# INSTITUTE OF FOREIGN BANKERS, INC.

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The Honorable William Proxmire
U.S. Senate
Washington, D.C. 20510

Re: Amendment No. 50 to S. 790

Dear Senator Proxmire:

I am writing to you on behalf of the Institute of Foreign Bankers, Inc. (the "Institute") to correct some serious misunderstandings that have surfaced during the Senate's floor debate on the provisions of S. 790 about the circumstances of foreign banks operating in the United States pursuant to the federal regulatory framework established by the International Banking Act of 1978 (the "IBA"). These misunderstandings have been reflected, unfortunately, in yesterday's approval of an amendment to the provisions of S. 790 that would, if enacted into law, have far-reaching and unintended consequences for foreign banks maintaining banking operations in the United States.

Since the enactment of IBA in 1978, foreign banks operating in the United States through branch or agency offices or banking subsidiaries have been permitted to engage in financial activities in the United States only to the same extent as domestic banking organizations. A very limited, well-considered exception to this general prohibition was provided, in the form of limited "grandfather" privileges, for the pre-IBA activities and investments of those foreign banks that were newly subjected by IBA to the nonbank prohibitions of the Bank Holding Company Act ("BHCA") (even though they did not have a U.S. bank subsidiary and were not "bank holding companies").

The provision of IBA which amended section 2(h) of BHCA limited the extraterritorial application of the U.S. policy of separating banking and commerce, to avoid unnecessary and undesirable U.S. regulation of foreign banks' ownership interests in foreign companies that are permissible under applicable home country law. This provision, does not, however, permit foreign banks to engage in any way in financial activities in the United States that are impermissible to U.S. banking organizations.

Important U.S. national interests were given careful recognition by Congress in 1978 in enacting both these provisions, interests that would, if considered again, be viewed as equally important today. Indeed, it took four years, and six Congressional hearings during that period of time, for the many different national as well as international interests to be considered fully, and balanced appropriately, by Congress. Those provisions of IBA would now be overridden, without benefit of hearings or any other opportunity to consider the ramifications of such action, by the amendment approved by yesterday's floor vote.

For the U.S. Congress to override summarily these provisions not only would shatter this delicate balancing of many different national and international interests, but also would cause undue operational difficulties for many foreign banks and their affiliates, not only in the U.S., but abroad. Activities "grandfathered" by IBA were commenced in the U.S. in good faith by foreign banking organizations not having a U.S. bank subsidiary, pursuant to assurances by the U.S. Government set forth in its various treaties of Friendship, Commerce and Navigation, that such investments would be treated fairly and not be discriminated against on account of their foreign ownership. These activities and investments would be subjected under the amendment to an arbitrary and discriminatory further prohibition against their expansion. Foreign banking organizations would further be prohibited from acquiring additional shares of foreign nonbank companies that are, in turn, engaged, directly or indirectly, in nonfinancial activities in the U.S. This prohibition on the acquisition of any additional shares in such foreign companies would require many foreign affiliates of foreign banks to choose between continuing to maintain their U.S. operations or investments, on the one hand, or their affiliation with the foreign bank that operates in the U.S., on the other. Even a temporary moratorium will result in changes in affiliations that will endure beyond its expiration. Moreover, in those countries, such as Germany, in whose financial systems banks has been given broader responsibilities as well as powers of investment, the withdrawal of this IBA provision will have a profound effect, limiting sharply the roles there are expected to serve in their home country system solely on account of their operation of U.S. branch offices. Given the increased internationalization of the world economy, it is even more unrealistic now than in 1978 to expect international organizations to confrom their worldwide operations to U.S. policy solely on account of their operation of a U.S. office.

The Senate acknowledged, at the time IBA was enacted, that foreign banks not having a U.S. bank subsidiary were lawfully engaged in nonbanking activities in the U.S. Thus, foreign banks' continued participation in activities under the IBA's already limited grandfather privileges does not involve any question of circumventing congressional intent. The moratorium on foreign bank activities now contained in the provisions of S. 790 is wholly unnecessary to the purposes underlying that bill. Rather, the issue of how the U.S. financial regulatory structure should treat foreign banks' U.S. activities has been specifically and definitively addressed by Congress. There has been no suggestion that these carefully compromised provisions of IBA have inadequately carried out the full intent of Congress.

For these reasons, the Institute respectfully urges the Senate to remove paragraphs (1) and (2) of section 201(a) of Amendment No. 50 in the final version of S. 790.

If we can provide any further information, please feel free to contact either the undersigned, or our outside counsel, Shaw, Pittman, Potts & Trowbridge (Steven M. Lucas, Esq./663-8139).

Respectfully submitted,

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