FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 83-78
June 22, 1983

REGULATION K

INTERNATIONAL BANKING OPERATIONS

(Final Amendments)

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 (International Banking Operations) effective July 18, 1983, to implement that portion of the Export Trading Company Act of 1982, the Bank Export Services Act, which authorizes investments in export trading companies by bank holding companies and certain other banking organizations. Comments concerning this matter were requested by Circular No. 82-157, dated November 26, 1982.

Enclosed is a copy of the Board's press release and the notice as published in the Federal Register. The amendments in slip sheet form will be furnished as soon as they are available.

Questions regarding Regulation K should be directed to David W. Dixon in the Holding Company Supervision Department, Extension 6182.

Additional copies of this circular will be furnished upon request from the Public Affairs Department, Extension 6289.

Sincerely yours,

William H. Wallace
First Vice President

Enclosure

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FEDERAL RESERVE press release

For immediate release June 2, 1983

The Federal Reserve Board today issued regulations implementing the Bank Export Services Act (BESA) authorizing investments in export trading companies. The BESA is part of the Export Trading Company Act of 1982.

Investment in export trading companies may be made by bank holding companies directly, or indirectly through an Edge or Agreement corporation subsidiary, but not through a bank.

The regulations, which are amendments to Regulation K, are limited in scope and are primarily designed to clarify ambiguities in the law, provide key definitions and basic guidance to investors as to the policies and procedures the Board will follow in carrying out its responsibilities under the Act. The regulations also incorporate an exemption from the collateral requirements of section 23A of the Federal Reserve Act for certain transactions between a bank and an affiliated export trading company to finance trade in goods by the export trading company.

Consistent with the purposes and objectives of the BESA, the regulations define an export trading company as one that is exclusively engaged in activities related to international trade and that derives more than half its revenues from the export of, or facilitiating the export of, goods or services produced in the United States by persons other than the export trading company or its subsidiaries. If the revenues test is not met over a two-year period, the company will be expected to provide an explanation and adopt and implement a plan to meet the requirement. The regulation defined revenues as including net sales revenues from trading of goods by the company and gross revenues from all other activities of the company. Under these regulations, an export trading company in which a

banking organization invests can engage in a broad range of services, including but not limited to, consulting, marketing, warehousing, freight forwarding, certain types of insurance activities, and taking title to goods, where these activities serve to facilitate trade in goods and services produced by others.

The BESA, in providing for Federal Reserve review of investments in export trading companies by eligible banking organizations, establishes expedited procedures requiring 60 days' prior written notice to the Board of an investment in an export trading company. If the Board does not disapprove the investment within this time (which the Board may extend by 30 days if it needs additional information), the investment may be made.

The regulations provide for a further notification when the export trading company expands into new activities that would alter the fundamental character of the company's operation.

Under the regulations, companies filing notifications of investment will follow the checklist of information used for Regulation K notifications of proposed investments.

Notification procedures will not differ for investments in joint venture export trading companies. The regulations prohibit lending to a partner in a joint venture on terms more favorable than terms available to others. This applies to partners with at least a 10 percent interest in the joint venture export trading company.

The Board also determined that, after more experience is gained with export trading companies and within at least one year, it will consider whether a general consent procedure should be provided for certain investments in export trading companies.

The Board may disapprove proposed investments to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition or conflicts of interest, material adverse effects on bank subsidiaries of bank holding companies, or if accurate or material information is not filed.

Notifications must include information as to the leveraging characteristics of the export trading company. The Board stated that capital adequacy is a critical determinant of the financial strength of an export trading company and its ability to withstand unexpected adverse developments so as not to affect the financial resources of the parent organization or the safety or soundness of affiliated banks. Accordingly, the Board will consider the capital adequacy of an export trading company as an important factor to be taken into account in determining whether to disapprove a proposed bank holding company investment. After further experience with these companies, the Board will also consider whether to establish capital adequacy guidelines for export trading companies.

The Board noted that bank holding company investment in export trading companies also raises the need to review the adequacy of the capital of the parent organization. Where a bank holding company seeks to expand its activities and operations through an export trading company, the Board will, in evaluating the proposed investment, also address the capital adequacy of the holding company.

The Board's notice, containing the amendments to Regulation K and discussion and explanation of the amendments, is attached.

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Attachment

Rules and Regulations

Federal Register
Vol. 48, No. 111
Wednesday, June 8, 1983

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Docket No. R-0045]

International Banking Operations; Export Trading Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Bank Export Services Act (Pub. L. 97–290, Title II (1982)) amended the Bank Holding Company Act of 1956 to permit bank holding companies, their subsidiary Edge or Agreement corporations, and bankers' banks to invest in export trading companies. The regulation implements and interprets this provision by establishing procedures for prior Board review of these investments and providing guidance on how the Board intends to administer the statute.

EFFECTIVE DATE: July 8, 1983.

FOR FURTHER INFORMATION CONTACT: Nancy Jacklin, Assistant General Counsel (202/452–3428), or Kathleen O'Day, Senior Attorney (202/452–3786), Legal Division; or Frederick R. Dahl, Associate Director (202/452–2726), or James Keller, Manager, International Banking Applications (202/452–2523), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System.

SUPPLEMENTARY INFORMATION: On October 8, 1982, the Export Trading Company Act of 1982 ("ETC Act") was enacted into law. The purpose of the statute is to encourage U.S. exports by facilitating the formation and operation of export trading companies and the expansion of export trade services generally. Title II of the ETC Act, known as the Bank Export Services Act ("BESA"), amends section 4 of the Bank Holding Company Act ("BHC Act") to permit bank holding companies to invest in export trading companies subject to certain limitations and after prior Board review. The Board's regulations, which were published for public comment on January 17, 1983, were framed to achieve two objectives set forth in the BESA: to facilitate the export of goods and services produced in the United States by allowing for meaningful and effective participation of bank holding companies in the financing and development of export trading companies, and to help avoid adverse effects on the subsidiary banks of the bank holding companies involved.

The Board received 23 public comments on the proposed regulations as well as comments from 10 Reserve Banks. The commenters focussed primarily on the following issues: the definition of an export trading company, the application of preferential lending restrictions, the applicability of the collateral requirements of section 23A of the Federal Reserve Act to extensions of credit by a bank to an affiliated export trading company, and the establishment of general consent procedures. In light of the comments received, the Board has adopted several revisions in the draft regulations.

Definition of Export Trading Company

In the comments received on the draft regulations, several commenters took the view that the definition of "export trading company" in the draft regulations improperly limited the range of activities that are permissible under the BESA. This definition was included in the draft regulations to clarify ambiguities in the language of the BESA and to further Congressional intent. The issue raised is whether Congress intended through the BESA to authorize banking organizations only to invest in a company that provides services to facilitate trade in goods and services produced by others, or whether Congress intended to grant the much broader authority to invest in any service company that principally provides its own services to non-residents. That is, is any company that is a service company but which deals with foreign residents to be considered an "export trading company"? Such an interpretation of the statute has potentially broad implications for the separation of banking and commerce, substantially increasing the activities in which a bank holding company can engage both in the United States and abroad.

The language and purposes of the BESA, and its legislative history as a whole, provide sufficient support for the interpretation reflected in the definition of "export trading company" contained in the regulations. Throughout the hearings and subsequent Congressional actions on the export trading company legislation, there is no evidence of Congressional consideration of the significant question whether bank holding company investment was needed in U.S. service industries in order *to develop those industries* for an export market. Rather, the common thread throughout consideration of the legislation is that banking organization investment was thought to be needed in what are commonly regarded as export trading companies—companies that serve as intermediaries for producers and suppliers of goods and services in the foreign marketing and sale of their products by providing a range of export trade services. Banking organization involvement was considered particularly helpful in that the overseas networks of many such organizations could provide a basic existing infrastructure for carrying out that intermediation role.

Thus, the services that may be provided by an export trading company under the regulations are those types of services listed in the definition of "export trade services" in the statute, *where the services are provided in connection with trade in goods and services produced by others*. Consistent with the regulation the export trading company could, *inter alia*, provide transportation insurance, or product liability insurance abroad, for goods in international trade; travel insurance related to international transportation services provided by others; consulting services promoting or facilitating trade transactions; marketing goods or services produced by others, including brokering insurance on risks located abroad; and warehousing services for products in international trade.

The Board finds that the definition of "export trading company" contained in the regulation is consistent with the purposes of the Act and does not hinder the effective operation of export trading companies in which bank holding companies may invest. The alternative

statutory interpretation favored by some of the commenters does not appear to be consistent with Congressional intent and would authorize bank holding company investments in business concerns never contemplated by the Congress in its consideration of the legislation. Accordingly, the Board retained in the final regulations the definition of "export trading company" as it appeared in the draft regulations.

Under the definition of "export trading company" in the regulations, an export trading company would be able to engage, in addition to its primary business of exporting, in activities related to importing, third party and barter trade up to half of its business. In determining whether goods are produced in the United States, reference may be made to the definitions used in preparing the Shipper's Export Declaration (a Department of Commerce form) for domestic merchandise exports from the United States. In determining whether services are "produced in the United States," for purposes of the BESA, reference may be made generally to the concepts applied by the Department of Commerce in compiling the U.S. balance of payments accounts as to services exports, following the general rule that services performed by U.S. residents for non-U.S. residents would be considered covered by the term. "United States" for this purpose has the same meaning as that in Section 103(a)(6) of the Export Trading Company Act (15 U.S.C. 4002).

A number of the comments focussed on aspects of the requirement that "more than half" of the export trading company's annual revenues must be derived from exports or facilitating exports. Some considered the test too high. One commenter considered the required percentage of export activity contained in the draft regulations to be too low. In addition, many commenters recommended that the percentage of export-related revenues be assessed over a period of time longer than the one-year period originally provided for in the regulation.

The Board believes that the test that more than half an export trading company's revenues should be export-related is consistent with the purposes of the BESA, and is not so rigid as to make profitable operation of an export trading company impracticable. However, in order to allow for increased flexibility for an export trading company to adapt to unforeseen changes in market conditions, the Board decided to liberalize the time period for meeting the test. The regulation adopted provides that an export trading company must meet the test on a biannual rather than on an annual basis. The biannual test will be measured by consecutive two-year periods rather than by a two-year moving average. The Board expects that where the requirement is not met, the export trading company will indicate the reasons for noncompliance and develop and implement an adequate plan for meeting the requirement.

The definition of "revenues" was also the subject of some discussion by the commenters. The draft regulations defined revenues as gross revenues of the export trading company. The Board is in agreement with those comments that pointed out that use of "gross revenues" as the measurement for qualification of an export trading company could have unintended and somewhat arbitrary results, depending upon the activities of a particular export trading company. For example, the revenues generated by an export trading company's buying and selling of goods on a "gross revenues" basis would necessarily have a much greater weight in determining whether an export trading company meets the "principally" test than revenues generated by that export trading company's provision of services on a fee basis. For example, a company that primarily facilitates imports but also does some exporting nonetheless could qualify as an export trading company. The converse also would be true. Consequently, the Board decided that "revenues" should be defined in the regulations to include *net* sales revenues from the trading of goods by the export trading company for its own account (*i.e.*, the gross revenues received from the sale of goods less the expenditures made for the goods), and *gross* revenues derived from all other activities of the export trading company.

Another question that arose regarding the revenues test was how to treat revenues from third party trade or from countertrade. Some of the comments recommended that third party trade revenues not be included in the calculation of an export trading company's revenues for purposes of determining whether more than half the export trading company's business is U.S. export-related, nor that revenues from U.S. imports or third party trade *in a countertrade transaction* be so counted. The first proposal was based on the reasoning that third party trade should not be limited in the same manner that import activities are limited because they do not "reduce" demand for U.S. products in the same way. However, this could mean that an "export trading company" could be a company principally engaged in third party trade, which clearly is not the intent of the BESA. The argument was made, as to countertrade, that the importing or third party transaction may be the only way that a U.S. product can be exported and so the revenues derived from the importing or third party trade component of countertrade transactions should not be counted in the revenues test. However, Congress appears to have intended that these activities should be conducted where necessary or useful in the conduct of an export trading company's primary business of exporting, so that the revenues generated by the non-exporting activities should not exceed the export trading company's export revenues. Therefore, the Board adopted no changes in the regulation on these points.

Investments and Extensions of Credit

A. Limits on Amounts

The BESA authorizes banking organizations, as described above, to invest in export trading companies subject to certain prudential limits on aggregate financial exposure of each organization in this new activity. The regulations include the statutory limitations on investment, *i.e.*, a bank holding company, Edge or agreement corporation or bankers' bank may invest a total of five per cent of its consolidated capital and surplus in export trading companies. An Edge or Agreement corporation not engaged in banking (*i.e.*, deposit-taking in the United States from unaffiliated persons) may invest a total of up to 25 per cent of its consolidated capital and surplus in export trading companies. Reinvested dividends by the investor and retained earnings of the export trading company are not considered an "investment" in determining compliance with the investment limitation.

The legislation also contains certain restrictions on extensions of credit by banking organizations to affiliated export trading companies and their customers. The draft regulation limited the amount of credit that an investor could extend, directly or indirectly, to its affiliated export trading company *or export trading companies* to 10 per cent of the investor's consolidated capital and surplus. This provision elicited several comments, most of which objected to applying the 10 per cent limit on an aggregate basis to loans to all export trading companies in which a bank holding company invests. The Board believes that aggregate extensions of credit to all export trading companies in which the bank holding

company invests is the only reasonable interpretation of this provision. The contrary interpretation would make this prudential limit meaningless since a bank holding company could easily choose to conduct its export trading company activities through an unlimited number of small, *e.g.*, single-service, companies and effectively avoid the statutory limitation. This limitation does not appear to pose any immediate problems. In any event, the Board must report to Congress by October 8, 1984, on its experience under the BESA. Should it develop that banking organization involvement in export trading companies may be unduly hampered by such a lending limitation, the Board will consider making appropriate recommendations for modifications in the legislation.

B. Section 23A of the Federal Reserve Act ("FRA")

A major area of comment involving extensions of credit was the applicability of the collateral requirements of section 23A of the FRA to covered transactions between a bank holding company's subsidiary bank and an affiliated export trading company. Most of the comments received from the industry recommend that the Board exempt all bank extensions of credit to an export trading company affiliate from section 23A's collateral requirements. Some of the reasons given for this position are: that it is virtually impossible to collateralize the financing of export services; that in the start-up phase an export trading company would probably not have the capital against which to borrow; and that the export trading companies of small or regional bank holding companies with limited access to financing in the commercial paper market would be competitively disadvantaged.

On May 9, the Board acted on the first notification by a bank holding company under the BESA in which the bank holding company requested a waiver in certain circumstances from the collateral requirements of section 23A. The Board waived the section 23A collateral requirements in the following transactions: where the bank provides a letter of credit for the account of its affiliated export trading company or advances funds for the purchase of goods for the resale of which the export trading company has a firm order from a bona fide customer, and where the bank has a security interest in the goods or proceeds from the sale of the goods at least equal in value to the letter of credit or advance. The Board concluded that, with this waiver, the export trading company could finance, through its affiliated bank, the purchase of goods in which it is trading without creating an undue risk to the bank.

The Board believes that the granting of the limited waiver should address many of the concerns raised in the public comments on the section 23A issue. With such a waiver, the major export trading company activities requiring substantial amounts of financing could in fact be financed by the affiliated bank, and this method could be used by large or small bank holding companies alike. The Board accordingly adopted a regulation incorporating this type of waiver. The Board may grant additional waivers from the section 23A collateral requirements based on specific requests.

C. Preferential Lending

In addition to limiting the financial risk to affiliated banks by limiting the investor's financial exposure in export trading companies, the legislation contains a further provision specifically intended to mitigate potential conflicts of interests and associated risks where a banking organization is linked with a commercial venture. A bank holding company or its subsidiary may extend credit to an affiliated export trading company or its customers on terms no more favorable than those afforded similar borrowers in similar circumstances. The proposed regulation provided that the term "customer" includes affiliates of the customer in order to prevent potential evasions of the purpose of this statutory provision.

The proposed regulation also applied the foregoing limitation on preferential lending to extensions of credit by a bank holding company to a co-investor with at least a 10 percent interest in an export trading company or to affiliates of the co-investor. The Board is concerned that joint ventures, particularly between banking and nonbanking organizations, create a serious potential for conflicts of interest and concentration of economic resources. However, the Board recognizes that the legislation specifically authorizes joint ventures both between banking organizations and between banking and nonbanking organizations. The limitations contained in the regulations on preferential lending, which are designed to reduce potential conflicts of interest and unsound banking practices that might result from joint venture export trading companies, do not in any way affect the ability of the bank holding company or its affiliated banks to offer to the esport trading company, its customers, or a co-investor any rate that is based on the established creditworthiness of the borrower. Rather, the provision merely incorporates principles of sound banking practice.

The Reserve Banks' comments express the view that since all preferential lending is undesirable, the prohibition should apply to all transactions and the reference to a 10 percent minimum interest of a co-investor should be deleted. Although the Board agrees that all preferential lending is undesirable, the Board nonetheless believes that a 10 percent minimum interest in an export trading company is a reasonable threshhold for closer scrutiny of transactions and the regulatory requirement need not be changed.

Several commenters considered the preferential lending restrictions as inordinately burdensome from an administrative standpoint. In light of these comments, the Board determined that affiliate of an export trading company's customers need not be included in the preferential lending prohibition in the regulation. Of course, if it were to become apparent that the prohibition on preferential lending was being evaded through loans to an affiliate of an export trading company's customer, appropriate enforcement action could be taken at that time.

In response to one comment concerning possible problems with extraterritorial application of the regulations where a foreign banking organization subject to the BESA invests in an export trading company, the Board notes that the preferential lending restrictions apply only to U.S. activities of foreign banks.

Notification Procedures

Commenters suggested various criteria as a basis for allowing general consent procedures. The Reserve Banks generally were opposed to adoption of general consent procedures at this time. The Board concluded that on balance the establishment of such procedures would be premature until more experience with bank involvement in export trading companies is obtained, and the Board intends to reconsider this issue after some reasonable experience has been gained in the export trading company notification process, no later than one year from the effective date of these regulations.

The Board has deleted the reference in the regulations to the information required in notifications under the BESA. In considering the pending and completed notices to date, identification of activities by Standard Industrial Classification has been found to be unnecessary. Further, the use of the

Subpart A, Regulation K checklist for Proposed Investments (Attachment E to Board Form F.R. K–1) has been a suitable vehicle for obtaining needed information. The Board also deleted the activity "freight forwarding" from the list of activities for which a subsequent notification to the Board is required if the activity was not included in the bank holding company investor's original notice. Upon closer review of the activity, it was determined that the potential risks associated with that activity should not necessitate the subsequent notice requirement.

Finally, a significant issue in connection with notifications of proposed investments in export trading companies was presented to the Board with the proposed regulations. It was noted that the proposed leveraging ratios of export trading companies should be carefully examined in connection with notifications and in subsequent supervision of the bank holding companies. This is especially true where the company is engaged in trading and where the bank holding company's investment in the export trading company is significant. Capital adequacy is a critical determinant of financial strength of the export trading company and its ability to withstand unexpected adverse developments so as not to affect the financial resources of the parent holding company or the safety and soundness of affiliated banks. Capital adequacy of the export trading company also serves to assure competitive equality of bank-affiliated companies with companies that do not have the benefit of bank affiliation. Accordingly, the Board will consider the capital adequacy of an export trading company as an important factor to be taken into account in determining whether to disapprove a proposed bank holding company investment. The Board will consider adopting industry-wide capital standards generally for bank-affiliated export trading companies based on the Board's further experience with specific notifications of proposed investments (*e.g.,* after considering approximately a dozen such notices but no later than one year after adoption of these regulations). In the interim, banking organizations considering investments in export trading companies will be able to obtain guidance regarding the Board's policies on capital adequacy for export trading companies in the context of Board actions on individual notices.

Bank holding company investment in export trading companies also raises the need to review the adequacy of the capital of the parent organization. Where a bank holding company seeks to expand its activities and operations through an export trading company, the Board will, in evaluating the proposed investment, also address the capital adequacy of the holding company.

The foregoing discussion constitutes the analysis required by the Regulatory Flexibility Act (5 U.S.C. 604).

List of Subjects in 12 CFR Part 211

Banks, banking, Federal Reserve System, Foreign Banking, Investments, Reporting and recordkeeping requirements.

Pursuant to its authority under section 5 of the Bank Holding Company Act (12 U.S.C. 1844), the Board proposes to amend 12 CFR Part 211 by adding a new Subpart C, reading as follows:

PART 211—INTERNATIONAL BANKING OPERATIONS

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Subpart C—Export Trading Companies

Sec.

211.31 Authority, purpose and scope.
211.32 Definitions.
211.33 Investments and extensions of credit.
211.34 Procedures for filing and processing notices.

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.*); and the Bank Export Services Act (Title II, Pub. L. 97–290, 96 Stat. 1235 (1982)).

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Subpart C—Export Trading Companies

§ 211.31 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, as amended (12 U.S.C. 1841 *et seq.*) ("BHC Act") and the Bank Export Services Act (Title II, Pub. L. 97–290, 96 Stat. 1235 (1982)) ("BESA").

(b) *Purpose and scope.* This Subpart is in furtherance of the purposes of the BHC Act and the BESA, the latter statute being designed to increase U.S. exports by encouraging investments and participation in export trading companies by bank holding companies and the specified investors. The provisions of this Subpart apply to: (1) Bank holding companies as defined in section 2 of the BHC Act (12 U.S.C. 1841(a)); (2) Edge and Agreement corporations, as described in § 211.1(b) of this Part, that are subsidiaries of bank holding companies but are not subsidiaries of banks; (3) bankers' banks as described in section 4(c)(14)(F)(iii) of the BHC Act (12 U.S.C. 1843(c)(14)(F)(iii)); and (4) foreign banking organizations as defined in § 211.23(a)(2) of this Part. These entities are hereinafter referred to as "eligible investors."

§ 211.32 Definitions.

The definitions of § 211.2 in Subpart A apply to this Subpart subject to the following:

(a) "Export trading company" means a company that is exclusively engaged in activities related to international trade and, by engaging in one or more export trade services, derives more than one-half its revenues in each consecutive two-year period from the export of, or from facilitating the export of, goods and services produced in the United States by persons other than the export trading company or its subsidiaries. For purposes of this subsection, revenues shall include net sales revenues from exporting, importing, or third party trade in goods by the export trading company for its own account and gross revenues derived from all other activities of the export trading company.

(b) The terms "bank," "company" and "subsidiary" have the same meanings as those contained in section 2 of the BHC Act (12 U.S.C. 1841).

§ 211.33 Investments and extensions of credit.

(a) *Amount of Investments.* In accordance with the procedures of § 211.34 of this Subpart, an eligible investor may invest no more than five per cent of its consolidated capital and surplus in one or more export trading companies, except that an Edge or Agreement corporation not engaged in banking may invest as much as 25 per cent of its consolidated capital and surplus but no more than five per cent of the consolidated capital and surplus of its parent bank holding company.

(b) *Extensions of credit.*

(1) *Amount.* An eligible investor in an export trading company or companies may extend credit directly or indirectly to the export trading company or companies in a total amount that at no time exceeds 10 per cent of the investor's consolidated capital and surplus.

(2) *Terms.* An eligible investor in an export trading company may not extend credit directly or indirectly to the export trading company or any of its customers or to any other investor holding 10 per cent or more of the shares of the export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extensions of credit shall not involve more than the normal risk of

repayment or present other unfavorable features. For the purposes of this provision, an investor in an export trading company includes any affiliate of the investor.

(3) *Collateral requirements.* Covered transactions between a bank and an affiliated export trading company in which a bank holding company has invested pursuant to this Subpart are subject to the collateral requirements of section 23A of the Federal Reserve Act (12 U.S.C. 371c), except where a bank issues a letter of credit or advances funds to an affiliated export trading company solely to finance the purchase of goods for which:

(i) The export trading company has a bona fide contract for the subsequent sale of the goods; and

(ii) The bank has a security interest in the goods or in the proceeds from their sale at least equal in value to the letter of credit or the advance.

§ 211.34 Procedures for filing and processing notices.

(a) *Filing notice.*—(1) *Prior notice of investment.* An eligible investor shall give the Board 60 days' prior written notice of any investment in an export trading company.

(2) *Subsequent notice.* An eligible investor shall give the Board 60 days' prior written notice of changes in the activities of an export trading company that is a subsidiary of the investor if the export trading company expands its activities beyond those described in the initial notice to include: (1) Taking title to goods; (ii) product research and design; (iii) product modification; or (iv) activities not specifically covered by the list of services contained in section 4(c)(14)(F)(ii) of the BHC Act. Such an expansion of activities shall be regarded as a proposed investment under this Subpart.

(b) *Time period for Board action.* (1) A proposed investment that has not been disapproved by the Board may be made 60 days after the Reserve Bank accepts the notice for processing. A proposed investment may be made before the expiration of the 60-day period if the Board notifies the investor in writing of its intention not to disapprove the investment.

(2) The Board may extend the 60-day period for an additional 30 days if the Board determines that the investor has not furnished all necessary information or that any material information furnished is substantially inaccurate. The Board may disapprove an investment if the necessary information is provided within a time insufficient to allow the Board reasonably to consider the information received.

(3) Within three days of a decision to disapprove an investment, the Board shall notify the investor in writing and state the reasons for the disapproval.

By order of the Board of Governors, June 2, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-15151 Filed 6-7-83; 8:45 am]

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