the bank would reduce the resource demands placed on the Board, FinCEN, and the bank, while still preserving the objective of the consultation framework. This would be consistent with the overall objective of the Proposed Rule, which is to avoid unnecessary compliance burden.

- *Second*, if a consultation framework is implemented, the IIB suggests that the Board permit banks to make a written submission to FinCEN as part of the consultation process, with the option of a supplemental meeting or call as appropriate. The written submission would be required within a reasonable period of time, such as 60 days (subject to extensions for good

[14] *Id.* at 42374.

cause), and would address the factors that FinCEN is required to consider under the consultation framework. For example, in order for FinCEN to appropriately consider whether a bank has advanced the AML/CFT Priorities by providing highly useful information or has performed innovative activities (including the effective use of artificial intelligence, federated learning, or other advanced monitoring tools), the bank should have the opportunity to directly provide relevant information to FinCEN. Likewise, to take another example, a bank should be permitted to explain why the compliance processes or activities in question were consistent with a reasonable, risk-based resource allocation. It is possible that information on all of these factors may not be in the possession of the Board, and it would be inefficient to require the Board to collect and present this information when the bank can do so more efficiently. Adopting the Agencies' proposed information-sharing provision alongside a structured written-submission process would give both provisions practical effect.

- *Third*, if a consultation framework is implemented, the IIB suggests that the Board clarify which "significant AML/CFT supervisory action[s]" would trigger the requirement for the Board to notify and consult with FinCEN (or, under our proposal, the right by a bank to request that the Board notify and consult). We suggest that a Matter Requiring Attention be included as a specific example of a "significant AML/CFT supervisory action," to confirm that it is consistent with the definition of that term.[15]

III. Comments on the Role of Artificial Intelligence and Other Technological Innovation in AML/CFT Compliance

The IIB welcomes the Board's support for the use of innovative technologies in financial institutions' AML/CFT programs.[16] To further this support and to promote consistency across financial institutions supervised by different agencies, the IIB offers the following recommendations.

- *First*, the Board should affirmatively state in the body of the rule setting forth the components of an AML/CFT program, in 12 C.F.R. § 208.63(c)(1), that a bank's risk

[15] Under the Proposed Rule, the term "significant AML/CFT supervisory action" would mean "any written communication or other formal supervisory determination that— (i) Identifies one or more alleged deficiencies, weaknesses, violations of law, or unsafe or unsound practices or conditions relating to an AML/CFT requirement; (ii) Communicates supervisory expectations to a state member bank regarding actions or remedial measures required to correct the deficiency, weakness, violation, or practice or condition; and (iii) Contemplates significant or programmatic actions or remedial measures to be taken by the state member bank." *Id.* at 42381 (proposed 12 C.F.R. § 208.63(a)(4)). Examiner observations, suggestions, or other informal comments would be expressly excluded from this definition. *Id.*

[16] *See id.* at 42368.

assessment processes and/or policies, procedures, or controls to mitigate AML/CFT risk "may include the use of innovative techniques such as artificial intelligence, machine learning, large language models, generative AI, agentic AI or other innovative technology." This would give effect to one of the AML Act's key purposes of "encourag[ing] technological innovation and the adoption of new technology by financial institutions to more effectively counter money laundering and financing of terrorism,"[17] and would advance the Board's statement in the Proposed Rule's preamble that it "encourages banks to evaluate whether new technology or innovative approaches in other resources might help to combat financial crime more effectively."[18]

- *Second*, the preamble to the Proposed Rule states that "[b]anks that responsibly incorporate innovative technologies into their AML/CFT programs will not incur on that basis any additional risk of being subject to a significant supervisory action or enforcement action solely based on the use of innovative technologies."[19] The IIB welcomes this statement and suggests that the Board incorporate it into an expanded 12 C.F.R. § 208.63(g); reflecting this commitment in the regulatory text itself, rather than in the preamble alone, would provide banks with more durable clarity. In doing so, the Board should also reaffirm and expand upon the principles of the 2018 Joint Statement, including that pilot programs should not by themselves trigger supervisory action and that the adequacy of existing processes will be assessed independently of pilot results.[20]

- *Third*, in line with the IIB's comments to FinCEN's proposed rule, the IIB recommends that the final rule state the Board will consider that innovation, including the effective use of technology, will be treated as a mitigating factor when assessing a bank's AML/CFT program in the context of a supervisory or enforcement action. For example, this could include providing affirmative credit to banks in their written examination reports acknowledging any instances in which banks have demonstrated the use of innovative technology. Similarly, the rule should specify that the absence of innovation will not be treated as an aggravating factor. Banks may reasonably decline to adopt artificial intelligence or other advanced technologies in their AML/CFT programs due to a variety of factors, including the institution's size, resources, and sophistication; regulatory

[17] *See id*. (citing William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, 134 Stat. 4547 at § 6002(3) (Jan. 1, 2021)).

[18] *See id*.

[19] *See id.*

[20] Board et al., Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing (Dec. 3, 2018).

prohibitions in other jurisdictions; cost constraints; the maturity of available tools; or other reasons.

IV. Standards for an Effective AML/CFT Program

A. Clarify the Distinction Between the Requirements to "Establish" and "Maintain" an Effective AML/CFT Program and How Those Requirements Will be Enforced

The Proposed Rule makes an important distinction between the requirements to "establish" and "maintain" an "effective AML/CFT program." It defines the requirement to "establish" an AML/CFT program based on the BSA's four pillars—(1) risk-based internal policies, procedures, and controls; (2) a designated compliance officer; (3) an ongoing employee training program; and (4) an independent audit function.[21] By contrast, it defines the requirement to "maintain" an effective AML/CFT program as the requirement to "implement[], in all material respects, the AML/CFT program."[22] That distinction has important consequences for banks, as the Proposed Rule introduces an "enforcement and supervision policy" under which a bank that has a properly "established an AML/CFT program" will not be subject to an AML/CFT enforcement action or a "significant AML/CFT supervisory action" absent a "significant or systemic failure to implement the AML/CFT program."[23]

In order to give effect to the important distinction between "establishing" and "maintaining" an AML/CFT program, we suggest that the Board should clarify the distinction between failures to establish and failures to maintain/implement an AML/CFT program. For "establishment" failures, the Board should state expressly in the final rule that such failures involve (i) the absence of one or more of the four pillars; (ii) a program that is fundamentally not risk-based, or (iii) the absence of any meaningful risk assessment. The Board should also offer concrete, illustrative examples of establishment failures in the text of the final rule reflecting that program establishment involves the core framework for the AML/CFT program. In these examples, the Board should caution against blurring the distinction between program establishment and program implementation, as the preamble to the Proposed Rule appears to do at times. For instance, the preamble suggests that "a failure to update the program to reflect significant changes in the bank's risk profile may result in the program no longer meeting the program *establishment* requirements."[24] However, the process of identifying changes in ML/TF risks, *e.g.*, from a new product or service, is a central aspect of *implementation* of the AML/CFT program. We are concerned that treating the requirement to

[21] 91 Fed. Reg. at 42381 (proposed 12 C.F.R. § 208.63(c)).

[22] *Id.* (proposed 12 C.F.R. § 208.63(d)).

[23] *Id.* at 42382 (proposed 12 C.F.R. § 208.63(g)(1)).

[24] *Id.* at 42367 (emphasis added).

update the program as part of a requirement to "establish" or "re-establish" the AML/CFT program undermines the conceptual distinction between establishing and implementing an AML/CFT program. As to the risk assessment processes requirement for a properly established AML/CFT program, the final rule should clarify that so long as a financial institution has a process in place for assessing the risk relating to a new product or service, this process would meet the requirement of an established program. Any failure in that process would in turn be evaluated under the "implementation" requirement. This would reinforce that there is a fundamental distinction between the establishment and implementation requirements and would provide necessary regulatory clarity. Of course, we recognize that a failure to implement appropriate risk assessment processes could rise to the level of a significant or systemic implementation failure in certain circumstances, but we believe that this would appropriately be analyzed as a potential implementation failure, not a failure to establish an AML/CFT program.

B. The Board Should Provide Adequate Flexibility in Designing and Updating Risk Assessment Processes

The IIB supports the Proposed Rule's approach to risk assessments. In particular, the IIB appreciates the Board's acknowledgement in the preamble that banks are "best positioned to identify and evaluate" their ML/TF risks, and the Board's commitment that, under the Proposed Rule, "Board-supervised banks will continue to have significant flexibility and discretion in their decisions and determinations related to risk identification and resource allocation."[25] Banks that operate in multiple jurisdictions have a wide variety of risk assessment processes that are reasonably designed to address the various risks they face across different products, services, and jurisdictions and appreciate the flexibility to appropriately design risk assessments to reflect the specific needs of particular financial institutions.

Given the importance of the risk assessment processes to banks' AML/CFT programs, the IIB suggests the following clarifications and modifications to the risk assessment requirement:

- *First*, while the IIB supports that the preamble to the Proposed Rule allows for multiple risk assessment processes to satisfy the requirement, it would be beneficial for the Board to make this explicit in the final rule text by adding the phrase "one or more" before the term "risk assessment processes" in proposed 12 C.F.R. § 208.63(c)(1)(i).

- *Second*, the IIB supports the Proposed Rule's requirement that banks incorporate the AML/CFT priorities "as appropriate" into their risk assessment processes.[26] However, the

[25] *Id.*

[26] *Id.* at 42381 (proposed 12 C.F.R. § 208.63(c)(1)(i)(B)).

Board should incorporate into the final rule text the explanation in the preamble that, "having reviewed the AML/CFT Priorities, a Board-supervised bank may determine the extent to which a particular AML/CFT Priority is applicable and whether and how a particular AML/CFT Priority should be appropriately incorporated into its risk assessment processes."[27] The Board should also clarify that, consistent with this explanation, changes to the AML/CFT Priorities need not trigger an enterprise-wide risk assessment update, but instead may trigger only a review of those standalone risk assessment processes that incorporate the AML/CFT Priorities. The bank may then update those risk assessment processes as appropriate based on that review. This clarification would further the Board's stated intention to continue providing banks "significant flexibility and discretion in their decisions and determinations related to risk identification and resource allocation."[28]

- *Third*, the Board should allow banks adequate time to update their risk assessments and make any appropriate changes to their AML/CFT program following significant changes to their risk profiles. The process of updating a risk assessment and making any resulting changes to an AML/CFT program may, in certain circumstances, be complex and time-intensive. The Proposed Rule states that banks should update their risk assessments "promptly" upon any change that the bank knows or has reason to know significantly changes its risk profile.[29] The "promptly" standard could be viewed as requiring near-immediate enterprise-wide revisions, which is unrealistic and may have the unintended consequence of driving banks to make changes that are not appropriately considered. Instead, the final rule should clarify that banks are expected to (i) update a risk assessment "within a reasonable period of time after any material changes" to their risk profile and (ii) make appropriate risk-based "updates to the AML/CFT program within a reasonable period of time after updating the risk assessment." This would provide greater regulatory clarity and would better align with real-world practices of financial institutions undertaking risk assessments and updating AML/CFT programs.

- *Fourth*, the IIB supports that the preamble to the Proposed Rule recommends continuing to afford banks "significant flexibility and discretion" in their decisions and determinations related to risk identification and resource allocation.[30] However, this point should be included in the final rule text or in a rule of construction that states the following:

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[27] *Id.* at 42371.

[28] *Id.* at 42367.

[29] *Id.* at 42381 (proposed 12 C.F.R. § 208.63(c)(i)(C)).

[30] *Id.* at 42367.

> **Because banks are best positioned to identify and evaluate their risks, their risk assessment processes to fulfill the requirement in subsection (b) of this section, and the outcomes from such processes, shall be evaluated using a standard of reasonableness. The Board shall not substitute its own judgment for that of banks' reasonable judgments in designing and interpreting risk assessment processes and outcomes.**

- *Fifth*, the Board should clarify that the requirement to update risk assessments would be satisfied by updates to risk assessments pertaining to relevant lines of business or operations or particular products or services affected by the risk profile change, and would not require that a bank update all risk assessments.

- *Sixth*, the Board should clarify that a bank has discretion to determine whether a change in its business is sufficiently material to require an updated risk assessment process, and if so, that the update to the risk assessment process may be targeted at the business changes, emerging risks, or updated program element(s) to meet the regulatory expectation for updates to risk assessments for significant changes to a bank's risks.

- *Seventh*, the Board should clarify that updates to risk assessment processes are only required for changes that the bank reasonably believes will impact its illicit finance activity risks. The preamble suggests that risk assessments may need to be updated when new products, services, and customer types are introduced; when existing products, services, and customer types undergo significant changes; when the bank adopts new risk mitigation technology; or when the bank as a whole expands or contracts through mergers, acquisitions, and divestitures. However, these changes may not always impact the bank's ML/TF risks, and suggesting that banks should update risk assessments in response to any changes that may fit into these categories creates the sort of "check-the-box" prescriptive exercise the Proposed Rule was designed to avoid. Instead, the final rule should explicitly state that risk assessment updates should be in response to significant or material changes that the bank reasonably determines impact its ML/TF risks.

C. The Board Should Provide Regulatory Clarity on Banks' Risk-Based Resource Allocations

The IIB supports the Board's risk-based approach to resource allocation in the Proposed Rule's requirement that financial institutions devote "more attention and resources toward higher-risk customers and activities, consistent with the risk profile of the bank, rather than toward lower-risk customers and activities."[31] The IIB further supports the Board's statement in the preamble that the rule does not contemplate "regulatory second-guessing" of banks' risk-based resource allocations because banks are "best positioned" to identify, assess, and allocate resources based on risk.[32] The IIB also appreciates the Board's statements that an "examiner should [not] substitute his or her own subjective judgement in place of the bank's,"[33] but we recommend that the Board provide additional regulatory clarity to achieve this objective.

- *First*, to avoid "regulatory second-guessing" of resource-based decisions, the Board should provide clearer language in the final rule about the processes it expects banks to undertake in identifying what areas are higher and lower risk and how to develop appropriate risk-based resource allocations. To this end, the Board should create a rebuttable presumption in the rule text that a bank's resource-allocation determinations will not be deemed inadequate if they are (i) informed by risk assessment processes and (ii) approved by the AML/CFT officer, or if they otherwise reflect the use of sound judgment in good faith that is sufficiently documented.

- *Second*, the Board should clarify what constitutes "resource-related issues" for banks. The preamble explains that examiners will consider whether a bank "knows or should know of resource-related issues" when assessing the institution's risk identification and resource allocation but does not define such issues.[34] In offering clarification, the Board should also take care not to disincentivize the use of innovative technologies, including generative artificial intelligence, that the agency encourages elsewhere in the rule.[35] These technologies may allow banks to devote fewer financial and staffing resources to their AML/CFT programs over time while enhancing (or at least without compromising) effectiveness. The Board should clarify that regulators should not make conclusions about a bank's compliance merely because it has decreased spending on head count. The Board could also make clear that deliberate, risk-based decisions to allocate fewer resources to lower-risk areas, which is one of the objectives of the Proposed Rule, do not constitute "resource-related issues" so long as the decisions are consistent with the bank's documented risk assessments. Moreover, the Board should apply a reasonableness standard when assessing a bank's knowledge of resource issues, requiring consideration of whether a bank "reasonably knows or should know" of resource issues.

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[31] *Id.* at 42366.

[32] *Id.* at 42371-72.

[33] *Id.* at 42372.

[34] *Id.* at 42367.

[35] *Id.* at 42368.

- *Third*, to promote regulatory clarity and give banks the confidence to implement this important tenet of the AML Act, the Board should offer specific examples of what it means for banks to "direct more attention and resources to higher-risk customers and activities."[36] For example, we believe the Board intends, among other things, to allow banks to shift transaction monitoring and investigative resources from lower-risk typologies toward higher-risk typologies. The Board should explicitly state this in the regulatory text and should also acknowledge that one consequence of this risk-based resource allocation is that, for example, certain SARs that would otherwise meet the SAR filing requirement may not be filed regarding low-risk typologies. Without examples showing that the Board recognizes the concrete trade-offs that accompany proper risk-based resource allocation, banks will be reluctant to adopt this approach for fear of check-the-box supervisory or enforcement consequences.

V. IIB Supports the Proposed Rule's Requirement That the Designated AML/CFT Officer Be Located in the United States

The IIB supports the requirement that banks have a designated AML/CFT officer located in the United States while permitting "personnel located outside of the United States . . . to perform certain AML/CFT functions," including having "AML/CFT staff and operations outside of the United States" or "contract[ing] out or delegat[ing] parts of their AML/CFT operations to third-party providers located outside of the United States."[37] The IIB appreciates the Board's acknowledgment that such "arrangements may serve to improve cost efficiencies; to enhance coordination, particularly with respect to cross-border operations; or serve other purposes not in conflict with goals underlying the BSA."[38]

VI. IIB Supports the Proposed Rule's Flexibility with Respect to Approval of the Written AML/CFT Program

With respect to the banks' approval of the written AML/CFT program, the IIB supports the Proposed Rule's emphasis on providing banks with flexibility to determine the appropriate governing body within the institution to issue the approval.[39] The IIB also supports the preamble's statement that, "[f]or the U.S. branch of a foreign bank, the equivalent governing body may be the

[36] *Id.* at 42366.

[37] *Id.* at 42373.

[38] *Id.*

[39] *Id.* at 42374.

foreign banking organization's board of directors or delegates acting under the board's express authority."[40] While the Proposed Rule does not prescribe a timeline for re-approval of the written AML/CFT program, we expect that most banks would have the relevant authority re-approve the program on an annual basis. We also expect that the standard industry practice of obtaining board or equivalent governing body approval of the AML/CFT program policy satisfies the requirement, rather than requiring the approval of the program's day-to-day processes, procedures, and controls. We would ask the Board for confirmation of that understanding.

VII. An Effective Date of Two Years From the Issuance of the Final Rule Would Provide Banks Sufficient Time to Implement Program Changes

The Proposed Rule provides for an effective date of 12 months from the date of issuance of the final rule, and the Board solicits comment on the proposed effective date. Given the significant changes that would be required by the final rule, we suggest that the final rule be effective 24 months after the issuance of the final rule. The one-year timeline would not provide banks with adequate time to review the final rule, analyze its provisions, evaluate their current AML/CFT programs in light of the final rule, determine what, if any, changes may be required, and then implement any such changes. As noted, updating AML/CFT programs is a time- and resource-intensive process. A more reasonable approach would be modeled after other agencies' implementation of similar rulemakings, such as FinCEN's implementation of the customer due diligence rule, where banks had two years to plan for implementing its requirement to collect beneficial ownership information from their new legal entity customers.[41]

Relatedly, any supervisory materials concerning how banks will be supervised and examined on their compliance with the final rule, including the FFIEC BSA/AML Examination Manual, should be issued or updated well in advance of the effective date. However, it is possible that such materials will not be made public until after the final rule's publication. Banks may wish to reference these materials in designing certain AML/CFT program components including new or updated risk assessment processes and/or incorporation of innovative technologies, which could take substantial time to develop and implement. The need for such materials also supports a 24-month implementation period.

Finally, the IIB requests that the Board clarify its expectations for the effective date. Even in the course of a two-year implementation period, banks may be able to implement procedures to conduct revised risk assessments that reflect the AML/CFT Priorities, but completing those risk

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[40] *Id.*

[41] FinCEN, Customer Due Diligence Requirements for Financial Institutions, 81 Fed. Reg. 29398, 29398 (May 11, 2016) ("The final rules are effective July 11, 2016 . . . [c]overed financial institutions must comply with these rules by May 11, 2018.").

assessments and making any corresponding changes to AML/CFT controls and procedures in many cases may not be feasible within that timeframe. Accordingly, the Board should state expressly in the final rule that banks will be considered compliant so long as they have implemented appropriate processes to conduct the required risk assessments and make any subsequent updates to their AML/CFT programs.

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We appreciate the opportunity to comment on the Board's proposed reforms to banks' AML/CFT program rule obligations. The IIB strongly supports the Board's objectives in this rulemaking and we stand ready to answer any questions that the Board may have. If you have any questions, please contact Stephanie Webster at (646) 213-1149 or swebster@iib.org.

Sincerely,

Stephanie Webster
General Counsel