FEDERAL RESERVE press release

For immediate release January 12, 1993

The Federal Reserve Board today issued a final rule implementing portions of the Foreign Bank Supervision Enhancement Act of 1991. The final rule amends the Board's Regulation K (International Banking Operations) and Regulation Y (Bank Holding Companies and Change in Bank Control).

The rule is effective immediately and replaces an interim regulation issued in April 1992.

The amendments to Regulation K reflect the Board's new authority to supervise and regulate foreign banks that conduct or seek to conduct a banking business in the United States.

The rule requires that foreign banks seeking to conduct direct banking operations in the United States must be subject to comprehensive supervision by their home country authorities on a consolidated basis.

The amendment to Regulation Y requires a foreign banking organization to file an application with the Board in order to acquire more than 5 percent of the shares of a U.S. bank or bank holding company.

The Board also is requesting additional comment on the definition of representative office and the types of activities such an office may conduct.

These comments must be received by March 15, 1993.

The Board's notice is attached.

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Attachment

FEDERAL RESERVE SYSTEM

12 CFR Parts 211, 225, 263, 265

[Docket No. R-0754]

Regulation K—International Banking Operations and Regulation Y—Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule and request for comment.

SUMMARY: This final rule implements portions of the Foreign Bank Supervision Enhancement Act of 1991 (FBSEA), Subtitle A of Title II of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L 102-242, 105 Stat. 2236, 2286-2305), which made changes to the authority of the Board of Governors of the Federal Reserve System (Board) under the International Banking Act of 1978 (IBA). These changes generally provided the Board with new authority to approve the establishment of U.S. offices by foreign banks and to regulate and supervise the U.S. operations of foreign banks. The final rule replaces the previous interim rule and reflects the Board's authority with respect to the supervision and regulation of foreign banks that conduct or seek to conduct a banking business in the United States. The Board has also requested additional comment on aspects of the final rule concerning representative offices of foreign banks. Lastly, the final rule amends Regulation Y to reflect the requirement that a foreign banking organization must file an application with the Board under the Bank Holding Company Act (BHC Act) in order to acquire more than 5 percent of the shares of a U.S. bank or bank holding company.

DATES: *Effective Date.* Effective [on date of publication]. *Comment Date.* Comments are requested and must be submitted by March 15, 1993.

ADDRESSES: Comments, which should refer to Docket No. R-0754, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary. Comments addressed to the attention of Mr. Wiles may be delivered to the Board's mailroom between 8:45 am and 5:15 pm, and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 am and 5 pm, except as provided in section 261.8 of the Board's Rules Regarding the Availability of Information. 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Kathleen M. O'Day, Associate General Counsel (202/452-3786), Ann E. Misback, Senior Attorney (202/452-3788), Margaret E. Miniter, Attorney (202/452-3900), or John W. Rogers, Attorney (202/452-2798), Legal Division; Michael G. Martinson, Assistant Director (202/452-3640), or Betsy Cross, Manager (202/452-2574), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System.

For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The FBSEA provided the Board with new authority to supervise and regulate foreign banks that operate or seek to operate in the United States. As the FBSEA became effective upon enactment, the Board issued an interim rule on April 15, 1992, with a request for public comments (57 FR 12992). In taking this action, the Board stated that it would consider revisions to the interim rule as appropriate and on the basis of the comments received. The comment period ended on June 15, 1992.

The Board received 19 public comments on the regulation. Comments were submitted by 7 foreign banking organizations, 3 law firms, 6 trade associations, a state banking supervisor, an association of state banking supervisors, and a foreign banking supervisor. The Board has considered the comments and, as a result of this further review, has adopted several provisions in this final rule that differ from the provisions contained in the interim rule.

The final rule amends Regulation K in a number of areas, including definitions, requirements for the establishment of a branch, agency, commercial lending company, or representative office of a foreign bank in the United States (collectively, "offices"), examination of offices and affiliates of foreign banks, termination of activities of foreign banks, and limits on lending by a state branch or state agency to a single borrower. The final rule also amends both Regulation K and Regulation Y to reflect the requirement in the FBSEA that a foreign banking organization must apply under section 3 of the BHC Act to acquire more than 5 percent of a U.S. bank or bank holding company. Lastly, the final rule reserves sections for the future promulgation of rules implementing the provisions of the FBSEA that govern activities of state branches and agencies, retail deposit-taking by foreign banks. Comments were received on each of these areas and are discussed below.

Establishment of Foreign Bank Offices

Standards for Approval of Applications to Establish an Office

The interim rule revised Regulation K to implement the mandatory and discretionary standards in the FBSEA for Board approval of an application by a foreign bank to establish a branch, agency, or commercial lending company. These standards are all discretionary for approval of an application to establish a representative office. The comments generally supported the formulation of these standards, and focused on the means for proving that the standards are met.

Mandatory Standard of Comprehensive Supervision on a Consolidated Basis

The final rule adopts the standard provided in the interim rule for determining whether a foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor. This standard is met if the bank is regulated in such a manner as to allow its home country supervisor to receive sufficient information on the worldwide operations of the

foreign bank (including its dealings with affiliates) to assess the bank's overall financial condition and compliance with law. The final rule also adopts five factors that, among other things, the Board will consider when evaluating this standard.

Eight comments supported the standard as providing the flexibility to accommodate different regulatory systems, with one comment opposing the standard as vague. The commenters also recommended alternatives to the Board's case-by-case determinations under this standard, which they opposed as burdensome. Finally, certain commenters requested two substantive additions, one to permit entry by foreign banks from countries that are developing, but do not yet have, systems for supervising a bank on a consolidated basis, and the other to acknowledge that many countries do not regulate bank holding companies or their nonbank subsidiaries.

Alternatives to case-by-case determinations. The commenters opposing case-by-case determinations under the comprehensive supervision standard proposed alternatives to requesting information from each foreign bank applicant. Five commenters suggested exclusive use of internal resources or consultations with the home country supervisor as more reliable, less burdensome, and, according to one commenter, consistent with the Basle Committee Minimum Standards for the Supervision of International Banking Groups and Their Cross-Border Establishments (June 1992) (Basle Minimum Standards). Four other commenters recommended granting country-wide approval through the first application from each country or publishing a list of countries presumed to exercise comprehensive supervision in all cases.

The comprehensive supervision standard is a bank-specific determination that, in general, does not permit blanket approval based on categories of countries or general information on bank supervision. Some countries supervise all banks in the same manner, and a decision on such a country could be applicable to applications by other banks from the same country; such subsequent applications would focus on the actual supervision of the bank and any material changes or differences in such supervision since the approval of the first application. Other countries may tailor their supervision of banks according to the type or organizational structure of the bank. For this reason, the FBSEA requires evaluation of the supervision of a particular bank, not simply the general supervisory system of the bank's home country. Thus, while general country materials are useful, the Board cannot determine if a specific bank is subject to comprehensive supervision without considering the particular supervisory and regulatory provisions that apply to that foreign bank applicant. Accordingly, information from the foreign bank on its particular supervisory process forms an integral part of the record. Exclusive use of consultations with the home country supervisors or internal Board resources also poses problems. Formal consultations take time, and setting up procedures for relying solely on government-to-government communications would exacerbate delays and further prolong processing.

In making its assessments, the Board will continue to use each of the methods suggested by the commenters. In addition, the Board expects that, as

it acts on applications, the information already reviewed regarding comprehensive supervision in particular countries may be used to make judgments without requiring significant additional input from similar applicants chartered in the same country. Once a determination is made for an applicant from one country, a subsequent applicant bank may specify the extent to which it is supervised in the same manner as an applicant previously considered by the Board, and identify any material differences or changes in the supervision of the applicant. The Board believes that this approach addresses many of the concerns regarding case-by-case determinations while remaining within the prescribed statutory framework.

Countries developing comprehensive supervision; supervision of affiliates. Three comments recommended permitting banks chartered in countries that are developing systems for exercising comprehensive supervision to enter the U.S. market through branches, agencies, or commercial lending companies. In support of this approach, some comments cited the Basle Minimum Standards which contemplate permitting a bank from a country that is seeking to implement a system for consolidated supervision to establish branches or banks in a host country. Suggestions included allowing approval of an application by a foreign bank chartered in a country that is taking significant steps to provide comprehensive supervision or giving such a country three years to meet the comprehensive standard. Another commenter viewed the FBSEA as permitting a foreign bank from a country developing comprehensive supervision to enter through a banking office if the foreign bank voluntarily provides to home country regulators the information the supervisor would need in order to exercise comprehensive supervision over the applicant.

The Board strongly supports efforts to implement systems for exercising comprehensive, consolidated supervision of banks. The FBSEA, however, does not permit foreign banks to enter the United States if such banks are not supervised by a home country authority on a consolidated basis, even if the authority is in the process of developing such a system. A foreign bank from such a country, however, could be authorized to open a representative office, if the Board finds all other applicable factors to be satisfactory.

Although the United States subscribes to the Basle Minimum Standards, these are only minimum standards, and the FBSEA imposes a higher threshold. With regard to self-imposed reporting practices, the Board believes that comprehensive supervision necessarily entails active regulation by a home country supervisor, whether legally compelled or otherwise. Such a standard is not met solely through receipt of unsolicited information from a bank that self-imposes reporting to its supervisors.

Certain commenters asked the Board to recognize that some countries do not regulate holding companies, other owners of banks, or nonbanking subsidiaries of banks. The Board notes that the general standard is established in the context of consolidated supervision of the bank itself. With regard to sister or parent companies of the bank, the comprehensive supervision standard focuses on how the supervisor reviews transactions between a foreign bank and its affiliates, rather than on direct supervision of these companies.

Factors indicating comprehensive supervision. The comments on the illustrative factors that the Board reviews in making comprehensive supervision determinations generally supported an objective review without unduly favoring banks of a certain size or from certain countries. The Board reaffirms its support for this position. The Board also wishes to emphasize that the factors are simply *indicia* of comprehensive, consolidated supervision. They are not mandatory standards unto themselves.

With respect to comments on the specific factors, one commenter requested that the Board acknowledge that there are different standards for the evaluation of capital among countries. The Board notes that it provided guidelines for evaluating different capital standards in the Capital Equivalency Report, issued jointly with the Department of the Treasury (Treasury) on June 19, 1992, and that the Board intends to apply these guidelines to assure capital equivalency between foreign banks and domestic banking organizations. The Board also will consider the principles of consolidation that are applied in the home country of the foreign bank in the context of reviewing comprehensive supervision. Finally, the Board notes that comprehensive supervision by home country authorities contemplates an ability of the home country supervisor to conduct a broad review of a foreign bank's compliance with law.

Discretionary Standards

The FBSEA provides several other standards that the Board may consider in acting on an application, which are further elaborated in the final rule. These standards permit the Board to take into account: whether home country authorities have consented to the establishment of the office; the financial and managerial resources of the applicant bank; whether the bank has made adequate assurances on the provision of information; and the bank's record of compliance with U.S. law. The comments briefly discussed managerial resources, and focused primarily on the assurances standard.

Managerial resources. Four comments suggested that, in order to avoid processing delays, the Board should limit review under the managerial resources standard to an evaluation of only those principals of the foreign bank that participate in its management or operations. The Board reiterates that it will assess the competence and experience of all such individuals and any other persons that participate in management or otherwise significantly influence the foreign bank's operations.

Adequate assurances. The Board received four comments on the standard that considers whether the foreign bank applicant has provided the Board with adequate assurances of access to information on its operations and activities, and on those of its affiliates, that is deemed necessary to review compliance with federal banking laws ("necessary information"). The Board's procedures used in processing applications under the interim rule required applicants to describe any laws that would restrict the bank and any parent of the bank in their ability to provide information to the Board. The interim rule permitted the Board to terminate an office in the future if a bank is unable to provide necessary information due to these laws. The Preamble to the interim rule also stated that the Board may approve an application even where there may be legal

impediments to providing privileged information, if there are no suspected violations of law, and subject to a condition that permits termination of the U.S. activities of the foreign bank should material impediments to monitoring the foreign bank's U.S. operations arise.

The comments generally supported this approach as appropriate and flexible but, as with the comprehensive supervision standard, recommended alternative means for obtaining such assurances in lieu of case-by-case review. All of the comments recommended consultation with the home country supervisor as the primary or, according to one commenter, exclusive means of evaluating the standard. Two of these comments described the interim rule as inconsistent with the Revised Basle Concordat (April 1990), which contemplates such consultation. Several comments also recommended that the Board develop a list of countries whose laws do not materially impede access to information. Other comments said the Board should limit its consideration to the laws of the home country. Finally, the commenters were concerned that banks cannot commit to provide customer information.

The Board will continue to consult with other bank supervisors on disclosure of information to promote coordination and to reduce burdens on foreign banks. The Board has also narrowed the information requested under the adequate assurances standard to require descriptions of impediments that arise only in the jurisdictions in which a foreign bank or its parents have material operations. Operations in any particular jurisdiction generally will be considered material if the direct and indirect activities in that country, in the aggregate, account for 5 percent or more of the consolidated, worldwide assets of the foreign bank or its ultimate parent. The Board expects this change to reduce informational burdens for those applicants with complex organizational structures and worldwide operations.

With respect to comments on the scope of assurances and the laws reviewed, the Board confirms that this standard primarily addresses assurances of access to supervisory information. The Board generally is not concerned with access to specific customer account information; such information would be relevant only as it may relate to the bank's compliance with U.S. banking laws or specific supervisory matters. The Board disagrees, however, with one request to state that a foreign bank need only commit to provide information that is not subject to bank secrecy laws. Secrecy laws differ in scope and the Board will consider their content in each case.

The commenters that questioned the need for *any* description of secrecy laws, other than those of the home country, argued that secrecy laws generally apply only to customer account information and that such information is usually not necessary to determine compliance with U.S. law. The FBSEA provides for review of whether a bank has provided "adequate assurances" that it will provide necessary information. As necessary information may be subject to disclosure under laws other than those of the home country, a review of the adequacy of any assurances is better informed by information on the secrecy laws of jurisdictions in which an institution operates. For example, the Board may consider there to be a material difference in the adequacy of assurances if a

bank has only a relatively small portion of its operations in "secrecy" jurisdictions, as opposed to having substantial operations in such jurisdictions. Moreover, the Board's determination could also take into account whether the authorities of particular jurisdictions cooperate in supervisory matters or have mechanisms in place to assist in the provision of information.

The Board recognizes that its approach may require review of multiple jurisdictions for banks with extensive international operations. Publishing a list of countries found not to impede access to information is not feasible at this time. However, the Board will continue to encourage applicants to refer to information previously submitted in connection with other applications, and generally to limit their submissions to the applicability of, and material changes in or differences with, this information. The Board will inform applicants if additional information is necessary.

Three comments questioned the Board's ability to condition its approval of an application so as to permit termination of the activities of an office if material impediments to obtaining necessary information arise in the future. Other comments urged the Board to provide notice and an opportunity for a hearing prior to any such termination.

The FBSEA specifically permits the Board to condition its approval of any office application in a manner that is not inconsistent with the comprehensive, consolidated supervision standard. If the Board finds that a foreign bank has failed to comply with any such condition, including a condition relating to adequate assurances, the bank may be subject to enforcement action, which may include the Board requiring termination of any U.S. activities of the bank or, in the case of a federal branch or a federal agency, recommending such termination.

Evaluation of Standards in Representative Office Applications

The interim rule reflected that all of the standards for approving a representative office application, including the comprehensive supervision standard, are discretionary. Three comments urged the Board to use flexibility in reviewing the standards for approval of an application to establish a representative office. One comment also recommended that such an application consist only of a copy of the state application and information regarding the reputation, management, and financial condition of the bank.

A representative office conducts more limited activities than, for example, a branch or an agency. Thus, approving the establishment of a representative office does not necessarily require as rigorous an application of the standards as are applied to an office that engages in banking activities. As discussed below, this fact also will be reflected by requesting less information in a representative office application than in a branch or an agency application.

Procedures for Applications

Methods of processing. A number of comments generally described the internal guidelines and procedures for processing applications as unduly burdensome, time consuming, and unnecessary. These comments focused on

information requested, coordination with the licensing authority, and timing for processing.

Several commenters supported streamlining the information requested in an office application and relying on more coordination with the licensing authority. Measures suggested included prompt development of a standard application form and coordination of background checks with the licensing authorities.

The Board reaffirms its intent to develop a standard application form. In the interim, Board staff will issue revised lists of information requested in office applications that modify the prior requests for information contained in Board letter SR 92-6. Letter from Director of Division of Banking Supervision and Regulation to Reserve Banks SR 92-6 (March 5, 1992).

The revised requests for information in branch, agency, or commercial lending company applications will continue generally to parallel the information requirements for acquiring a bank under Regulation Y. As discussed above, these requests will seek discussion of confidentiality laws in jurisdictions where the foreign bank has material operations. For similar reasons, the lists also will request summary financial information from a subsidiary of the foreign bank or its ultimate parent only where the subsidiary is deemed material. A material subsidiary is any subsidiary that accounts for more than 1 percent of the total, worldwide assets of the foreign bank or its ultimate parent. This measure is intended to identify significant subsidiaries and reduce the amount of information requested from foreign banks with complex organizational structures. Information on particular subsidiaries or jurisdictions that fall below these thresholds may be requested in specific cases. The revised requests for information in representative office applications will seek less information to further reflect the less rigorous approval requirements. In responding to these requests, the Board to encourages applicants to refer to any information previously provided to the Federal Reserve System or contained in any application submitted to the licensing authority.

One commenter opposed the conduct of background checks as unnecessary and demeaning, and as preventing action on foreign bank applications within the prescribed regulatory time periods. This commenter also questioned the Board's authority to conduct background checks. Several other comments recommended streamlining or eliminating these checks.

Background checks can be an important source of information in evaluating applications for supervisory and regulatory purposes. The Board conducts these checks pursuant to its general authority to regulate and supervise foreign banks seeking to operate in the United States, and to its specific authority to evaluate the standards for such entry provided in the FBSEA. The Board recognizes that these checks may delay the processing of an application, and has taken measures to reduce delays, including early initiation of checks, frequent contact with agencies conducting checks, and, where possible, coordination with the licensing authority. The Board also has reduced the background checks on individuals to cover only those persons who hold significant interests in the foreign bank or

its ultimate parent, or who are at the highest levels of bank management. The Board will continue to pursue all steps that may reduce any delay.

Several comments suggested that the Board establish and adhere to deadlines for processing applications, regardless of whether all information has been provided. Three comments specifically recommended providing additional and mandatory processing deadlines.

The Board cannot act on an application without a complete record that permits evaluation of the statutory standards. Additional time periods and arbitrary limits on presentation of applications to the Board would prevent action on a complete record. Regulation K currently provides that applications should be processed within 60 days of acceptance, unless the applicant is notified of the reasons for the delay. The final regulation maintains this timing requirement. The Board recognizes that this time period has not been met with respect to applications to establish offices submitted thus far. Moreover, in light of the time necessary to complete background checks, it is likely that action on future applications also will be delayed beyond the 60-day period, perhaps significantly. However, every effort will be made to minimize delays. The Board remains committed to collecting information and acting upon all applications as promptly as possible. In the meantime, the 60-day schedule will be maintained as a goal.

Approval procedures. The interim rule provided that, at least initially, the Board would act on all applications to establish offices. The Board, however, indicated that it would consider more streamlined or delegated approval procedures after obtaining sufficient experience. Eight commenters made various proposals for abbreviated approval procedures, particularly for applications from a foreign bank with an existing U.S. office.

Some comments recommended delegated approval procedures for foreign banks with existing U.S. offices that seek to establish an additional office, for any applications without supervisory or policy issues, or for any applications to change the status of an existing office. One comment recommended permitting the Reserve Banks to review only the applications that they may approve under such delegated authority. Prior notification procedures also were recommended for certain foreign banks that seek to establish an additional office in a state where the bank has previously established a Board-approved office, that were previously reviewed by the Board through examination or otherwise, that seek to change the status of a Board-approved office, or that apply to establish a representative office.

After considering these recommendations, the Board has determined to delegate authority to the Reserve Banks to approve a subsequent application by a foreign bank that previously received Board approval under the FBSEA to establish an office that has equal or greater powers than this subsequent office, if the subsequent application does not present significant supervisory issues. This delegation procedure permits the Board to review the particular circumstances of a foreign bank on an initial basis and provide a ruling and factual record that serve as precedent for the foreign bank's subsequent office applications. The Board has also adopted general consent and prior notice procedures for certain

categories of representative offices, as discussed below. Delegated or streamlined approval procedures for more general categories of applications would not at this time address the fact-specific determinations required for each foreign bank by the FBSEA. The Board will consider further delegation or streamlining measures as may become feasible in the future.

Other procedures. These delegated approval procedures supplement the abbreviated procedure under which a foreign bank that establishes an office through certain mergers or acquisitions may obtain after-the-fact approval from the Board. In order to permit prompt action, if necessary, the Board has also delegated to its General Counsel and Director of Division of Banking Supervision and Regulation the authority to approve the use of these after-the-fact procedures.

Certain acquisitions that result in a change in control of a foreign bank with U.S. offices may not, as discussed above, require Board approval if the acquired foreign bank continues to operate in the same corporate form following the acquisition and does not control or own more than 5 percent of the shares of a U.S. bank. In order to monitor other regulatory requirements, the final rule continues to require written notice to the Board within 10 days of this change in ownership or control. For the same reasons, the final rule requires notification of the conversion of a branch to an agency or a representative office, an agency to a representative office, and, as discussed below, a state license to a federal license.

Representative Office Definition and Activities

The interim rule modified the definition of a *representative office* that a U.S. bank may establish overseas, and provided a new definition of a *representative office* that a foreign bank may establish in the United States. The two definitions were similar, but not identical. The Board received twelve comments on the definition of representative office and, while some did not distinguish between the two definitions, all focused on the new definition of a representative office of a foreign bank.

Representative office of a U.S. bank. The comments that addressed the definition of a representative office of a U.S. bank stated that prohibiting the making of business decisions improperly prevented basic operational decisions. The Board has revised the definition in the final rule to reflect that a representative office of a U.S. bank may make such internal operational decisions.

Representative office of a foreign bank. The comments regarding a representative office of foreign bank broadly focused on, first, the treatment of a representative office under the FBSEA as a residual category of office and, second, the Board's authority to prescribe the activities that a representative office may conduct. Generally, these commenters took the view that the Board's definition was overly narrow, and that the Board should defer to state law to determine the permissible activities of a representative office.

Five commenters recommended repeating in the final rule the definition of representative office contained in the FBSEA in order to avoid conflict with state law. The FBSEA defines a representative office of a foreign bank as any office

of a foreign bank which is located in a state and is *not* a branch, agency, or subsidiary of the foreign bank. Under this definition, a representative office is the category of office through which all direct activities of a foreign bank that are not branch or agency activities must be conducted.

The interim rule reflected the traditional view that a representative office is confined to limited functions related to banking, such as soliciting new business or acting as liaison between U.S. customers and the home office, and may not engage in business activities except in this limited capacity. Commenters criticized this definition as overly restrictive in light of the broader definitions found in the FBSEA and state law. They supported this argument by noting that the FBSEA defines a representative office in terms of what it is not—*i.e.*, it is not a branch, agency, or subsidiary—and does not define what a representative office is. The commenters stated that a representative office should not be prohibited from engaging in activities that do not require a branch or agency license.

The legislative history of the FBSEA does not address this issue directly. However, both the FBSEA and its legislative history evidence a general intent to require foreign banks to conduct all of their direct U.S. activities through a regulated office. Therefore, the Board has amended the final rule to define a representative office of a foreign bank as any place of business of a foreign bank that is not a branch, agency, or subsidiary of a foreign bank. This definition makes clear that any activity conducted through a direct office of a foreign bank in the United States must be conducted through *either* a branch, agency, or representative office, each of which is subject to regulation and examination by the Board.

One commenter regarded the exclusion of a subsidiary from the definition of representative office as inappropriate. In its view, a foreign bank seeking to conduct representative office activities may simply form a subsidiary to perform such activities and thereby avoid Board regulation. The Board wishes to make clear that a subsidiary, whether formed to conduct representative functions or otherwise, may not be used to evade the banking laws. If the Board becomes aware of any abuses or evasions of the banking laws through such means, it will take further action to regulate these subsidiaries as banking offices.

As a result of the adoption of this new definition of a representative office of a foreign bank, certain additional direct offices of a foreign bank may fall within the representative office definition for the first time. In June 1992, the Board provided a notice of a representative office registration form to all known representative offices. Form F.R. 3072, 57 FR 31374 (July 15, 1992). The purpose of the form was to update existing records. Any offices of foreign banks that meet the revised definition of representative office and that have not previously filed the information contained in this form to the Board are requested to do so by February 26, 1993.

Permissible activities. Twelve commenters discussed the Board's authority to define the activities that a representative office may conduct. Ten of these commenters recommended permitting a representative office to conduct activities

deemed permissible under state law. Seven commenters criticized the specific activities permitted or prohibited by the interim rule as overly restrictive or inconsistent with the FBSEA.

All of the commenters that urged the Board to allow a representative office to conduct any activities permitted by state law cited the FBSEA definition in support of their position. They argued that the Board's authority to limit the activities of a representative office should be confined to prohibiting the conduct of either branch or agency activities or any other activities that are prohibited by state law. Seven of these commenters viewed this approach as implicitly required by the FBSEA definition. The commenters that criticized the narrowness of the interim rule similarly referred to the definition of representative office in the FBSEA as more expansive. While most commenters recommended expanding the permissible activities, six commenters recommended more narrow functions.

In implementing the provisions of the FBSEA concerning a representative office, the Board has determined to adopt rules that set forth the permissible representative functions that may be performed on behalf of the foreign bank; the rules also provide that other activities that are not prohibited by state law or rulings or orders of the Board may be conducted by a representative office. Thus, the final rule expressly prohibits a representative office from directly conducting banking activities, such as contracting for deposits, that may only be performed by a branch or an agency. It also allows a representative office to conduct activities that are not linked to banking. This approach implements the FBSEA's intent to treat a representative office as any office of a foreign bank that is not a branch or an agency.

Preventing a representative office from conducting any activities prohibited by Board rule or order gives the Board the flexibility that may be necessary to address prudential or supervisory concerns. An issue is presented as to whether there may be certain types of activities that a foreign bank should not be permitted to conduct through a representative office, either because the activity is the functional substitute of a banking business, or because it may not be administratively feasible for the Board to monitor the activity to determine compliance with law. In the Board's view, this is an issue primarily for foreign banks that are not subject to the nonbanking restrictions of the BHC Act because they operate in the United States only through one or more representative offices. *See* 12 U.S.C. 3106(a). However, given the scope and impact of provisions dealing with a representative office, the Board seeks additional comment on this issue, as well as on the definition of and standards for the activities of representative offices.

General consent and prior notification. The Board is of the opinion that there are certain activities conducted by representative offices that require reduced regulatory scrutiny. A foreign bank may conduct direct activities through a representative office that are so minimal that their conduct does not raise any significant supervisory or prudential concerns. For example, a foreign bank may set up a separate office for back office support or to provide temporary facilities in the event that the foreign bank's banking premises become inaccessible or

damaged. Opening such an office constitutes the establishment of a representative office and requires Board approval. However, the Board has determined to grant its general consent to the establishment of such offices. These offices may perform only limited support functions in connection with the banking activities of the foreign bank that are both clearly defined and the exclusive focus of the office. In addition, these offices may not have contact with customers. The Board must receive notice that such an office is being established, and retains full regulatory and supervisory authority with respect to its operations.

The Board also recognizes that a foreign bank with banking operations in multiple locations in the United States may wish to establish a *regional administrative office*, separate from its existing offices, to coordinate and supervise the foreign bank's operations and those of its affiliates in a region. Such an office is a representative office, the establishment of which requires Board approval. The Board wishes to encourage the establishment of such offices as a sound prudential practice and has provided a prior notification procedure for obtaining Board approval. This procedure permits a foreign bank to establish a regional administrative office in the same city in which the foreign bank operates a branch, agency, commercial lending company, or subsidiary bank by providing the Board with 45 days' prior written notice.

Establishment of a Commercial Lending Company

One comment raised an issue regarding overlapping regulations governing the establishment of a commercial lending company by a foreign banking organization. The FBSEA and the interim rule require a foreign bank to obtain prior Board approval to establish a commercial lending company. In addition, the lending activities of a commercial lending company are considered nonbanking activities that, under section 4(c)(8) of the BHC Act and Regulation Y, a foreign banking organization must obtain Board approval to conduct. The commenter sought clarification that obtaining approval only under Regulation Y suffices for a foreign banking organization to establish a commercial lending company.

The FBSEA imposes mandatory standards for Board approval to establish a commercial lending company. Obtaining approval to engage in nonbanking activities under the BHC Act does not meet these standards. Therefore, a foreign banking organization that seeks to establish a commercial lending company must comply with the standards for establishing the company and for conducting the nonbanking activities. One application may be filed in connection with both processes. It should be noted that this overlap does not extend to an existing commercial lending company that itself seeks to establish an office. Only approval under the BHC Act is required for this latter office.

Transactions Subject to Approval under Regulation Y

The interim rule implemented the provision of the FBSEA that extended section 3 of the BHC Act to require a foreign banking organization to obtain Board approval to acquire more than 5 percent of the voting shares of U.S. bank or bank holding company. The interim rule also clarified that Board approval is not required for the acquisition of a foreign banking organization that does

not directly or indirectly control a U.S. bank, unless the acquiror is also a foreign banking organization and acquires control of a bank or bank holding company, acquires all or substantially all of the assets of a bank, or merges with a bank holding company.

The Board received two comments on these provisions. One commenter described these provisions as consistent with national treatment of foreign banks, but sought streamlined or notification procedures for a foreign banking organization to obtain Board approval under section 3 to acquire a minority interest in another foreign banking organization that controls a U.S. bank. This commenter noted that foreign banks frequently take minority positions in other foreign banks to establish cross-border relationships. Because acquiring an interest in a U.S. bank is incidental to these largely foreign transactions, the commenter described a full-scope section 3 application as unwarranted and unduly burdensome.

Although the Board seeks to minimize the effect of U.S. regulation on foreign transactions, the Board has little flexibility to provide a general exemption from this requirement. Accordingly, the Board has not provided the requested procedures in the final rule.

The other commenter recommended revising this provision in the final rule to reflect that a foreign bank that does not have a U.S. banking presence may acquire more than 5 percent of a U.S. bank (but presumably less than 25 percent) without requiring approval under section 3 of the BHC Act. The Board has revised the final rule to reflect this change, but notes that any foreign company, including a foreign bank, must comply with the requirements of Regulation Y before acquiring control of a U.S. bank or bank holding company, whether control is gained through acquisition of voting shares or otherwise.

Definitions

The interim rule amended Regulation K to include additional definitions of terms necessary to implement the FBSEA. The rule also repeated or made complementary amendments to definitions previously contained in Subparts A and B of Regulation K. The comments received generally sought clarification of and, in some cases, modifications to certain of these definitions.

Agency

The interim rule incorporates the long-standing definition of an *agency* as a place of business that may maintain credit balances, pay checks, or lend money, but may not accept deposits from a citizen or resident of the United States. The definition also provides six minimum criteria under which a balance is presumed to be a credit balance and not a deposit.

The Board received five comments on this definition. Each of the five commenters sought clarification of the deposit-taking ability of an agency in order to remove the implication that an agency may *only* maintain credit balances. Some states permit agencies to accept deposits from non-residents of the United States. Accordingly, the Board has revised the definition of an agency to confirm that, to the extent not prohibited by state or federal law, an agency may maintain

certain deposits, such as deposits of non-resident persons and entities, as well as interbank and international banking facility deposits, without being considered a branch. Regulation K does not place additional restrictions on the operations of these types of deposit accounts.

The five commenters also described the criteria for identifying credit balances as vague and burdensome. These commenters suggested replacing the criteria either with numerical limits on transactions in an account or with restrictions permitting maintenance of accounts that are incidental to the exercise of banking powers and that, for U.S. residents or citizens, relate to specific bank transactions.

The criteria for defining a credit balance were adopted after careful examination of existing practices and are designed to ensure than an agency does not engage in domestic deposit-taking, an activity prohibited for an agency. Domestic deposits include transaction accounts maintained by a U.S. citizen or resident. Acceptance of the commenters' suggestions would permit the solicitation and acceptance of deposits from any U.S. resident or citizen for use upon demand and would violate the IBA. Accordingly, the final rule retains the previously established criteria for identifying a credit balance.

Branch

The interim rule defined a *branch* as any place of business of a foreign bank at which deposits are received. Four commenters stated that this definition improperly classified state agencies that may take deposits from non-residents as branches. To address this matter, the Board has revised the definition of *branch* to exclude a place of business that functions as an agency. The Board reaffirms, however, that any office that may receive domestic deposits under state law will continue to be considered a *branch* for purposes of this rule and the IBA.

Domestic branch

Four comments recommended that the Board omit the definition of *domestic branch* from the final rule as unnecessary. These commenters also suggested adding a definition of the term "limited branch" because the term appears in the IBA and a foreign bank may wish to establish a "limited branch" as a first entry office.

The IBA does not use the term "limited branch." The Board defined the term "domestic branch" in 1980 to implement the interstate banking provisions of the IBA, which were not affected by the enactment of the FBSEA. These provisions permit a foreign bank to take domestic deposits only in offices located in its home state. Under section 5 of the IBA, however, a foreign bank may also establish a branch outside of its home state if the branch agrees to limit its deposit-taking activities to those permitted for an Edge corporation; it is to this concept that the commenters apparently referred. Because the IBA limits the interstate locations at which a foreign bank may accept domestic deposits, the Board believes that it is appropriate to retain the term "domestic branch." Contrary to the implication of the comments, a foreign bank may establish a branch that limits its deposits to Edge-type deposits as its first entry into the U.S. market. Regardless of the particular nomenclature for that type of branch,

the approval process under the FBSEA for such an office remains the same as for a full-service branch.

Establish and change the status

The interim rule reflected the new requirement under the FBSEA that a foreign bank must obtain the approval of the Board to establish an office. It defined *establish* to mean open and operate an office, change the status of an office, relocate an office to another state, assume the operations of an existing office through merger, or acquire an office through the acquisition of a subsidiary that changes its corporate form following the acquisition. The interim rule also defined the term to *change the status* to mean to convert a representative office into a branch or an agency, or to convert an agency into a branch. Comments on the definitions of both terms generally sought clarification of events that do not establish an office.

With respect to the establishment of an office through merger or acquisition, one commenter noted that a foreign bank may assume the operations of an office through a transaction that is not labelled a merger. Thus, the definition of establish has been amended to clarify that such assumption of operations may occur through merger, consolidation, or any similar transaction. It is not intended to cover the acquisition of a foreign bank with a U.S. office where the acquired foreign bank continues to operate as a separate entity and has not merged or otherwise consolidated its operations with another entity. Another commenter noted that a corporate reorganization of a foreign bank may technically result in the establishment of an office as an incident to the reorganization. In such a case, the foreign bank may seek a determination from the Board as to whether approval is necessary. Finally, several commenters asked the Board to specify the transactions that do not establish an office. These are the acquisition of a foreign bank with a U.S. office in which the acquired foreign bank continues to operate in the same corporate form, *i.e.*, where the acquired foreign bank is not merged into another bank or does not otherwise lose its charter identity, and the acquisition of, or merger or consolidation with, a foreign bank with no U.S. banking presence where the bank with the U.S. office is the surviving entity. The first transaction requires written notification to the Board within 10 days of this change in control.

Several commenters also questioned the scope of the definition of *change the status* of an existing office. As stated in the interim rule, effecting a material difference in the activities of an existing office through a change in its status establishes that office. Thus, the Board has determined, in response to comments, that routine renewals of the license of an existing office do not change the status of that office because such renewals make no change in the activities that the office may conduct.

Several commenters also argued that a license conversion (*e.g.*, from state license to federal license, from state agency to a state branch, or from one state to another) does not change the status of an office. After reviewing these comments, the Board has concluded that converting from a state license to a federal license does not effect a material difference in the activities of the office because a federal license is generally more restrictive than a state license. The

Board has determined at this time that conversion from a federal license to a state license continues to require an application for Board approval. In its separate rulemaking regarding the provision of the FBSEA that permits state branches and agencies to conduct only the activities that are permissible for a federal branch, the Board has sought comment as to whether an application should continue to be required to convert an office from a federal to a state license.

Another commenter recommended adopting a functional test for identifying a change in the status of an office. This test would require a comparison of the functions of the existing office to those of the new office and require an application when a material difference results. The Board believes that the current definition implicitly takes this approach. Exclusive use of this approach would create uncertainty by requiring case-by-case determinations instead of a clear standard.

The Board also has required a foreign bank to submit notification within 10 days of any downgrade or conversion of an existing office into another type of office in instances in which no application to the Board is required. This notice will permit the Board to monitor these offices for supervisory purposes.

Foreign bank

The IBA contains a definition of *foreign bank* that differs slightly from the corresponding definition in the interim rule. Five commenters criticized the interim rule for improperly restricting the IBA definition by requiring a foreign bank to engage *directly* in banking outside of the United States and by excluding foreign central banks. They believe that the IBA definition of foreign bank legally preempts—and should replace—the regulatory definition.

The Board adopted the definition of foreign bank in order to implement the provision in the FBSEA that permits the Board to approve an application by a foreign bank to establish a U.S. office only if the foreign bank engages *directly* in the business of banking outside of the United States. The interim rule definition, which is adopted in the final rule, reflects this statutory limitation in the statute.

Three comments suggest that the exclusion of central banks with no U.S. commercial banking business from the definition of a foreign bank exempts central banks that wish to establish a first commercial banking office in the United States from the FBSEA. The Board is of the view that a foreign central bank that wishes to establish an office to engage in a commercial banking business must apply for approval and has revised the final rule to clarify this requirement.

Other definitions

The Board received brief comments on certain other definitions.

Five comments recommended including in the definition of *home country* the country in which the foreign bank locates its head office as an alternative home country. In the interim rule, a foreign bank's only home country is its chartering country. The proposal suggested by the comments would permit a

foreign bank to change its home country by designating its headquarters as being in another country. The designation of a head office is in many respects an arbitrary decision, and may have little to do with a bank's supervision. Since the laws related to the consolidated operations of a bank are those of its chartering country, it appears clear that, to meet the standards set forth in the FBSEA, the chartering country must exercise supervision. Therefore, the definition of home country has not been changed.

Several comments recommended including a state authority that licenses representative offices in the definitions of *licensing authority* and *relevant state supervisor*. The Board has incorporated this recommendation in order to ensure consistent consultation with the appropriate state banking authority regarding either the establishment or termination of a state-licensed representative office.

Several comments suggested that the definition of *subsidiary* be clarified by setting forth the standards for determining when a foreign organization is considered capable of controlling another company. The Board notes that such determinations are governed by the facts of individual cases. The Board has also amended the definition of *subsidiary* to apply to companies owned or controlled by a foreign bank, as well as by a foreign banking organization. This amendment ensures that companies controlled by a foreign bank that has only a representative office in the United States will be considered subsidiaries of that foreign bank.

Examination of Offices and Affiliates of Foreign Banks

The interim rule implemented the provisions of the FBSEA that granted authority to the Board to examine the offices and affiliates of a foreign bank with U.S. banking operations, and the representative offices of any other foreign banks. The final rule incorporates these provisions and continues to provide for annual on-site examination of branches, agencies, and commercial lending companies by a U.S. banking supervisor as well as coordination of such examinations.

Nine comments supported coordination with other bank supervisors to ensure that a foreign bank office ordinarily undergoes only one examination each year. Measures recommended to achieve this objective included prompt development of joint, uniform examination procedures and supervision guidelines on an interagency basis, application of uniform guidelines to foreign banking organizations and domestic member banks, formal agreements for joint examinations with the other bank supervisors, allocating responsibilities among joint examiners, and issuing a single, joint examination report.

In implementing a coordinated examination program for foreign banks, the Board is applying a flexible approach designed to use resources efficiently and to minimize the burdens on the office examined, while obtaining the information needed for the examination. Under the FBSEA, an on-site examination of a branch or an agency by its primary supervisor will satisfy the statutory requirement that such offices be examined annually. In addition, the Board may conduct its own examination of foreign bank offices, rely on the examination of the primary supervisor, alternate its examination with the primary supervisor every other year, or participate in a joint examination. The final rule also reflects

that the Board must coordinate such examinations, to the extent possible, with the licensing authority and, in the case of an insured branch, the Federal Deposit Insurance Corporation. The Reserve Banks will seek to avoid duplicating the work of other federal or state examiners. Where possible, a joint report will be issued on a joint examination.

With respect to future coordination efforts, the Board is in the process of developing, jointly with state and other federal supervisors, a report form and manual for examinations of branches and agencies. In the interim, the Board has developed an examination report form for branches and agencies that will be available for use by other banking supervisors.

Two comments also recommended ensuring that each Reserve Bank uniformly implements Board policy, asserting that Reserve Banks have inconsistently applied the Board's policy regarding general loan loss reserves. There is no general policy requiring the maintenance of such reserves by all U.S. branches and agencies. For branches and agencies with serious asset quality problems, state or federal regulators would require that the foreign bank take corrective measures. The establishment of an adequate allowance for loan losses is one of the options designed to remedy asset quality deficiencies. The Board, in conjunction with other federal and state regulators, is currently developing a uniform policy on the treatment of branches and agencies with asset quality problems.

A few comments focused on examinations relating to representative offices. Two comments sought clarification that the FBSEA does not generally authorize the Board to examine the U.S. affiliates of a foreign bank whose only U.S. presence is through one or more representative offices. The regulation has been amended to reflect this comment. In response to another commenter's concern for less rigorous examinations of representative offices, the Board generally expects to examine representative offices in a manner appropriate to their limited functions.

Termination of an Office of a Foreign Bank in the United States

Grounds for Termination

The interim rule included the statutory standards and procedures for termination of the activities of a representative office, state branch, state agency, or commercial lending company of a foreign bank and for recommending termination of a federal branch or agency to the Office of the Comptroller of the Currency (Comptroller). The comments on this provision distinguished between mandatory and voluntary termination and generally sought clarification of the grounds for each type of action.

Required termination. The comments on the provision allowing the Board to require termination sought modification of both the grounds and procedures for taking such actions. The Board may require termination of state branches, state agencies, or commercial lending companies if there is reason to believe a foreign bank or its affiliates has committed a violation of law or is engaged in unsafe and unsound banking practices in the United States, or if the foreign bank is not subject to comprehensive home country supervision. The Board may

consider other factors in such terminations, including the needs of the community and the history and size of the bank. These terminations require consultation with the state supervisor and notice and an opportunity for a hearing for the foreign bank, unless expeditious action is necessary to protect the public interest.

Several comments suggested restricting the first ground for termination to material violations of applicable *U.S. banking* laws. They described this as necessary to cure an overbroad statute that permits termination for minor violations of *any* laws. The FBSEA does not limit the Board's termination authority in this fashion. Rather, it requires the Board to find both a violation of law is reasonably likely to have occurred and that the continued operation of the office would be inconsistent with the public interest, the FBSEA, the BHC Act, or the Federal Deposit Insurance Act. This grant of termination authority is intended to provide the Board with the flexibility to address a variety of situations and is retained in the final rule. In making its determinations, the Board will consider all relevant matters, including mitigating factors. The Board also notes that termination is not the sole enforcement measure available, and that it expects to utilize the full range of enforcement tools as circumstances warrant.

Several comments suggested either excluding the ground permitting termination solely for lack of comprehensive supervision or requiring application of the guidelines to be developed by the Board and the Treasury under the FBSEA for permitting continued operation by a foreign bank that lacks comprehensive supervision. Eliminating this ground is contrary to the express language of the FBSEA. However, as noted above, the Board will take other factors into account in making its termination decisions. Furthermore, once issued, the guidelines referenced above will inform any termination on this ground. In addition, the Board will address this issue more fully in its separate request for comment regarding these guidelines.

The commenters on the termination procedures sought guidance on the policy for termination, including the use of lesser enforcement measures, consultation with state licensing authorities, termination of a single office of a foreign bank with multiple U.S. offices, and procedures for expedited termination.

The commenters that recommended the use of lesser enforcement measures, such as cease and desist orders, sought to assure that foreign banks receive treatment similar to U.S. banks. The Board will exercise its termination authority in conformance with this policy. In addition, the Board would intend to use early and extensive consultation with state licensing authorities for any terminations, as contemplated by the final rule.

One commenter recommended providing a hearing before the Board exercises its power to terminate an office on an expedited basis when necessary to protect the public interest. A termination order generally will be issued only after notice and an opportunity for a hearing. Expedited termination is an extreme measure that the Board expects would be used in exigent circumstances. When expedited termination procedures are necessary, the Board may, to the extent possible, take other actions designed to give the foreign bank notice and an opportunity to present its views. The Board also notes that a foreign bank may

obtain review of any Board order in the U.S. Court of Appeals for the circuit where the office is located or in the U.S. Court of Appeals for the District of Columbia Circuit.

Voluntary termination. The interim rule required 30 days' advance notice of the voluntary termination of an office. Four comments contended that this procedure exceeds the Board's authority, and that only the licensing authority should notify the Board of such closures. The Board believes that the notice of voluntary termination permits the Board to track the offices it supervises, and is consistent with the Board's statutory authority to supervise the U.S. activities of a foreign bank.

Disclosure of Information to Foreign Supervisors

The final rule incorporates the provision of the FBSEA that permits the Board to share supervisory information with its foreign counterparts after, among other things, obtaining an agreement to maintain the confidentiality of the information to the extent possible.

Limitation on Loans to One Borrower

The Board has adopted measures provided in the interim rule that require a foreign bank to aggregate all loans to the same borrower by all of its federal and state licensed offices for purposes of determining compliance with the new limitations on loans to one borrower contained in the FBSEA. This provision puts the operations of a foreign bank in the United States on a comparable footing with domestic banks for lending purposes in accordance with principles of national treatment.

It has come to the Board's attention that there may be loans outstanding from a foreign bank to a single borrower that exceed the new lending limits because of the aggregation requirements. The Board has determined that it will not consider a foreign bank to be in violation of this provision if the foreign bank originated the non-conforming loans prior to December 19, 1991, provided that such loans are not renewed or their maturities extended. Any new credits granted after December 19, 1991, must be in compliance with the new lending limits.

Deposit Insurance Requirement for Retail Deposit-Taking

Under section 6(c) of the IBA, as amended by the FBSEA, a foreign bank was required to establish an insured banking subsidiary if it wished to accept or maintain deposit accounts with balances under $100,000. In legislation enacted on October 28, 1992, section 6(c) of the IBA was further amended to clarify that this provision applies only to the acceptance of domestic retail deposits in amounts under $100,000 requiring deposit insurance protection. Housing and Community Development Act of 1992, § 1684, Pub. L. 102-550, 106 Stat. 3672. Consequently, foreign banks may continue to conduct their deposit-taking activities in conformance with regulations of the Comptroller and the FDIC, issued in connection with sections 6(a) and 6(b) of the IBA. *See* 12 CFR §§ 28.8, 346.6 (1992). The Board will review the need for implementing regulations.

One commenter seeks clarification that a territorial or protectorate bank that is classified as a bank under the BHC Act, is insured by the FDIC, and is supervised by the FDIC and, in some cases, the Federal Reserve, may continue to take domestic retail deposits through new, insured branches despite the FBSEA provision that requires foreign banks to conduct such activities only in an insured bank subsidiary. The definition of foreign bank in the IBA and the interim rule also included banks chartered in Puerto Rico, Guam, American Samoa, the Virgin Islands, or a U.S. territory, in order to implement the interstate banking provisions of the IBA. The Board is of the view that section 6 of the IBA, as amended, does not preclude insured banks from the jurisdictions listed above from establishing additional branches because such institutions are insured banks, fully subject to the Federal Deposit Insurance Act.

Limitation on Activities of State Branches and Agencies

The FBSEA provides that after December 19, 1992, a state licensed branch or agency may not engage in any activity that is not permissible for a federal branch unless the Board has determined that the activity is consistent with sound banking practices, and, in the case of insured branches, the FDIC determines that the activity poses no significant risks to the deposit insurance fund.

Three commenters suggested approaches to this future implementation. Two commenters recommended close coordination with the states, and supported an interpretation that applies the provision to the same types of activities only, even if state law imposes different conditions or limitations on the conduct of those activities. Another comment suggested issuing a list of pre-approved activities for branches and agencies, and urged adoption of prior notification procedures for obtaining approval to conduct any impermissible activities. This provision is the subject of the separate rulemaking that is being conducted in consultation with the FDIC and the Comptroller.

Delegation

The Board has determined to delegate certain authority in response to comments discussed above. This includes delegating the authority to the Reserve Banks to approve a subsequent office application by a foreign bank that has previously received approval under the standards in the FBSEA, if the application does not present significant supervisory issues. The Board also delegated authority to the General Counsel to permit the use of the after-the-fact approval procedures to establish an office (with the concurrence of the Director of the Division of Banking Supervision and Regulation), to modify the requirement for publication of notice of an office application, and to disclose information to a foreign bank supervisory authority. Lastly, the Board adopted in the final rule the delegation of authority to coordinate examinations to the Director of the Division of Banking Supervision and Regulation.

Miscellaneous

Advisory Committee

Three comments recommended forming an advisory committee of bankers, lawyers, academics, and state and federal regulators to assist in and coordinate the implementation of the FBSEA. The Board welcomes views of any interested

parties on all matters within its purview, including the FBSEA. Such input is an important and ongoing source of information. As there are already many avenues for providing views to or holding discussion with the Federal Reserve System, which any party is encouraged to use, such a committee is not essential at this time.

Hearings

The Board also adopted, without modification, the changes to the Board's Rules of Practice for Hearings, as set forth in the interim rule.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that this final rule will not have a significant economic impact on a substantial number of small entities that are subject to the regulation.

Paperwork Reduction

The Board, acting pursuant to authority delegated to it by the Director of the Office of Management and Budget under 44 U.S.C. § 3507(e), has approved the collection of information called for by sections 211.25 and 211.27 of the Board's Rules and sections 7 and 10 of the IBA.

List of Subjects

12 CFR part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities

12 CFR part 263

Administrative practice and procedure, Federal Reserve System.

12 CFR part 265

Authority delegations (Government agencies), Federal Reserve System.

For the reasons outlined above, the Board of Governors is adopting the interim rule that amends 12 CFR parts 211, 225, 263, and 265 with the following changes:

PART 211—INTERNATIONAL BANKING OPERATIONS

1. The authority citation for 12 CFR part 211 continues to read as follows:

Authority: Federal Reserve Act (12 U.S.C. 221 *et seq.*); Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); the International Banking Act of 1978 (Pub. L. 95-369; 92 Stat. 607; 12 U.S.C. 3101 *et seq.*); the Bank Export Services Act (title II, Pub. L. 97-290, 96 Stat. 1235); the International Lending Supervision Act

(title IX, Pub. L. 98-181, 97 Stat. 1153, 12 U.S.C. 3901 *et seq.*); and the Export Trading Company Act Amendments of 1988 (title III, Pub. L. 100-418, 102 Stat. 1384 (1988)).

2. Section 211.2 is amended by revising paragraph (t) to read as follows:

§ 211.2 Definitions.

* * * * *

(t) *Representative office* means an office that:

(1) Engages solely in representational and administrative functions, such as soliciting new business or acting as liaison between the organization's head office and customers in the United States; and

(2) Does not have authority to make any business decision (other than decisions relating to the premises or personnel of the representative office) for the account of the organization it represents, including contracting for any deposit or deposit-like liability on behalf of the organization.

* * * * *

3. Section 211.21 is redesignated as § 211.20. Newly redesignated § 211.20 is amended by revising paragraphs (b)(3) through (b)(8) and by adding new paragraphs (b)(9) and (c) to read as follows:

§ 211.20 Authority, purpose, and scope.

* * * * *

(b) * * *

(3) Board approval of the establishment of an office of a foreign bank in the United States under sections 7(d) and 10(a) of the IBA (12 U.S.C. 3105(d), 3107(a));

(4) The termination by the Board of a foreign bank's representative office, state branch, state agency, or commercial lending company subsidiary under sections 7(e) and 10(b) of the IBA (12 U.S.C. 3105(e), 3107(b)) and the transmission of a recommendation to the Office of the Comptroller of the Currency to terminate a federal branch or federal agency under section 7(e)(5) of the IBA (12 U.S.C. 3105(e)(5));

(5) The examination of an office or affiliate of a foreign bank in the United States as provided in sections 7(c) and 10(c) of the IBA (12 U.S.C. 3105(c), 3107(c));

(6) The disclosure of supervisory information to a foreign supervisor under section 15 of the IBA (12 U.S.C. 3109);

(7) The limitations on loans to one borrower by state branches and state agencies of a foreign bank under section 7(h)(2) of the IBA (12 U.S.C. 3105(h)(2));

(8) The limitation of a state branch and a state agency to conducting only activities that are permissible for a federal branch under section (7)(h)(1) of the IBA (12 U.S.C. 3105(h)(i)); and

(g) The deposit insurance requirement for retail deposit taking by a foreign bank under section 6 of the IBA (12 U.S.C. 3104).

(c) *Additional requirements*. Compliance by a foreign bank with the requirements of this subpart and the laws administered and enforced by the Board does not relieve the foreign bank of responsibility to comply with the laws and regulations administered by the licensing authority.

4. Section 211.22 is redesignated as § 211.21 and is revised to read as follows:

§ 211.21 Definitions.

The definitions contained in § 211.2 in subpart A of this part apply to this subpart except as a term is otherwise defined in this section:

(a) *Affiliate*, of a foreign bank or of a parent of a foreign bank, means any company that controls, is controlled by, or is under common control with, the foreign bank or the parent of the foreign bank.

(b) *Agency* means any place of business of a foreign bank, located in any state, at which credit balances are maintained, checks are paid, money is lent, or, to the extent not prohibited by state or federal law, deposits are accepted from a person or entity that is not a citizen or resident of the United States. Obligations shall not be considered credit balances unless they are:

(1) Incidental to, or arise out of the exercise of, other lawful banking powers;

(2) To serve a specific purpose;

(3) Not solicited from the general public;

(4) Not used to pay routine operating expenses in the United States such as salaries, rent, or taxes;

(5) Withdrawn within a reasonable period of time after the specific purpose for which they were placed has been accomplished; and

(6) Drawn upon in a manner reasonable in relation to the size and nature of the account.

(c) *Banking subsidiary*, with respect to a specified foreign bank, means a bank that is a subsidiary as the terms *bank* and *subsidiary* are defined in section 2 of the BHC Act (12 U.S.C. 1841).

(d) *Branch* means any place of business of a foreign bank, located in any state, at which deposits are received and that is not an agency, as that term is defined in paragraph (b) of this section.

(e) *Change the status* of an office means convert a representative office into a branch or an agency, an agency into a branch, a federal branch into a state branch, or a federal agency into a state agency, but does not include renewal of the license of an existing office.

(f) *Commercial lending company* means any organization, other than a bank or an organization operating under section 25 of the Federal Reserve Act (FRA) (12 U.S.C. 601-604a), organized under the laws of any state, that maintains credit balances permissible for an agency and engages in the business of making commercial loans. *Commercial lending company* includes any company chartered under Article XII of the banking law of the State of New York.

(g) *Comptroller* means the Office of the Comptroller of the Currency.

(h) *Control* has the same meaning assigned to it in section 2 of the BHC Act (12 U.S.C. 1841), and the terms *controlled* and *controlling* shall be construed consistently with the term *control.*

(i) *Domestic branch* means any place of business of a foreign bank, located in any state, that may accept domestic deposits and deposits that are incidental to or for the purpose of carrying out transactions in foreign countries.

(j) A foreign bank *engages directly in the business of banking outside of the United States* if the foreign bank engages directly in banking activities usual in connection with the business of banking in the countries where the foreign bank is organized or operating.

(k) To *establish* means to:

(1) Open and conduct business through an office;

(2) Acquire directly, through merger, consolidation, or similar transaction with another foreign bank, the operations of an office that is open and conducting business;

(3) Acquire an office through the acquisition of a foreign bank subsidiary that will cease to operate in the same corporate form following the acquisition;

(4) Change the status of an office; or

(5) Relocate an office from one state to another.

(l) *Federal agency, federal branch, state agency, and state branch* have the same meanings as in section 1 of the IBA (12 U.S.C. 3101).

(m) *Foreign bank* means an organization that is organized under the laws of a foreign country and that engages directly in the business of banking outside of the United States. The term *foreign bank* does not include a central bank of a foreign country that does not engage or seek to engage in a commercial banking business in the United States through an office.

(n) *Foreign banking organization* means a foreign bank, as defined in section 1(b)(7) of the IBA (12 U.S.C. 3101(7)), that operates a branch, agency, or commercial lending company subsidiary in the United States, or that controls a bank in the United States, and any company of which the foreign bank is a subsidiary.

(o) *Home country*, with respect to a foreign bank, means the country in which the foreign bank is chartered or incorporated.

(p) *Home country supervisor*, with respect to a foreign bank, means the governmental entity or entities in the foreign bank's home country with responsibility for the supervision and regulation of the foreign bank.

(q) *Licensing authority* means:

(1) The relevant state supervisor, with respect to an application to establish a state branch, state agency, commercial lending company, or representative office of a foreign bank;

(2) The Comptroller, with respect to an application to establish a federal branch or federal agency;

(r) *Office* or *office of a foreign bank* means any branch, agency, representative office, or commercial lending company subsidiary of a foreign bank in the United States.

(s) The *parent* of a foreign bank means any company of which the foreign bank is a subsidiary; the *immediate parent* of a foreign bank is the company of which the foreign bank is a direct subsidiary; and the *ultimate parent* of a foreign bank is the parent of the foreign bank that is not the subsidiary of any other company.

(t) *Regional administrative office* means a representative office that:

(1) Is established by a foreign bank that operates one or more branches, agencies, commercial lending companies, or banks in the United States;

(2) Is located in the same city as one or more of the foreign bank's branches, agencies, commercial lending companies, or banks in the United States; and

(3) Manages, supervises, or coordinates the operations of such foreign bank or its affiliates, if any, in a particular geographic region.

(u) *Relevant state supervisor* means the state entity that is authorized to supervise and regulate a state branch, state agency, commercial lending company, or representative office.

(v) *Representative office* means any place of business of a foreign bank, located in any state, that is not a branch, agency, or subsidiary of the foreign bank.

(w) *State* means any state of the United States or the District of Columbia.

(x) *Subsidiary* means any organization 25 percent or more of whose voting shares is directly or indirectly owned, controlled, or held with the power to vote by a company, including a foreign bank or foreign banking organization, or any organization that is otherwise controlled or capable of being controlled by a foreign bank or foreign banking organization.

5. Section 211.23 is redesignated as § 211.22.

6. Section 211.24 is redesignated as § 211.23, paragraphs (a) through (h) of newly redesignated § 211.23 are redesignated as paragraphs (b) through (i) respectively, and a new paragraph (a) is added and reserved.

7. Sections 211.25 through 211.28 are redesignated as §§ 211.24 through 211.27, respectively, and are revised to read as follows:

§ 211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority.

(a) *Board approval of offices of foreign banks*—(1) *Prior Board approval of branches, agencies, or commercial lending companies of foreign banks.*

(i) Except as otherwise provided in paragraph (a)(3) of this section, a foreign bank shall obtain the approval of the Board before it:

(A) Establishes a branch, agency, or commercial lending company subsidiary in the United States; or

(B) Acquires ownership or control of a commercial lending company subsidiary.

(2) *Prior Board approval of representative offices of foreign banks.* Except as otherwise provided in this paragraph or in paragraph (a)(3) of this section, a foreign bank shall obtain the approval of the Board before it establishes a representative office in the United States.

(i) *Prior notice for regional administrative offices.* After providing 45 days' prior written notice to the Board, a foreign bank may establish a regional administrative office. The Board may waive the 45-day period if it finds that immediate action is required by the circumstances presented. The notice period shall commence at the time the notice is accepted. The Board may suspend the period or require Board approval prior to the establishment of such an office if the notification raises significant policy, prudential, or supervisory concerns.

(ii) *General consent for representative offices.* The Board grants its general consent for a foreign bank to establish a representative office that solely engages in limited administrative functions that are clearly defined, are performed in connection with the banking activities of the foreign bank, and that do not involve contact or liaison with customers or potential customers (such as separately maintaining back office support systems), provided that the foreign bank notifies the Board in writing within 30 days of the establishment of the representative office.

(3) *After-the-fact Board approval.* Where a foreign bank proposes to establish a branch, agency, representative office, or commercial lending company in the United States through the acquisition of, or merger or consolidation with, a foreign bank with an office in the United States, the Board may, in its discretion, allow the acquisition, merger, or consolidation to proceed before an

application to establish the office has been filed or acted upon under this section if:

(i) The foreign bank or banks resulting from the acquisition, merger, consolidation, or similar transaction will not directly or indirectly own or control more than 5 percent of any class of the voting securities of, or control, a U.S. bank;

(ii) The Board is given reasonable advance notice of the proposed acquisition, merger, or consolidation;

(iii) Prior to consummation of the acquisition, merger, or consolidation each of the relevant foreign banks commits in writing to comply with the procedures for an application under this section within a reasonable period of time or has already filed an application; and

(iv) Each of the relevant foreign banks commits in writing to abide by the Board's decision on the application, including, if necessary, a decision to terminate the activities of any such U.S. office, as the Board or the Comptroller may require.

(4) *Notice of change in ownership or control or conversion of existing office.* A foreign bank with a U.S. office shall notify the Board in writing within 10 days of either:

(i) A change in the foreign bank's ownership or control where the foreign bank is acquired or controlled by another foreign bank or company and the acquired foreign bank with a U.S. office continues to operate in the same corporate form as prior to the change in ownership or control; or

(ii) The conversion of a branch to an agency or representative office, an agency to a representative office, a state branch to a federal branch, or a state agency to a federal agency.

(5) *Transactions subject to approval under Regulation Y.* Subpart B of the Board's Regulation Y (12 CFR 225.11-225.14) governs the acquisition by a foreign banking organization of direct or indirect ownership or control of any voting securities of a bank or bank holding company in the United States if the acquisition results in the foreign banking organization's ownership or control of more than 5 percent of any class of voting securities of a U.S. bank or bank holding company, including through acquisition of a foreign bank or foreign banking organization that owns or controls more than 5 percent of any class of the voting securities of a U.S. bank or bank holding company.

(b) *Procedures for application*—(1) *Filing application.* An application for the Board's approval pursuant to this section shall be filed in the manner prescribed by the Board.

(2) *Publication requirement*—(i) *General.* Except with respect to a proposed transaction where more extensive notice is required by statute or as otherwise provided in paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, the applicant shall publish a notice in a newspaper of general circulation in the community in which

the applicant proposes to engage in business. The notice shall state that an application is being filed as of the date of the notice and provide the name of the applicant, the subject matter of the application, the place where comments should be sent, and the date by which comments are due pursuant to paragraph (b)(3) of this section. The applicant shall furnish with its application to the Board a copy of the notice, the date of its publication, and the name and address of the newspaper in which it was published.

(ii) *Exception.* The Board may modify the publication requirement of paragraph (b)(2)(i) of this section in appropriate circumstances.

(iii) *Federal branch or federal agency.* In the case of an application to establish a federal branch or federal agency, compliance with the publication procedures of the Comptroller shall satisfy the publication requirement of this section. Comments regarding the application should be sent to the Board and the Comptroller.

(3) *Written comments.* Within 30 days after publication as required in paragraph (b)(2), any person may submit to the Board written comments and data on an application. The Board may extend the 30-day comment period if the Board determines that additional relevant information is likely to be provided by interested persons or if other extenuating circumstances exist.

(4) *Board action on application*—(i) *Time limits.* The Board shall act on an application from a foreign bank within 60 calendar days after the foreign bank has been notified that its application has been accepted, unless the Board determines that the public interest will be served by providing additional time to review the application and notifies the applicant that the 60-day period is being extended.

(ii) *Additional information.* The Board may request any information in addition to that supplied in the application when the Board believes that additional information is necessary for its decision.

(5) *Coordination with other regulators.* Upon receipt of an application by a foreign bank under this section, the Board shall promptly notify, consult with, and consider the views of the licensing authority.

(c) *Standards for approval*—(1) *Mandatory standards*—(i) *General.* As specified in section 7(d) of the IBA (12 U.S.C. 3105(d)), the Board may not approve an application to establish a branch or an agency, or to establish or acquire ownership or control of a commercial lending company, unless it determines that:

(A) Each of the foreign bank and any parent foreign bank engages directly in the business of banking outside the United States and is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor; and

(B) The foreign bank has furnished to the Board the information that the Board requires in order to assess the application adequately.

(ii) *Basis for determining comprehensive supervision or regulation on a consolidated basis.* In determining whether a foreign bank and any parent foreign bank is subject to comprehensive supervision or regulation on a consolidated basis, the Board shall determine whether the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation. In making such a determination, the Board shall assess, among other factors, the extent to which the home country supervisor:

(A) Ensures that the foreign bank has adequate procedures for monitoring and controlling its activities worldwide;

(B) Obtains information on the condition of the foreign bank and its subsidiaries and offices outside the home country through regular reports of examination, audit reports, or otherwise;

(C) Obtains information on the dealings and relationships between the foreign bank and its affiliates, both foreign and domestic;

(D) Receives from the foreign bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the foreign bank's financial condition on a worldwide, consolidated basis;

(E) Evaluates prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis.

(2) *Discretionary standards.* In acting on any application under this subpart, the Board may take into account:

(i) *Consent of home country supervisor.* Whether the home country supervisor of the foreign bank has consented to the proposed establishment of a branch, agency, or commercial lending company subsidiary;

(ii) *Financial resources.* The financial resources of the foreign bank (including the foreign bank's capital position, projected capital position, profitability, level of indebtedness, and future prospects) and the condition of any U.S. office of the foreign bank;

(iii) *Managerial resources.* The managerial resources of the foreign bank, including the competence, experience, and integrity of the officers and directors; the integrity of its principal shareholders; management's experience and capacity to engage in international banking; and the record of the foreign bank and its management of complying with laws and regulations, and of fulfilling any commitments to, and any conditions imposed by, the Board in connection with any prior application;

(iv) *Sharing information with supervisors.* Whether the foreign bank's home country supervisor and the home country supervisor of any parent of the foreign bank share material information regarding the operations of the foreign bank with other supervisory authorities;

(v) *Assurances to Board.* Whether the foreign bank has provided the Board with adequate assurances that information will be made available to the Board on the operations or activities of the foreign bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the BHC Act, and other applicable federal banking statutes; these assurances shall include a statement from the foreign bank describing the laws that would restrict the foreign bank or any of its parents from providing information to the Board.

(vi) *Compliance with U.S. law.* Whether the foreign bank and its U.S. affiliates are in compliance with applicable U.S. law, and whether the applicant has established adequate controls and procedures in each of its offices to ensure continuing compliance with U.S. law, including controls directed to detection of money laundering and other unsafe or unsound banking practices.

(3) *Additional factor.* In acting on an application, the Board may consider the needs of the community and the history of operation of the foreign bank and its relative size in its home country, provided, however, that the size of the foreign bank shall not be the sole factor in determining whether an office of a foreign bank should be approved.

(4) *Board conditions on approval.* The Board may impose such conditions on its approval as it deems necessary, including a condition which may permit future termination of any activities by the Board or, in the case of a federal branch or a federal agency, by the Comptroller, based on the inability of the foreign bank to provide information on its activities or those of its affiliates that the Board deems necessary to determine and enforce compliance with U.S. banking laws.

(d) *Representative offices*—(1) *Activities.* A representative office may engage in:

(i) Representational and administrative functions in connection with the banking activities of the foreign bank which may include soliciting new business for the foreign bank, conducting research, acting as liaison between the foreign bank's head office and customers in the United States, performing any of the activities described in 12 CFR 250.141(h), or performing back office functions, but shall not include contracting for any deposit or deposit-like liability, lending money, or engaging in any other banking activity for the foreign bank; and

(ii) Other functions for or on behalf of the foreign bank or its affiliates, such as operating as a regional administrative office of the foreign bank, but only to the extent that such other functions are not banking activities and are not prohibited by applicable federal or state law or by ruling or order of the Board.

(2) *Standards for approval of representative offices.* As specified in section 10(a)(2) of the IBA (12 U.S.C. 3107(a)(2)), in acting on the application of a foreign bank to establish a representative office, the Board shall take into account to the extent it deems appropriate the standards for approval set out in paragraph (c) of this section.

(3) *Additional requirements*. The Board may impose any additional requirements that it determines to be necessary to carry out the purposes of the IBA.

(e) *Preservation of existing authority*. Nothing in this subpart shall be construed to relieve any foreign bank or foreign banking organization from any otherwise applicable requirement of federal or state law, including any applicable licensing requirement.

§ 211.25 Termination of offices of foreign banks.

(a) *Grounds for termination—(1) General*. Under sections 7(e) and 10(b) of the IBA (12 U.S.C. 3105(e), 3107(b)), the Board may order a foreign bank to terminate the activities of its representative office, state branch, state agency, or commercial lending company subsidiary if the Board finds that:

(i) The foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor in accordance with § 211.24(c)(1) of this subpart; or

(ii)(A) There is reasonable cause to believe that the foreign bank or any of its affiliates has committed a violation of law or engaged in an unsafe or unsound banking practice in the United States; and

(B) As a result of such violation or practice, the continued operation of the foreign bank's representative office, state branch, state agency, or commercial lending company subsidiary would not be consistent with the public interest or with the purposes of the IBA, the BHC Act, or the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1811 *et seq.*).

(2) *Additional ground*. The Board may also enforce any condition imposed in connection with an order issued under § 211.24 of this subpart.

(b) *Factor*. In making its findings under this section, the Board may take into account the needs of the community as well as the history of operation of the foreign bank and its relative size in its home country, provided, however, that the size of the foreign bank shall not be the sole determining factor in a decision to terminate an office.

(c) *Consultation with relevant state supervisor*. Except in the case of termination pursuant to paragraph (d)(3) of this section, before issuing an order terminating the activities of a state branch, state agency, representative office, or commercial lending company subsidiary under this section, the Board shall request and consider the views of the relevant state supervisor.

(d) *Termination procedures—(1) Notice and hearing*. Except as otherwise provided in paragraph (d)(3) of this section, an order issued under paragraph (a)(1) of this section shall be issued only after notice to the relevant state supervisor and the foreign bank and after an opportunity for a hearing.

(2) *Procedures for hearing*. Hearings under this section shall be conducted pursuant to the Board's Rules of Practice for Hearings (12 CFR part 263).

(3) *Expedited procedure.* The Board may act without providing an opportunity for a hearing if it determines that expeditious action is necessary in order to protect the public interest. When the Board finds that it necessary to act without providing an opportunity for a hearing, the Board, solely in its discretion, may provide the foreign bank that is the subject of the termination order with notice of the intended termination order, grant the foreign bank an opportunity to present a written submission opposing issuance of the order, or take any other action designed to provide the foreign bank with notice and an opportunity to present its views concerning the order.

(e) *Termination of federal branch or federal agency.* The Board may transmit to the Comptroller a recommendation that the license of a federal branch or federal agency be terminated if the Board has reasonable cause to believe that the foreign bank or any affiliate of the foreign bank has engaged in conduct for which the activities of a state branch or state agency may be terminated pursuant to this section.

(f) *Voluntary termination.* A foreign bank shall notify the Board at least 30 days prior to terminating the activities of any office. Notice pursuant to this paragraph is in addition to, and does not satisfy, any other federal or state requirements relating to the termination of an office or the requirement for prior notice of the closing of a branch pursuant to section 39 of the FDI Act (12 U.S.C. 1831p).

§ 211.26 Examination of offices and affiliates of foreign banks.

(a) *Conduct of examinations*—(1) *Examination of branches, agencies, commercial lending companies, and affiliates.* The Board may examine any branch or agency of a foreign bank, any commercial lending company or bank controlled by one or more foreign banks or one or more foreign companies that control a foreign bank, and any other office or affiliate of a foreign bank conducting business in any state.

(2) *Examination of representative offices.* The Board may examine any representative office in the manner and with the frequency it deems appropriate.

(b) *Coordination of examinations.* To the extent possible, the Board shall coordinate its examinations of the U.S. offices and U.S. affiliates of a foreign bank with the licensing authority and, in the case of an insured branch, the Federal Deposit Insurance Corporation (FDIC), including through simultaneous examinations of such U.S. offices and U.S. affiliates of a foreign bank.

(c) *Annual on-site examinations.* Each branch, agency, or commercial lending company subsidiary of a foreign bank shall be examined on-site at least once during each 12-month period (beginning on the date the most recent examination of the office ended) by:

(1) The Board;

(2) The FDIC, if the branch of the foreign bank accepts or maintains insured deposits;

(3) The Comptroller, if the branch or agency of the foreign bank is licensed by the Comptroller; or

(4) The state supervisor, if the office of the foreign bank is licensed or chartered by the state.

§ 211.27 Disclosure of supervisory information to foreign supervisors.

(a) *Disclosure by Board.* The Board may disclose information obtained in the course of exercising its supervisory or examination authority to a foreign bank regulatory or supervisory authority if the Board determines that disclosure is appropriate for bank supervisory or regulatory purposes and will not prejudice the interests of the United States.

(b) *Confidentiality.* Before making any disclosure of information pursuant to paragraph (a) of this section, the Board, shall obtain, to the extent necessary, the agreement of the foreign bank regulatory or supervisory authority to maintain the confidentiality of such information to the extent possible under applicable law.

8. A new § 211.28 is added to read as follows:

§ 211.28 Limitation on loans to one borrower.

(a) *Limitation.* Except as otherwise provided in paragraph (b) of this section, the total loans and extensions of credit by all the state branches and agencies of a foreign bank outstanding to a single borrower at one time shall be aggregated with the total loans and extensions of credit by all federal branches and federal agencies of the same foreign bank outstanding to such borrower at the time and shall be subject to the limitations and other provisions of section 5200 of the Revised Statutes (12 U.S.C. 84), and the regulations promulgated thereunder, in the same manner that extensions of credit by a federal branch or federal agency are subject to section 4(b) of the IBA (12 U.S.C. 3102(b)) as if such state branches and agencies were federal branches and agencies.

(b) *Preexisting loans and extensions of credit.* Any loans or extensions of credit to a single borrower that were originated prior to December 19, 1991 by a state branch or state agency of the same foreign bank and that, when aggregated with loans and extensions of credit by all other branches and agencies of the foreign bank, exceed the limits set forth in paragraph (a) of this section, may be brought into compliance with such limitations through routine repayment, provided that any new loans or extensions of credit, including renewals of existing unfunded credit lines or extensions of the dates of maturity of existing loans, to the same borrower shall comply with the limits set forth in paragraph (a) of this section.

9. A new § 211.30 is added and reserved as follows:

§ 211.30 Deposit insurance requirement for retail deposit taking by foreign banks.—[Reserved].

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for 12 CFR part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3907, 3909, 3310, and 3331-3351.

2. Section 225.11 is amended by revising paragraph (f) to read as follows:

§ 225.11 Transactions requiring Board approval.

* * * * *

(f) *Transactions by foreign banking organization.* Any transaction described in paragraphs (a) through (e) of this section by a foreign banking organization (as defined in 12 CFR 211.21(n)) that involves the acquisition of an interest in a U.S. bank or in a bank holding company for which application would be required if the foreign banking organization were a bank holding company.

3. Section 225.12 is amended by revising paragraph (f) to read as follows:

§ 225.12 Transactions not requiring Board approval.

* * * * *

(f) *Acquisition of foreign banking organization.* The acquisition of a foreign banking organization (as defined in 12 CFR 211.21(n)) where the foreign banking organization does not directly or indirectly own or control a bank in the United States, unless the acquisition is also by a foreign banking organization and otherwise subject to § 225.11(f) of this subpart.

PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for 12 CFR part 263 is revised to read as follows:

Authority: 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o-4, 78o-5, and 78u-2.

2. Section 263.51 is amended by revising paragraph (c) to read as follows:

§ 263.51 Definitions.

* * * * *

(c) *Institution* has the same meaning as that assigned to it in § 263.3(f) of subpart A, and includes any foreign bank with a representative office in the United States.

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for 12 CFR part 265 continues to read as follows:

Authority: Section 11(i) and (k) of the Federal Reserve Act, (12 U.S.C. 248(i) and (k)).

2. Section 265.6 is amended by revising paragraph (b)(2) and by adding a new paragraph (f) to read as follows:

§ 265.6 Functions delegated to General Counsel.

(b)* * *

(2) *Disclosure to foreign authorities.* To make the determinations required for disclosure of information to a foreign bank regulatory or supervisory authority, and to obtain, to the extent necessary, the agreement of such authority to maintain the confidentiality of such information to the extent possible under applicable law (12 CFR 211.27).

* * * * *

(f) *International banking.*— (1) With the concurrence of the Board's Director of the Division of Banking Supervision and Regulation, to grant a request by a foreign bank to establish a branch, agency, commercial lending company, or representative office through certain acquisitions, mergers, consolidations, or similar transactions, and to file an after-the-fact application for the Board's approval to establish that office pursuant to § 211.24(a)(3) of Regulation K (12 CFR 211.24(a)(3)); and

(2) To modify the requirement that a foreign bank that has applied to establish a branch, agency, commercial lending company, or representative office pursuant to § 211.24(a) of Regulation K (12 CFR 211.24(a)) shall publish notice of the application in a newspaper of general circulation in the community in which the applicant proposes to engage in business as provided in § 211.24(b)(2)(ii) of Regulation K (12 CFR 211.24(b)(2)(ii)).

3. Section 265.7 is amended by revising paragraph (d)(8) to read as follows:

§ 265.7 Functions delegated to the Director of the Division of Banking Supervision and Regulation.

* * * * *

(d)* * *

(8) *Conduct and coordination of examinations.* To authorize the conduct of examinations of the U.S. offices and affiliates of foreign banks as provided in sections 7(c) and 10(c) of the IBA (12 U.S.C. 3105(c), 3107(c)), and, where appropriate, to coordinate those examinations with examinations of the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the state entity that is authorized to supervise or regulate a state branch, state agency, commercial lending company, or representative office.

* * * * *

4. Section 265.11 is amended by adding paragraph (d)(11) to read as follows:

§ 265.11 Functions delegated to Federal Reserve banks.

* * * * *

(d)* * *

(11) *Establishment of additional office by foreign bank.—(i) Additional branch, agency, or commercial lending company.* To approve an application by a foreign bank to establish an additional branch, agency, or commercial lending company in the United States pursuant to § 211.24 of Regulation K (12 CFR 211.24), provided that:

(A) The foreign bank previously received approval from the Board to establish a branch, agency, or commercial lending company in the United States pursuant to § 211.24 of Regulation K (12 CFR 211.24); and

(B) The application raises no significant policy or supervisory issues.

(ii) *Representative office.* To approve an application by a foreign bank to establish a representative office in the United States pursuant to § 211.24 of Regulation K (12 CFR 211.24), provided that:

(A) The foreign bank previously received approval from the Board to establish a branch, agency, commercial lending company, or representative office in the United States pursuant to 211.24 of Regulation K (12 CFR 211.24); and

(B) The application raises no significant policy or supervisory issues.

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 12, 1993.

(signed) William W. Wiles

William W. Wiles,
Secretary of the Board.
[FR Doc. 93-00000 Filed 00-00-93; 8:45 am]
BILLING CODE 6210-01-F