

FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 82-48
April 21, 1982

REGULATION K

International Banking Operations

TO ALL MEMBER BANKS,
BANK HOLDING COMPANIES,
EDGE AND AGREEMENT CORPORATIONS
AND OTHERS CONCERNED IN THE
ELEVENTH FEDERAL RESERVE DISTRICT:

The Board of Governors of the Federal Reserve System has amended its Regulation K to permit Edge Corporations to engage in certain investment and economic advisory and investment management services in the United States. Comments concerning this amendment were requested in Circular No. 81-218, dated November 17, 1981.

Printed on the following pages is a copy of the Board's notice as published in the Federal Register. The amendments making Regulation K complete are enclosed for insertion in Vol. II of your Regulations Binders. Please destroy the slip-sheet dated December 1980.

Any questions concerning the enclosed material may be directed to Ann Worthy of our Holding Company Supervision Department, Ext. 6259.

Additional copies of this circular will be furnished upon request to the Department of Communications, Financial and Community Affairs, Ext. 6289.

Sincerely yours,



William H. Wallace
First Vice President

Enclosure

Banks and others are encouraged to use the following incoming WATS numbers in contacting this Bank: 1-800-442-7140 (intrastate) and 1-800-527-9200 (interstate). For calls placed locally, please use 651 plus the extension referred to above.

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Docket No. R-0366]

International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System is amending Regulation K on international banking operations by adding a new activity to the list of activities permissible for Edge Corporations in the United States. The amendment would permit Edge Corporations to offer certain investment and economic advisory and investment management services in the United States to their foreign customers, and such advice with respect to foreign investments to their U.S. customers. This action is being taken in response to a request from a member bank.

EFFECTIVE DATE: March 12, 1982.

FOR FURTHER INFORMATION CONTACT: Henry Schiffman, Division of Banking Supervision and Regulation, (202) 452-2523, James Keller, Senior Attorney, (202) 452-3582, or Melanie Fein, Attorney, (202) 452-3594, Legal Division, Board of Governors of the Federal Reserve System.

SUPPLEMENTARY INFORMATION: Section

25(a) of the Federal Reserve Act (the "Edge Act"), 12 U.S.C. 611 *et seq.*, authorizes the organization of corporations ("Edge Corporations") for the purpose of engaging in international or foreign financial or banking operations. The Edge Act specifies certain powers and activities that are permissible for Edge Corporations and authorizes other activities that are incidental thereto. Section 211.4(e) of the Board's Regulation K, 12 CFR 211.4(e), lists activities that will ordinarily be considered incidental to an Edge Corporation's international or foreign business and may be conducted in the United States. These activities include certain foreign or internationally related deposit-taking, funding, and financing activities. Section 3(a) of the International Banking Act of 1978 ("IBA") (12 U.S.C. 611a note) states that it is the policy of Congress to eliminate restrictions that disadvantage or unnecessarily restrict Edge Corporations in competing with foreign-owned banking institutions in the United States or abroad, or impede the purposes of the Edge Act to foster United States international business activities.

The Board has been requested by Bank of America National Trust and Savings Association, San Francisco, California to include on the list of activities permissible in the United States for Edge Corporations certain investment and economic advisory and investment management services. These activities would include managing investment portfolios comprised of securities, other financial instruments, and real estate, on behalf of foreign persons. Bank of America states that the customers to whom the Edge Corporation would offer these services would be individuals residing outside the United States who visit the United States infrequently and are therefore unavailable for consultation on a continuing basis. Bank of America believes that such individuals desire to grant an Edge Corporation discretionary authority over their U.S. investments.

The Board published notice of a proposed rule to add this activity to Regulation K in the *Federal Register* of October 13, 1981 (46 FR 50975). Interested persons were invited to comment specifically on (1) whether the proposed activity would enable Edge Corporations to compete effectively with foreign-owned institutions in a manner consistent with the IBA and (2) whether the provision of such services should be extended to U.S. customers with respect to foreign investments.

The Board received 34 comments on the proposal, all but two of which favored the proposal. Generally, those favoring the proposal believed that it

would enhance competitive equality between domestic and foreign banks operating in the United States, consistent with the IBA, by enabling domestic banks to offer a broader range of financial services to foreign customers through their Edge Corporations. Currently, a U.S. bank wishing to offer fiduciary services in more than one state may do so only through a bank holding company, whereas a foreign bank competitor may offer such services outside its home state through grandfathered operations or through limited federal or state branches. Several commenters observed that the proposal was a logical extension of the fiduciary services already permitted under § 211.4(e)(4)(ix) of Regulation K, which authorizes Edge Corporations to "hold securities in safekeeping for, or buy and sell securities upon the order and for the account and risk of a person."

Several commenters thought that the proposal could be improved by broadening the list of investments that Edge Corporations would be permitted to manage to include oil and gas interests and gold and silver. One commenter recommended that the term "other assets" be added to the list of investments to allow a wider range of investment activities.

All twenty-four of the commenters addressing the issue favored extending investment advisory and management services to U.S. customers with respect to foreign investments.

Only two commenters opposed the proposal. Their objections were that the proposal would benefit large money center banking organizations at the expense of smaller regional organizations. The smaller organizations cannot provide the range of services that the larger organizations provide, the opponents argued, and will lose customers if the large competitors are permitted to offer these services through Edge Corporations.

Based on a review of the public comments and consideration of the issues raised by the proposed activity, the Board has determined that the services are incidental to the international business of an Edge Corporation and would further the purposes of the International Banking Act. The addition of investment advisory and portfolio management services to Regulation K would eliminate restrictions that unnecessarily inhibit Edge Corporations in competing with foreign-owned banking institutions in the United States and that impede the purposes of the Act to foster U.S. international business activities. Accordingly, the Board has determined to adopt the proposal. The Board

believes that the same considerations support the provision of investment and economic advisory and investment management services to domestic customers with respect to foreign investments, and the Board also has determined to amend Regulation K to permit these activities.

In taking this action, the Board has used terminology similar to that contained in § 225.4(a)(5) (iii) and (iv) of Regulation Y (12 CFR 225.4(a)(5) (iii) and (iv)), which authorizes bank holding companies to provide portfolio investment advice and furnish general economic advice. The Board believes that the Regulation Y terminology would make more certain the scope of the advice permitted. For example, Regulation Y distinguishes the provisions of economic advice and industry studies from management consulting, which is not permitted. In addition, the Board has previously interpreted "portfolio investment advice" as including the power to determine what securities or other property shall be purchased and sold. Although the language of the amendment states that portfolio management is included in the activities being authorized, the Board does not intend by the use of this term to authorize management consulting, property management, land development or any other activity denied to section 4(c)(8) subsidiaries under the Bank Holding Company Act.

Use of the Regulation Y terminology also is responsive to comments citing the need to make explicit that real estate interests may be the subject of investment services. In addition, the Board has added "other investment assets" to the list of permissible investments to allow a wider range of normal investment alternatives. However, as in the case of section 4(c)(8) subsidiaries, the Board expects that in furnishing portfolio investment advice under this authorization, the Edge Corporation shall observe the standards of care and conduct applicable to fiduciaries.

Further, the Board expects any Edge Corporation engaging in this activity to adopt written policies and procedures suitable to its particular circumstances to ensure that any inside information in its possession obtained in connection with the commercial lending activities of the Edge Corporation or its bank and nonbank affiliates is not used for any recommendation or decision to purchase and sell securities for its investment advisory customers. See 64 Federal Reserve Bulletin 339 (1978).

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354; 5 U.S.C. 601 *et seq.*), the Board of

Governors of the Federal Reserve System certifies that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation. The proposed amendment would liberalize the existing regulations and does not have any particular effect on small entities.

Accordingly, pursuant to its authority under section 25(a) of the Federal Reserve Act, 12 U.S.C. 615, the Board of Governors of the Federal Reserve System amends 12 CFR Part 211 as follows:

By order of the Board of Governors of the Federal Reserve System, March 12, 1982.

William W. Wiles,
Secretary of the Board.

[FR Doc. 82-7469 Filed 3-18-82; 8:45 am]

BILLING CODE 6210-01-M

PART 211—INTERNATIONAL BANKING OPERATIONS

1. The authority citation for Part 211 reads as follows:

Authority: Federal Reserve Act (12 U.S.C. 221 *et seq.*); the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*); and the International Banking Act of 1978 (Pub. L. 95-369; 92 Stat. 607; 12 U.S.C. 3101).

§ 211.4 [Amended]

2. Section 211.4 is amended as follows:

a. In paragraph (e)(4)(xii); delete the "and" at the end of the paragraph.

b. In paragraph (e)(4)(xiii); change the period (".") at the end of the paragraph to a semi-colon (";").

3. Section 211.4 is amended by adding the following paragraphs (e)(4) (xiv) and (xv):

§ 211.4 Edge and agreement corporations.

* * * * *

(e) * * *

(4) * * *

(xiv) Act as investment or financial adviser by providing portfolio investment advice and portfolio management with respect to securities, other financial instruments, real property interests and other investment assets,³ provided such services for U.S. persons shall be with respect to foreign assets only; and

(xv) Provide general economic information and advice, general economic statistical forecasting services and industry studies, provided such services for U.S. persons shall be with respect to foreign economies and industries only.

* * * * *

³ For purposes of this section, management of an investment portfolio does not include operational management of real property, industrial and commercial assets.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

INTERNATIONAL BANKING OPERATIONS

AMENDMENTS TO REGULATION K †

As amended effective March 12, 1982

SUBPART A—INTERNATIONAL OPERATIONS OF UNITED STATES BANKING ORGANIZATIONS

Effective March 23, 1981, section 211.3(b)(2) is amended by revising it to read as follows:

SECTION 211.3.—FOREIGN BRANCHES OF MEMBER BANKS

* * * * *

(b)***

* * * * *

(2) accept drafts or bills of exchange drawn upon it; however, such acceptances that are of the type described in paragraph 7 of section 13 of the FRA (12 USC 372) shall be subject to the amount limitations provided therein and such acceptances that are of the type described in paragraph 12 of section 13 of the FRA shall be subject to the amount limitations provided therein;

Effective March 12, 1982, section 211.4(e)(4)(xii) is amended by deleting the word "and" at the end of the paragraph; paragraph 211.4(e)(xiii) is amended by changing the period (".") at the end of the paragraph to a semi-colon (;); and by adding paragraphs 211.4(e)(4)(xiv) and (xv) as follows:

* * * * *

SECTION 211.4—EDGE AND AGREEMENT CORPORATIONS

* * * * *

(e)***

(4)

* * * * *

(xiv) act as investment or financial adviser by providing portfolio investment advice and portfolio management with respect to securities, other financial instru-

ments, real property interests and other investment assets,^{3a} provided such services for U.S. persons shall be with respect to foreign assets only; and

(xv) provide general economic information and advice, general economic statistical forecasting services and industry studies, provided such services for U.S. persons shall be with respect to foreign economies and industries only.

* * * * *

Effective October 20, 1980, Regulation K is amended by adding Subpart A—International Operations of United States Banking Organizations and retaining the current sections 211.1 through 211.7; effective November 28, 1979, section 211.5(b)(3) is amended; effective November 13, 1980, section 211.5(c)(1)(ii) is amended, section 211.5(c)(1)(iii) is redesignated as section 211.5(c)(1)(iv) and a new section 211.5(c)(1)(iii) is added as set forth below; and paragraph 211.5(c)(2) is amended to read as follows:

SECTION 211.5—INVESTMENTS IN OTHER ORGANIZATIONS

* * * * *

(b)***

* * * * *

(3) A subsidiary (other than a member bank or an Edge Corporation) may establish a foreign branch with prior approval of the Board. Unless otherwise advised by the Board: (i) a subsidiary (other than a member bank or an Edge Corporation) whose affiliates have offices (other than representative offices) in two or more foreign countries may establish initial branches in additional foreign countries after 60 days' notice to the Board; (ii) a foreign

3a) For purposes of this section, management of an investment portfolio does not include operational management of real property, industrial and commercial assets.

† For this Regulation to be complete as amended March 12, 1982, retain:

- 1) Printed regulation pamphlet dated June 14, 1979.
2) This slip sheet. (Destroy slip sheet dated December 1980.)

bank subsidiary may, without prior approval or prior notice, establish additional branches in any country in which it operates one or more offices (other than representative offices); and (iii) without prior approval or prior notice, any subsidiary (other than a foreign bank, member bank, or Edge Corporation) may establish additional branches in any foreign country in which any affiliate operates one or more offices (other than representative offices). Authority to establish branches through prior approval or prior notice shall expire one year from the earliest date on which that authority could have been exercised, unless extended by the Board. An investor shall inform the Board within 30 days of the opening, closing, or relocation of a branch and the address of a new or relocated foreign branch.

* * * * *

(c)***

(1)***

(ii) any additional investment in an organization in any calendar year so long as (A) the investment does not cause the organization to be a direct or indirect subsidiary or joint venture of the investor; (B) the total amount invested in that calendar year does not exceed 10 per cent of investor's capital and surplus; and, (C) the total amount invested under Part 211 in the current calendar year does not exceed cash dividends reinvested pursuant to paragraph (iii) below plus the greater of (1) 10 per cent of the investor's direct and indirect historical cost⁶ in such organization, or (2) 50 per cent of the investor's direct or indirect historical cost in that organization less any amounts invested in that organization during the previous four calendar years (excluding dividends reinvested pursuant to paragraph (iii) below); or

(iii) any additional investment in an organization in an amount equal to cash dividends received from that organization during the preceding 12 calendar months so long as such investment does not cause the organization to be a direct or indirect subsidiary or joint venture of the investor; or

(2) *Prior notification.* An investment in a subsidiary or joint venture that does not qualify under the general consent procedure, may be made after the investor has given 60 days' prior written notice to the Board, unless the Board waives such period because it finds immediate action by the investor is required by the circumstances

⁶The "historical cost" of an investment consists of the actual amounts paid for shares or otherwise contributed to the capital accounts, as measured in dollars at the exchange rate in effect at the time each investment was made. It does not include subordinated debt or unpaid commitments to invest even though these may be considered investments for other purposes of this Part. For investments acquired indirectly as a result of acquiring a subsidiary, the historical cost to the investor is measured as of the date of acquisition of the subsidiary; at the net asset value of the equity interest in the case of subsidiaries and joint ventures, and in the case of portfolio investments, at the book carrying value.

presented, if the total amount to be invested does not exceed 10 per cent of the investor's capital and surplus. The notification period shall commence at the time the notice is accepted. The Board may, during the notification period, disapprove the investment, suspend the period, or require that an application be filed by the investor for the Board's specific consent.

Effective July 29, 1981, section 211.6(d) is amended by revising it to read as set forth below:

SECTION 211.6—LENDING LIMITS AND CAPITAL REQUIREMENTS

* * * * *

(d) **Capitalization.** An Edge Corporation shall at all times be capitalized in an amount that is adequate in relation to the scope and character of its activities. In the case of an Edge Corporation engaged in banking, its capital and surplus shall be not less than 7 per cent of risk assets. For this purpose, subordinated capital notes or debentures, in an amount not to exceed 50 per cent of non-debt capital, may be included for determining capital adequacy in the same manner as for a member bank; risk assets shall be deemed to be all assets on a consolidated basis other than cash, amounts due from banking institutions in the United States, United States Government securities, and Federal funds sold.

Effective October 20, 1980, Regulation K is amended by adding new Subpart B, sections 211.21 and 211.22; effective January 3, 1981, new section 211.23 is added as set forth below:

SUBPART B—FOREIGN BANKING ORGANIZATIONS

SECTION 211.21—AUTHORITY, PURPOSE, AND SCOPE

(a) **Authority.** This Subpart is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) ("BHCA"); and the International Banking Act of 1978 (92 Stat. 607) ("IBA").

(b) **Purpose and Scope.** This Subpart is in furtherance of the purposes of the BHCA and the IBA. It applies to foreign banks and foreign banking organizations with respect to the limitations on interstate banking under section 5 of the IBA (12 U.S.C. 3103); and to foreign banks and foreign bank holding companies with respect to the exemptions from the nonbanking prohibitions of the BHCA and the IBA afforded by sections 2(h) and 4(c)(9) of the BHCA (12 U.S.C. 1841(h) and 1843(c)(9)).

SECTION 211.22—INTERSTATE BANKING OPERATIONS OF FOREIGN BANKING ORGANIZATIONS

(a) **Definitions.** The definitions of section 211.2 in Subpart A apply to this section subject to the following:

(1) "Agency" means any office or any place of business of a foreign bank located in any State of the United States or the District of Columbia at which credit balances are maintained, checks are paid, or money is lent, but at which deposits may not be accepted from a citizen or resident of the United States. Obligations shall not be considered credit balances unless they:

(i) are incidental to, or arise out of the exercise of other lawful banking powers; (ii) are to serve a specific purpose; (iii) are not solicited from the general public; (iv) are not used to pay routine operating expenses in the United States such as salaries, rent, or taxes; (v) are withdrawn within a reasonable period of time after the specific purpose for which they were placed has been accomplished; and (vi) are drawn upon in a manner reasonable in relation to the size and nature of the account.

(2) "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 BHCA (12 U.S.C. 1841).

(3) "Commercial lending company" means any organization, other than a bank or an organization operating under section 25 of the FRA, organized under the laws of any State of the United States or the District of Columbia, that maintains credit balances as may be maintained by an agency and engages in the business of making commercial loans.

(4) "Domestic branch" means any office or any place of business of a foreign bank located in any State of the United States or the District of Columbia that may accept domestic deposits and deposits that are incidental to or for the purpose of carrying out transactions in foreign countries.

(5) "Foreign Bank," for purposes of this section, is an organization that is organized under the laws of a foreign country and that engages in the business of banking.

(b) **Determination of home State.**

(1) A foreign bank selecting its home State shall do so by filing with the Board a declaration of home State within 180 days of the effective date of this Subpart. In the absence of such selection, the Board shall designate a foreign bank's home State. Within one year after the home State of a foreign bank has been determined, unless the Board authorizes a longer period:

(i) the foreign bank shall close domestic branches whose activities are not permissible under section 5(b) of the IBA, convert such domestic branches to agencies, or enter into an agreement with the Board regarding the deposits of such branches as prescribed in

section 5(a) of the IBA; and

(ii) the foreign bank shall divest voting shares of interests in, or assets of banks that are not permissible under section 5(b) of the IBA.

(2) A foreign bank that currently does not operate a domestic branch or banking subsidiary shall not be required to select a home State and shall not have its home State designated by the Board.

(3) A foreign bank (except a foreign bank to which paragraph (b)(5) of this section applies) that has any combination of domestic branches, banking subsidiaries, agencies, or commercial lending company subsidiaries that, before July 27, 1978, were established or applied for in more than one State may select its home State only from those States in which the foreign bank has continuously operated such offices.

(4) A foreign bank that established or applied for one domestic branch or one banking subsidiary before July 27, 1978, and that was not otherwise engaged in banking in the United States on that date, shall have as its home State the State in which such domestic branch or banking subsidiary is located.

(5) A foreign bank that before July 27, 1978, had no domestic branches or banking subsidiaries or had only agencies or commercial lending companies, and, after that date, has established or establishes any domestic branch or banking subsidiary shall have as its home State that State in which its initial domestic branch or banking subsidiary is located.

(c) **Change of home State.** A foreign bank may change its home State once if:

(1) 30 days' prior notification of the proposed change is filed with the Board; and

(2) domestic branches established and investments in banks acquired in reliance on its original home State selection are conformed to those that would have been permissible had the new home State been selected as its home State originally.

(d) **Bank mergers.** (1) A foreign bank with one or more banking subsidiaries that selects as its home State a State other than that in which a banking subsidiary is located, and that proposes to acquire through its subsidiary bank all or substantially all of the assets of a bank larger than its subsidiary bank (in terms of deposits) located outside the foreign bank's home State shall give 60 days' notification to the Board prior to consummation of the proposed transaction.

(2) If, after receiving the notification, the Board makes a preliminary determination within that period that the proposed acquisition would be inconsistent with the foreign bank's home State selection, the foreign bank shall:

(i) redesignate as its home State the State in which its subsidiary bank is located; or

(ii) show cause why in the facts and circumstances of its case its home State should not be redesignated.

nated (the foreign bank's submission may include a request for a hearing).

(3) On the basis of information available, the Board shall:

(i) direct that the foreign bank redesignate as its home State the State in which its subsidiary bank is located; or

(ii) take no action with respect to the foreign bank's home State.

(4) Factors to be considered by the Board in making its preliminary and final determinations include the size of the proposed acquisition relative to the foreign bank's other operations in the United States and the ability of the foreign bank to change its home State.

(c) **Attribution of home State.** (1) A foreign bank or organization and the other foreign banks or organizations over which it exercises actual control shall be regarded as one foreign bank and shall be entitled to one home State.

(2) Actual control shall be conclusively presumed to exist in the case of a bank or organization that owns or controls a majority of the voting shares of another bank or organization.

(3) Where it appears to the Board that a foreign bank or organization exercises actual control over the management or policies of another foreign bank or organization, the Board may inform the parties that a preliminary determination of control has been made on the basis of the facts summarized in the communication. In the event of a preliminary determination of control by the Board, the parties shall within 30 days (or such longer period as may be permitted by the Board):

(i) indicate to the Board a willingness to terminate the control relationship; or

(ii) set forth such facts and circumstances as may support the contention that actual control does not exist (and may request a hearing to contest the Board's preliminary determination); or

(iii) accede to the Board's preliminary determination, in which event the parties shall be regarded as one foreign bank and shall be entitled to one home State.

SECTION 211.23—NONBANKING ACTIVITIES OF FOREIGN BANKING ORGANIZATIONS

(a) **Definitions.** The definitions of section 211.2 in Subpart A apply to this section subject to the following:

(1) "Directly or indirectly" when used in reference to activities or investments of a foreign banking organization means activities or investments of the foreign banking organization or of any subsidiary of the foreign banking organization.

(2) "Foreign banking organization" means a foreign bank (as defined in section 1(b)(7) of the IBA) that operates a branch, agency, or commercial lending company subsidiary in the United States or that controls a

bank in the United States; and a company of which such foreign bank is a subsidiary.

(3) "Subsidiary" means an organization more than 25 per cent of the voting stock of which is held directly or indirectly by a foreign banking organization or which is otherwise controlled or capable of being controlled by a foreign banking organization.

(b) **Qualifying foreign banking organizations.** Unless specifically made eligible for the exemptions by the Board, a foreign banking organization shall qualify for the exemptions afforded by this section only if, disregarding its United States banking, more than half of its worldwide business is banking; and more than half of its banking business is outside the United States. In order to qualify, a foreign banking organization shall:

(1) meet at least two of the following requirements:

(i) banking assets held outside the United States¹ exceed total worldwide nonbanking assets;

(ii) revenues derived from the business of banking outside the United States exceed total revenues derived from its worldwide nonbanking business;

(iii) net income derived from the business of banking outside the United States exceeds total net income derived from its worldwide nonbanking business; and

(2) meet at least two of the following requirements:

(i) banking assets held outside the United States exceed banking assets held in the United States;

(ii) revenues derived from the business of banking outside the United States exceed revenues derived from the business of banking in the United States;

(iii) net income derived from the business of banking outside the United States exceeds net income derived from the business of banking in the United States.

(c) **Determining assets, revenues, and net income.**

(1) For purposes of paragraph (b), the total assets, revenues, and net income of an organization may be determined on a consolidated or combined basis. Assets, revenues and net income of companies in which the foreign banking organization owns 50 per cent or more of the voting shares shall be included when determining total assets, revenues, and net income. The foreign banking organization may include assets, revenues, and net income of companies in which it owns 25 per cent or more of the voting shares if all such companies within the organization are included;

(2) Assets devoted to, or revenues or net income derived from, activities listed in section 211.5(d) of this Part shall be considered banking assets, or revenues or net income derived from the banking business, when

¹ None of the direct or indirect assets, revenues, or net income of a United States subsidiary bank, branch, agency, commercial lending company, or other company engaged in the business of banking in the United States shall be considered held or derived from the business of banking "outside the United States."

conducted within the foreign banking organization by a foreign bank or its subsidiaries.

(d) **Loss of eligibility for exemptions.** A foreign banking organization that qualified under paragraph (b) of this section or an organization that qualified as a "foreign bank holding company" under section 225.4(g) of Regulation Y (12 C.F.R. § 225.4(g) (1980))² shall cease to be eligible for the exemptions of this section if it fails to meet the requirements of paragraph (b) for two consecutive years as reflected in its Annual Reports (F.R. Y-7) filed with the Board. A foreign banking organization that ceases to be eligible for the exemptions may continue to engage in activities or retain investments commenced or acquired prior to the end of the first fiscal year for which its Annual Report reflects nonconformance with paragraph (b). Activities commenced or investments made after that date shall be terminated or divested within three months of the filing of the second Annual Report unless the Board grants consent to continue the activity or retain the investment under paragraph (e).

(e) **Specific determination of eligibility for nonqualifying foreign banking organizations.** A foreign banking organization that does not qualify under paragraph (b) for the exemptions afforded by this section, or that has lost its eligibility for the exemptions under paragraph (d), may apply to the Board for a specific determination of eligibility for the exemptions. A foreign banking organization may apply for a specific determination prior to the time it ceases to be eligible for the exemptions afforded by this section. In determining whether eligibility for the exemptions would be consistent with the purposes of the BHCA and in the public interest, the Board shall consider the history and the financial and managerial resources of the organization; the amount of its business in the United States; the amount, type and location of its non-banking activities; and whether eligibility of the foreign banking organization would result in undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Such determination shall be subject to any conditions and limitations imposed by the Board.

(f) **Permissible activities and investments.** A foreign banking organization that qualifies under paragraph (b) may:

(1) Engage in activities of any kind outside the United States;

(2) Engage directly in activities in the United States that are incidental to its activities outside the United States;

(3) Own or control voting shares of any company that is not engaged, directly or indirectly, in any activities in the United States other than those that are incidental to

the international or foreign business of such company;

(4) Own or control voting shares of any company in a fiduciary capacity under circumstances that would entitle such shareholding to an exemption under section 4(c)(4) of the BHCA if the shares were held or acquired by a bank;

(5) Own or control voting shares of a foreign company that is engaged directly or indirectly in business in the United States other than that which is incidental to its international or foreign business, subject to the following limitations:

(i) more than 50 per cent of the foreign company's consolidated assets shall be located, and consolidated revenues derived from, outside the United States;

(ii) the foreign company shall not engage directly, nor own or control more than 5 per cent of the voting shares of a company that engages, in the business of underwriting, selling, or distributing securities in the United States except to the extent permitted bank holding companies;

(iii) If the foreign company is a subsidiary of the foreign banking organization, its direct or indirect activities in the United States shall be subject to the following limitations:

(A) the foreign company's activities in the United States shall be the same kind of activities or related to the activities engaged in directly or indirectly by the foreign company abroad as measured by the "establishment" categories of the Standard Industrial Classification (SIC) (an activity in the United States shall be considered related to an activity outside the United States if it consists of supply, distribution or sales in furtherance of the activity);

(B) the foreign company may engage in activities in the United States that consist of banking or financial operations, or types of activities permitted by regulation or order under section 4(c)(8) of the BHCA, only with the prior approval of the Board. Activities within Division H (Finance, Insurance, and Real Estate) of the SIC shall be considered banking or financial operations for this purpose, with the exception of acting as operators of nonresidential buildings (SIC 6512), operators of apartment buildings (SIC 6513), operators of dwellings other than apartment buildings (SIC 6514), and operators of residential mobile home sites (SIC 6515); and operating title abstract offices (SIC 6541). In addition, the following activities shall be considered banking or financial operations and may be engaged in only with the approval of the Board under subsection (g): computer and data processing services (SIC 7372, 7374 and 7379); management consulting (SIC 7392); certain rental and leasing activities (SIC 7394, 7512, 7513, and 7519); accounting, auditing and bookkeeping services (SIC 8931); and arrangement of passenger transportation (SIC 4722).

(g) **Exemptions under section 4(c)(9) of the BHCA.** A foreign organization that is of the opinion that other

² "[F]oreign bank holding company' means a bank holding company organized under the laws of a foreign country, more than half of whose consolidated assets are located or consolidated revenues derived, outside the United States." (12 C.F.R. § 225.4(g)(iii) (1980)).

activities or investments may, in particular circumstances, meet the conditions for an exemption under section 4(c)(9) of the BHCA may apply to the Board for such a determination by submitting to the Reserve Bank of the district in which its banking operations in the United States are principally conducted a letter setting forth the basis for that opinion.

(h) Reports.

(1) The foreign banking organization shall inform the Board through the organization's Reserve Bank within 30 days after the close of each quarter of all shares of companies engaged, directly or indirectly, in activities in the United States that were acquired during such quarter under the authority of this section. The foreign banking organization shall also report any direct activities in the United States commenced during such quarter by a foreign subsidiary of the foreign banking organization. This information shall (unless previously furnished) include a brief description of the nature and scope of each company's business in the United States, including the 4-digit SIC numbers of the activities in which the company engages. Such information shall also include the 4-digit

SIC numbers of the direct parent of any U.S. company acquired, together with a statement of total assets and revenues of the direct parent.

(2) If any required information is unknown and not reasonably available to the foreign banking organization, either because obtaining it would involve unreasonable effort or expense or because it rests peculiarly within the knowledge of a company that is not controlled by the organization, the organization shall (i) give such information on the subject as it possesses or can reasonably acquire together with the sources thereof; and (ii) include a statement either showing that unreasonable effort or expense would be involved or indicating that the company whose shares were acquired is not controlled by the organization and stating the result of a request for information.

(3) A request for information required by this paragraph need not be made of any foreign government, or an agency or instrumentality thereof, if, in the opinion of the organization, such request would be harmful to existing relationships.