



FEDERAL RESERVE BANK
OF DALLAS

ROBERT D. McTEER, JR.
PRESIDENT
AND CHIEF EXECUTIVE OFFICER

January 27, 1993

DALLAS, TEXAS 75222

Notice 93-13

TO: The Chief Executive Officer of each member bank and others concerned in the Eleventh Federal Reserve District

SUBJECT

**Proposed Amendment to Regulation K
(International Banking Operations)**

DETAILS

The Federal Reserve Board has issued for public comment a proposed amendment to Regulation K (International Banking Operations) to implement Section 202(a) of the Foreign Bank Supervision Act of 1991.

Section 202(a) provides in part that, after December 19, 1992, a state-licensed branch or agency of a foreign bank may not engage in any type of activity that is not permissible for a federal branch unless

- 1) the Board has determined that such activity is consistent with sound banking practice, and
- 2) in the case of a state-licensed insured branch, the Federal Deposit Insurance Corporation has determined that the activity would pose no significant risk to the deposit insurance fund.

The proposed amendment would set forth the application procedures that state-licensed branches and agencies would be required to follow to request the Board's permission to engage in, or continue to engage in, an activity that is not permissible for a federal branch. In addition, the proposed amendment would establish the requirements for divestiture and cessation plans.

The Board must receive comments by March 5, 1993. Comments should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. All comments should refer to Docket No. R-0793.

ATTACHMENT

A copy of the Board's notice as it appears on pages 513-15, Vol. 58, No. 3, of the Federal Register dated January 6, 1993, is attached.

MORE INFORMATION

For more information, please contact Ann Worthy at (214) 922-6156.
For additional copies of this Bank's notice, please contact the Public Affairs
Department at (214) 922-5254.

Sincerely yours,

Robert D. McTeer, Jr.

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 to Mr. Wiles may be delivered to the Board's mailroom between the 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 § 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. Minitzer, Attorney (202/452-3900), John W. Rogers, Attorney (202/452-2798), Legal Division; Michael G. Martinson, Assistant Director (202/452-3640), 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 Street, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 202 of the Act amended section 7 of the IBA by adding several new subsections concerning the establishment and termination of foreign bank branches in the United States. New subsection 7(h) of the IBA provides that after December 19, 1992, a state branch or state agency may not engage in any type of activity that is not permissible for a federal branch unless the Federal Reserve Board has determined that such activity is consistent with sound banking practice; and, in the case of an insured branch, the FDIC has determined that the activity would pose no significant risk to the deposit insurance fund. 12 U.S.C. 3105(h)(1).

In order to implement this provision, the Board is proposing to amend Regulation K (12 CFR part 211) concerning international banking operations by adding a new section to Subpart B entitled "Applications by State-Licensed Branches and Agencies to Conduct Activities Not Permissible for Federal Branches." This proposed new section provides that a foreign bank operating a state-licensed branch or agency in the United States, which desires to engage in or continue to

engage in an activity that is not permissible for a federal branch, pursuant to statute, regulation or order or interpretation issued by the Comptroller of the Currency (OCC), shall file an application for permission to conduct or to continue conducting such activity with the Board.

Contents of Application

Section 211.29(b) of the proposed regulation provides that the application shall be in letter form and shall contain certain information, including among other things, a description of the activity in which the branch or agency desires to engage or in which it is already engaged, the foreign bank's financial condition, the assets and liabilities of the branch or agency, the projected effect of the proposed activity on the financial condition of the foreign bank and the branch or agency, and in the case of an application by a state-licensed insured branch, a statement of why the proposed activity will pose no significant risk to the deposit insurance fund.

In view of the fact that section 202(h) of the Act became effective on December 19, 1992, a foreign bank with a state branch or agency that currently is conducting an activity that is determined to be impermissible for a federal branch will not be able to obtain the Board's permission to continue the activity prior to that effective date. In such cases, the Board may permit any such branch or agency to continue to conduct the activity in question (at existing levels) until such time as the Board acts on its application. The Board expects any foreign bank engaged in an impermissible activity in a state-licensed branch or agency to file the required application promptly.

The Board and the FDIC have consulted concerning the type of information that each agency will need in order to make an informed judgment, and have agreed on a common list of information in order that applicants will need to prepare only one application which, in the case of insured branches, may be submitted to both agencies. It is contemplated that the Board and the FDIC will review such applications simultaneously. Moreover, the Board and the FDIC have attempted to balance their need for information on which to base their decisions with the cost to the applicant of gathering, organizing and submitting an application.

The Board is particularly interested in receiving comments concerning the amount and type of information requested pursuant to § 211.29(b) of the proposed regulation. Comment is also requested on whether there are certain

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Regulation K; Docket No. R-0793]

International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing an amendment to part 211 of its regulations concerning the permissible activities of state-licensed branches and agencies of foreign banks. Section 202(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991 provides that after December 19, 1992, a state-licensed branch or agency of a foreign bank may not engage in any activity that is not permissible for a federal branch of a foreign bank unless the Board has determined that the activity is consistent with sound banking practice, and in the case of an insured branch, the Federal Deposit Insurance Corporation (FDIC) has determined that the activity would pose no significant risk to the deposit insurance fund. This proposed amendment to Regulation K sets forth the application procedures that state-licensed branches and agencies of foreign banks will be required to follow in order to request the Board's permission to engage in or continue to engage in an activity that is not permissible for a federal branch of a foreign bank and the requirements of divestiture and cessation plans. Insured branches are also required to seek the approval of the FDIC to engage in or to continue to engage in such an activity.

DATES: Comments must be received by March 5, 1993.

ADDRESSES: Comments, which should refer to Docket No. R-0793, may be

classes of activities that, even though not permitted for federal branches, nonetheless are consistent with sound banking practices, and whether a more limited prior written notice rather than a letter application could be utilized in connection with these types of activities. With respect to the activities described in the preceding sentence, commenters are requested to describe the activity in detail and to explain why its conduct by a state-licensed branch or agency would be consistent with sound banking practice.

In addition, the Board requests comment concerning whether the conduct by a state-licensed branch or agency of activities permitted by the OCC pursuant to informal interpretation, opinion or advice rather than by formal interpretation or opinion should require the filing of an application. In this regard, the Board will initiate consultations with the OCC on any questions of whether a particular activity is or is not permissible for a federal branch. The Board also seeks comment on potential coordination between applications to the Board and the FDIC as a way to make this process as efficient as possible.

Finally, the Board requests comment on whether an application should be required when a foreign bank wishes to convert a federally-licensed branch or agency to a state-licensed branch or agency. When the Board approved the final amendments to Regulation K concerning establishment of branches and agencies, the Board decided that an application would *not* be required when a foreign bank wished to convert from a state license to a federal license, because it would be converting from a less restrictive to a more restrictive regime. In light of the statutory provision limiting state office powers to those of a federal branch unless the Board and, in the case of an insured branch, the FDIC approve the activities, the Board is requesting comment on whether it is necessary to require an application when a foreign bank seeks to convert from a federal to a state license.

Standards to be Examined

Section 211.29(c) sets forth the standards that the Board will examine in order to determine whether a particular practice is consistent with sound banking practice. These factors are:

- (1) What types of risks, if any, the activity poses to the foreign banking organization;
- (2) If the activity poses any such risks, the magnitude of each risk; and

(3) If a risk is not *de minimis*, the actual or proposed procedures to control and minimize such risk.

Each of these factors shall be evaluated in light of the financial condition of the foreign bank in general and the branch or agency in particular and the volume of the proposed activity. The Board may also determine that a particular activity, after consideration of the above factors and subject to any conditions or limits imposed by the Board, may be conducted by any state-licensed branch or agency without further application to the Board.

Divestiture or Cessation

In the event that a state branch or agency is required to cease conducting an activity pursuant to the proposed regulation, § 211.29(e) of the proposed regulation sets forth the guidelines that must be followed to divest or cease the impermissible activity. Generally, this section provides that the state branch or agency shall submit a written plan of divestiture or cessation within 60 days of

(1) Being notified by the Board or the FDIC that an application to continue to conduct the activity has been denied;

(2) The effective date of the regulation in the event that the foreign bank elects not to apply for permission to continue to conduct the activity; and

(3) Any change in statute, regulation, order or OCC interpretation that renders the activity impermissible.

Divestiture or cessation shall be completed within one year, or sooner if the Board so directs. The Board requests comment on whether this period of time should be longer or shorter.

Application Not Required in Certain Instances.

The Board has determined that an application under this section normally shall not be required where an activity is permissible to a federal branch, but the OCC imposes a quantitative restriction on the conduct of such activity by the federal branch. As described in further detail above, the Board is requesting comment on whether there are any other classes of activities for which more limited prior notice would suffice.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), it is certified that the proposed rule would not have a significant impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 211

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

For the reasons outlined above, the Board is proposing to amend 12 CFR part 211 as set forth below:

PART 211—INTERNATIONAL BANKING OPERATIONS

1. The authority citation for 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. 96181, 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. Part 211 is amended by revising § 211.29 to subpart B to read as follows:

§ 211.29 Applications by state-licensed branches and agencies to conduct activities not permissible for federal branches.

(a) *Scope.* Any state-licensed branch or agency that desires to engage in or continue to engage, after December 19, 1992, in any type of activity that is not permissible for a federal branch, pursuant to statute, regulation or order or interpretation issued by the Comptroller, shall file a prior written application for permission to conduct such activity with the Board pursuant to this section.

(b) *Content of application.* An application submitted pursuant to paragraph (a) of this section shall be in letter form and shall contain the following information:

(1) A brief description of the activity, including the manner in which it will be conducted and an estimate of the expected dollar value;

(2) A discussion by management of its analysis regarding the impact of the proposed activity on the applicant's earnings, capital adequacy, and general condition, and on the balance sheet, earnings and condition of the branch or agency, including a copy, if available, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(3) A current statement of the applicant's assets, liabilities, and capital;

(4) A current statement of the assets and liabilities of the branch or agency;

(5) A copy of applicant's most recent audited financial statements;

(6) A resolution by the applicant's board of directors or, if a resolution is not required pursuant to the applicant's organizational documents, evidence of approval by senior management, authorizing the conduct of such activity and the filing of this application;

(7) In the case of an insured branch, a statement by the applicant of whether or not it is in compliance with §§ 346.19 and 346.20, Pledge of Assets and Asset Maintenance, respectively, of 12 CFR part 346;

(8) In the case of an insured branch, a statement by the applicant that it has complied with all requirements of the Federal Deposit Insurance Corporation concerning applications to conduct the activity in question and the status of such application, including a copy of the FDIC's disposition of such application, if applicable;

(9) In the case of an insured branch, a statement of why the activity will pose no significant risk to the deposit insurance fund; and

(10) Any other information that the Reserve Bank deems appropriate.

(c) *Factors to be considered in determination.*

(1) The Board may consider the following factors in order to determine whether a proposed activity is consistent with sound banking practice:

(i) The types of risks, if any, the activity poses to the foreign banking organization;

(ii) If the activity poses any such risks, the magnitude of each risk; and

(iii) If a risk is not de minimis, the actual or proposed procedures to control and minimize such risk.

(2) Each of the factors set forth in paragraph (c)(1) of this section, shall be evaluated in light of the financial condition of the foreign bank in general and the branch or agency in particular and the volume of the activity.

(d) *Application procedures.*

Applications pursuant to this section shall be filed with the responsible Reserve Bank for the foreign bank. An application shall not be deemed complete until it contains all the information requested by the Reserve Bank and has been accepted. Approval of such an application may be conditioned on the applicant's agreement to conduct the activity subject to specific conditions or limitations.

(e) *Divestiture or Cessation.*

(1) In the event that an applicant's application for permission to continue to conduct an activity is not approved

by the Board or the FDIC, the applicant shall submit a detailed written plan of divestiture or cessation of the activity to the responsible Reserve Bank within 60 days of the disapproval. The divestiture or cessation plan shall describe in detail the manner in which the applicant will divest itself of or cease the activity in question and shall include a projected timetable describing how long the divestiture or cessation is expected to take. Divestitures or cessation shall be complete within one year from the date of the disapproval, or within such shorter period of time as the Board shall direct.

(2) In the event that a foreign bank operating a state branch or agency chooses not to apply to the Board for permission to continue to conduct an activity that is not permissible for a federal branch or which is rendered impermissible due to a subsequent change in statute, regulation, order or interpretation, the foreign bank shall submit a written plan of divestiture or cessation, in conformance with § 211.29(d)(1) of this part, within 60 days of the effective date of this rule or of such change in statute, regulation, order or interpretation, respectively.

By order of the Board of Governors of the Federal Reserve System, December 30, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-163 Filed 1-5-93; 8:45 am]

BILLING CODE 6210-01-F