



FEDERAL RESERVE BANK
OF DALLAS

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

DALLAS, TEXAS
75265-5906

August 15, 1996

Notice 96-76

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

SUBJECT

**Final Rule Amending Regulation K
(International Banking Operations)**

DETAILS

The Board of Governors of the Federal Reserve System announced a final rule amending Regulation K (International Banking Operations) regarding the management of offshore offices by U.S. branches and agencies of foreign banks. The rule implements a provision of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 that amended the International Banking Act of 1978 by adding a new provision regarding the management of shell branches of foreign banks by such banks' U.S. offices.

The provision prohibits foreign banks from using their U.S. branches or agencies to manage types of activities through offshore offices that could not be managed by a U.S. bank at its foreign branches or subsidiaries. This prohibition applies to those offshore offices that are "managed or controlled" by a foreign bank's U.S. branches or agencies.

ATTACHMENT

A copy of the Board's notice as it appears on pages 39052-53, Vol. 61, No. 145, of the *Federal Register* dated July 26, 1996, is attached.

MORE INFORMATION

For more information, please contact Richard Burda at (713) 652-1503. For additional copies of this Bank's notice, please contact the Public Affairs Department at (214) 922-5254.

Sincerely yours,

Robert D. McTeer, Jr.

EFFECTIVE DATE: August 28, 1996.

FOR FURTHER INFORMATION CONTACT:

Sandra L. Richardson, Managing Senior Counsel (202/452-6406), Janet S. Crossen, Senior Attorney (202/452-3281), Legal Division; Michael G. Martinson, Assistant Director, Division of Banking Supervision and Regulation (202/452-3640), Board of Governors of the Federal Reserve System. For users of Telecommunication Device for the Deaf (TDD) only, please contact Dortha Thompson, (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: In the Interstate Act, Congress amended section 7 of the IBA (12 U.S.C. 3105) to prevent a foreign bank from using a U.S. branch or agency to manage types of activities at offshore offices that are managed or controlled by the foreign bank's U.S. branch or agency if those types of activities could not be managed by a U.S. bank at its foreign branches or subsidiaries. The final rule adopted by the Board to implement that provision tracks the language of section 7(k) of the IBA and defines the term "managed or controlled" for purposes of the restrictions on activities set out in that section.

The definition of "managed or controlled" for this final rule is consistent with the definition of that term adopted by the Federal Financial Institutions Examination Council with respect to the Supplement (FFIEC 002S) to the quarterly Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), which is required to be filed by foreign banks with respect to their offshore shell operations that are "managed or controlled" from the United States. 57 FR 61907, Dec. 29, 1992. For purposes of the FFIEC 002S and the final rule, a non-U.S. office is considered to be "managed or controlled" by a U.S. branch or agency of a foreign bank if a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that non-U.S. office, resides at the U.S. branch or agency.

The final rule also specifies that the types of activities that a branch or agency may manage through an office located outside of the United States include the types of activities authorized to a U.S. bank by state or federal charters, regulations issued by chartering or regulatory authorities and

other U.S. banking laws. Finally, the proposed rule states that U.S. procedural or quantitative requirements will not apply to non-U.S. offices of foreign banks.

On February 16, 1996, the Board requested public comment on a proposed rule to implement section 7(k) of the IBA. 61 FR 6956, Feb. 23, 1996. The comment period ended on March 25, 1996. The Board received two public comments on the proposal, one by a banking organization and the other by a trade association. Both commenters generally supported the proposal. Comments received addressed issues relating to the definition of "managed or controlled" and application of the rule to non-U.S. full-service offices. The Board has considered the comments and has determined not to make any modifications to the final rule from that which was proposed.

One commenter proposed that the Board should modify its definition of "managed or controlled" so that a U.S. branch or agency would not be subject to the regulation on the sole grounds that recordkeeping with respect to the assets or liabilities of a non-U.S. office resides at the U.S. branch or agency.

Alternatively, the commenter requested that if the Board determined to retain the recordkeeping prong of the definition, the Board should clarify that maintaining records at a U.S. branch or agency would not result in the application of the regulation to offshore branches that are managed by personnel outside the United States. The commenter noted that many international banks maintain data processing centers and keep other records in their U.S. offices in order to provide support services for non-U.S. branches within the Western Hemisphere.

The Board has found that the presence of records in a U.S. branch or agency relating to an offshore office often is evidence of involvement in the management of such offshore office by the U.S. branch or agency where the records reside. Eliminating responsibility for recordkeeping as a separate prong of the definition of "managed or controlled" could result in the significant potential for evasion of the provision. Accordingly, the Board has determined not to modify the definition as suggested by the commenter.

The Board, however, believes that additional guidance may be helpful to assist foreign banks in determining whether maintaining records at U.S. branches or agencies for an offshore branch would render them subject to the regulation. In this regard, the Board

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Regulation K; Docket No. R-0916]

International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: This final rule amends Regulation K to implement a provision of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (the Interstate Act) that amended the International Banking Act of 1978 (the IBA) by adding a new subsection regarding the management of shell branches of foreign banks by such banks' U.S. offices. The provision prohibits foreign banks from using their U.S. branches or agencies to manage types of activities through offshore offices that could not be managed by a U.S. bank at its foreign branches or subsidiaries. This prohibition applies with respect to those offshore offices that are "managed or controlled" by a foreign bank's U.S. branches or agencies.

considers that the phrase "responsibility for recordkeeping" entails formal responsibility for the maintenance of records relating to the offshore operations. Simple data processing activities such as compiling and sorting data entries that were originated, approved and confirmed by personnel outside the United States and routing and distributing such processed data to destinations outside the United States would ordinarily not constitute "responsibility for recordkeeping." If the U.S. branch or agency, however, originates the underlying information or utilizes the information for making business decisions or for the purpose of notifying or confirming transactions with customers, such activities could no longer be considered merely data processing. In addition, the Board considers that a U.S. branch or agency would have responsibility for recordkeeping within the meaning of the rule if it is the sole full-service office at which such records are maintained. Foreign banks that maintain records in the United States but do not believe they have "responsibility for recordkeeping" may consult with Board staff for guidance in determining whether they fall within the scope of the rule.

One commenter also recommended that the Board modify the regulation to make clear that it applies to offshore shell offices rather than offshore offices generally. The Board notes that the preamble to the proposed rule stated that the restrictions in that rule generally would not apply with respect to offshore branches that are full-service facilities managed or controlled by staff located at the offshore office or at locations other than in the United States. In addition, the title of the proposed rule, which is identical to the title of the statutory provision, refers to "shell" branches. In view of the foregoing, the Board has determined that no modification to the rule is necessary.

As the Board noted in the preamble to the proposed rule, section 7(k) of the IBA does not confer upon foreign banks any right to manage activities at an offshore office from a U.S. office. The Board will continue to monitor relationships between the U.S. and offshore offices of foreign banks in the supervisory process in order to determine whether such activities are consistent with considerations relating to the safety and soundness of the U.S. operations of the foreign bank and its affiliates and compliance with law.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the rule.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601-612), the Board certifies that the this final rule will not have a significant economic 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 set out in the preamble, the Board of Governors amends 12 CFR Part 211 as set forth below.

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

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

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1841 *et seq.*, 3101 *et seq.*, 3901 *et seq.*

2. Section 211.20 is amended by removing "and" at the end of paragraph (b)(8), by removing the period at the end of paragraph (b)(9) and adding ";" and" in its place, and by adding a new paragraph (b)(10) to read as follows:

§ 211.20 Authority, purpose, and scope.

* * * * *

(b) * * *
(10) The management of shell branches (12 U.S.C. 3105(k)).

* * * * *

3. Section 211.24 is amended by adding a new paragraph (g) to read as follows:

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

* * * * *

(g) *Management of shell branches.* (1) A state-licensed branch or agency shall not manage, through an office of the foreign bank which is located outside the United States and is managed or controlled by such state-licensed branch or agency, any type of activity that a bank organized under the laws of the United States or any State is not

permitted to manage at any branch or subsidiary of such bank which is located outside the United States.

(2) For purposes of this paragraph (g), an office of a foreign bank located outside the United States is "managed or controlled" by a state-licensed branch or agency if a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that non-U.S. office, resides at the state-licensed branch or agency.

(3) The types of activities that a state-licensed branch or agency may manage through an office located outside the United States that it manages or controls include the types of activities authorized to a U.S. bank by state or federal charters, regulations issued by chartering or regulatory authorities, and other U.S. banking laws, including the Federal Reserve Act, and the implementing regulations, but U.S. procedural or quantitative requirements that may be applicable to the conduct of such activities by U.S. banks shall not apply.

By order of the Board of Governors of the Federal Reserve System, July 17, 1996.

William W. Wiles,
Secretary of the Board.

[FR Doc. 96-19043 Filed 7-25-96; 8:45 am]

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