

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 8980]
December 19, 1980

INTERNATIONAL BANKING FACILITIES
Proposal To Permit Establishment of IBFs

To All Depository Institutions, and Others Concerned,
in the Second Federal Reserve District:

The Board of Governors of the Federal Reserve System has invited comment on proposals to permit the establishment in the United States of international banking facilities (IBFs). Comments should be submitted by February 13, 1981, and may be sent to our Legal Department.

The following is quoted from the text of the Board's announcement:

Under the proposals, an IBF could be established by all United States depository institutions, by Edge and Agreement Corporations and by branches and agencies in this country of foreign banks.

To give all States an opportunity to revise their laws or regulations relating to the establishment of IBFs—as has been done by New York State—the Board proposed that IBFs could not be established before October 1, 1981.

The Board's proposals would permit IBFs to:

- Accept time deposits, free of Federal reserve requirements, from foreign residents.
- Borrow funds, free of Federal reserve requirements, from depository institutions located outside the United States, or from other IBFs.
- Offer to foreign residents time deposits with a minimum maturity, or notice requirement, of two days, and pay interest on these deposits free of the interest rate limitations of Regulation Q.
- Offer time deposits authorizing minimum deposits or withdrawals of \$500,000.
 - Or (as an alternative proposal) offer time deposits in which the depositor must maintain a minimum average daily balance of \$500,000 and is permitted to make transactions of not less than \$100,000.
- Extend credit to foreign residents, other IBFs or to the United States office of the IBF's parent institution. (Such borrowings by a United States institution from its own IBF would be subject to Euro-currency reserve requirements.)

Further, the proposals would permit the transactions of an IBF to be made in any currency.

Enclosed—for depository institutions, Edge and Agreement Corporations, and foreign bank branches and agencies in this District—is the text of the Board's official notice of proposed rule-making. It will be published in the *Federal Register*, and copies will be furnished by our Circulars Division upon request.

The Board of Governors, while welcoming comment on any aspects of the proposals, has indicated that it would particularly like to receive comment on the following matters:

1. The alternative proposals on minimum deposit and transaction limits for IBFs.
2. The two-day minimum maturity or notice requirement.
3. Limitations on the customers to whom IBFs may extend credit.
4. Limitations on the sources from which IBFs may obtain deposits, and borrow funds.
5. The implications of the Board's proposals for competitive balance among depository institutions.
6. The amount of lead time institutions would need in order to establish an IBF.

ANTHONY M. SOLOMON,
President.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[12 CFR Part 204; 12 CFR Part 217]

(Docket No. R-0214)

Notice of Proposed Rulemaking

INTERNATIONAL BANKING FACILITIES

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rulemaking.

SUMMARY: The Board of Governors is requesting comment from the public on a proposal to amend Regulation D--Reserve Requirements of Depository Institutions (12 CFR Part 204) and Regulation Q--Interest on Deposits (12 CFR Part 217) to facilitate the establishment in the United States of international banking facilities ("IBFs") of depository institutions, Edge and Agreement Corporations, and branches and agencies of foreign banks located in the United States. Under the proposal, an IBF could accept deposits from foreign residents and borrow from depository institutions located outside the United States or from other IBFs. All such funds would be exempt from Federal reserve requirements. In addition, IBFs of depository institutions subject to Regulation Q would be permitted to offer to foreign residents large denomination time deposits with a minimum maturity or required notice period prior to withdrawal of two days. Funds raised by an IBF could be used only to extend credit to foreign residents, to other IBFs, or to the institution establishing the IBF. Funds derived by an institution from its own IBF would be subject to Eurocurrency reserve requirements. Thus, an IBF at a U. S. banking office would be able to conduct a banking business with foreign residents on nearly the same basis as an offshore shell branch.

DATE: Interested parties are invited to submit relevant data, views and other comments. Comments must be received by February 13, 1981.

ADDRESS: Comments, which should refer to Docket No. R-0214, should be addressed to Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N. W. Washington, D. C. 20551, or should be delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Assistant General Counsel (202/452-3625), or Paul S. Pilecki, Attorney (202/452-3281), Legal Division; or Jeffrey R. Shafer, Deputy Associate Director (202/452-3796), Division of International Finance, Board of Governors of the Federal Reserve System, Washington, D. C. 20551.

SUPPLEMENTARY INFORMATION: The Board of Governors has proposed amendments to Regulation D--Reserve Requirements of Depository Institutions (12 CFR Part 204) and Regulation Q--Interest on Deposits (12 CFR Part 217) that would facilitate the establishment in the United States of international banking facilities ("IBFs") by depository and other institutions to promote international banking activity in the United States. Under the proposal, IBFs in all U. S. depository institutions, Edge and Agreement Corporations, and U. S. branches and agencies of foreign banks would be permitted to accept time deposits from foreign residents and to borrow from foreign depository institutions or other IBFs. All such funds would be exempt from Federal reserve requirements. Funds raised by an IBF could be used only to extend credit to foreign residents, to other IBFs or to the institution establishing the IBF. Funds derived by an institution from its own IBF would be subject to Eurocurrency reserve requirements. In addition, member banks, Edge and Agreement Corporations, and U. S. branches and agencies of foreign banks that are subject to Regulation Q^{1/} would be authorized to offer and pay interest on an IBF time deposit with a minimum maturity or required notice period prior to withdrawal of two days if the funds were received from non-United States residents and used to extend credit only to non-United States residents, other IBFs or the U. S offices of the depository institution conducting the IBF business.

In July 1978, the New York Clearing House Association (NYCHA) submitted a proposal requesting that the Federal Reserve authorize IBFs. Public comment on the issues^{2/} related to the proposal was requested by the Board in December 1978. Earlier, New York State had enacted legislation granting an exemption from New York State and local taxes for net income of^{3/} a banking institution derived from an international banking facility. This legislation becomes effective contingent upon action

1/ Regulation Q applies to the following offices of parent foreign banks having total worldwide consolidated bank assets in excess of \$1 billion: insured and uninsured Federal branches, uninsured State branches, and Federal and State agencies. Under section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(g)), 12 CFR Part 329 applies to all insured State branches and those insured Federal branches of foreign banks with total worldwide consolidated bank assets of \$1 billion or less.

2/ Studies of international banking facilities were prepared by the staff of the Board of Governors in December 1978 and October 31, 1980. Copies of these reports and the summary of public comments on the December 1978 proposal are available through the Board's Freedom of Information Office (202/452-3684).

3/ 59 N. Y. Tax Law § 1450 et seq. (McKinney).

being taken by the Federal Reserve to exempt IBF deposits from Federal reserve requirements and restrictions on the payment of interest.^{4/} In July 1979, the Board announced that it was deferring a final decision on the proposal until a later date. After further study of the concept of IBFs and in view of the enactment of the Monetary Control Act of 1980 (Title I of Pub. L. 96-221), the Board believes that it would be feasible to permit domestic depository institutions, Edge and Agreement Corporations and U. S. branches and agencies of foreign banks to establish IBFs beginning October 1, 1981. In this regard, under the Monetary Control Act, the Board has the authority to set a reserve requirement ratio of zero per cent on nonpersonal time deposits (12 U.S.C. § 461(b)(2)), whereas section 19 of the Federal Reserve Act previously required a minimum average reserve ratio on all time deposits of three per cent. In addition, the Monetary Control Act authorizes the Board to impose reserve requirements on international banking facilities of nonmember depository institutions to the same extent the Board imposes such requirements on IBFs of member banks (12 U.S.C. § 461(b)(5)). The following amendments to Regulations D and Q concerning the establishment of an IBF are proposed for public comment.

Establishing an IBF

The Board proposes that a depository institution, an Edge or Agreement Corporation, or a U. S. branch or agency of a foreign bank be permitted to conduct an IBF business at any of its offices at which it is legally authorized to engage in business. An institution that desired to establish an IBF would be required to notify the Federal Reserve Bank in its District 14 days prior to the first reserve computation period during which it intended to begin accepting IBF deposits or IBF borrowings and to agree to abide by the conditions established by the Board for conducting an IBF business. Application to or approval by the Board would not be required to establish an IBF. However, an institution would be subject to any restrictions established by its chartering or licensing authority or its primary supervisor concerning the types of activities in which an IBF would be engaged.

An institution would not be required to establish a separate organizational structure for an IBF. It is contemplated that an IBF would be operated primarily as a recordkeeping entity similar to an offshore shell branch. An IBF could be established initially by identifying and segregating existing assets and liabilities that qualify under the definitions in Regulations D and Q and under other regulatory

^{4/} In order for the New York State tax exemption to apply, the New York State Banking Department is required to adopt laws or regulations conforming to laws of the United States or regulations of the Board relating to reserve requirements with respect to deposits received by an international banking facility from foreign persons and relating to the payment of interest on such deposits (1978 N. Y. Laws, c. 288, § 10).

provisions applicable to IBFs. An institution would be required to maintain segregated accounts for its IBFs within the office in which the IBF is located, report its IBF assets and liabilities as required by the Board, and comply with any other requirements otherwise established by the Board for IBFs. Failure to comply with the Board's restrictions on the type of business IBFs may engage in could result in the imposition of reserve requirements on the IBF or revocation of the institution's authority to maintain an IBF.

Permissible IBF Liabilities

As a general matter, an IBF would be permitted to accept deposits only from non-United States residents. Such deposits would be subject to special rules, discussed in greater detail below, permitting shorter minimum maturities than applicable to other types of time deposits but requiring larger minimum denominations than required for other forms of time deposits under Regulation Q. An IBF also would be permitted to borrow from foreign offices of other depository institutions, from other IBFs, and from the United States and non-United States operations of the same institution. Such IBF borrowings would not be subject to Federal Reserve deposit interest rate limitations and would be exempt from Federal reserve requirements.

Restrictions on eligible holders of IBF deposits. Only non-United States residents, including foreign affiliates of United States corporations, other IBFs, and the institution operating the IBF would be eligible to maintain time deposits in IBFs. Deposits could be received from non-United States residents and foreign affiliates of United States corporations provided that such funds were used in support of the depositor's international business or business outside of the United States. For example, funds received on deposit from a foreign affiliate of a U. S. corporation could not be derived from the United States operations and cannot represent funds that were advanced to the foreign affiliate for purposes of temporary investment. In order to insure that IBF deposits are restricted to non-United States residents, IBFs would be prohibited from issuing negotiable certificates of deposit, bankers' acceptances, or other bearer instruments.

Maturity of IBF time deposits. Generally, IBF time deposits would be subject to a minimum maturity or required notice period prior to withdrawal of two days. An IBF would not be permitted a reserve requirement exemption for transaction accounts, since an IBF is not intended to enable foreign customers to have such accounts exempt from reserve requirements.

Minimum size of transactions. The Board believes that IBFs should be established primarily to engage in a wholesale international banking business. Therefore, it is proposed that the minimum amount of any deposit or withdrawal to or from an IBF account would be \$500,000. A minimum transaction of such an amount also would help to insure that IBF deposits would not be used for transaction purposes.

As an alternative, the Board requests public comment on whether to permit an IBF to offer customers time deposit accounts that require a minimum daily average balance during the reserve computation period of \$500,000 and a minimum amount of \$100,000 for deposit or withdrawal transactions. This alternative may provide IBFs with additional flexibility and enable smaller organizations that engage in international business to make use of an IBF. However, this could affect the competitive balance between larger banks that established IBFs and smaller banks that did not in competing for the deposits of foreign residents. In addition, the smaller minimum transaction size might increase the likelihood that IBF deposits could be used for transactions purposes.

IBF borrowings. An IBF also would be permitted to borrow from any office located outside the United States of another depository institution or Edge or Agreement Corporation, from any office located outside the United States of a foreign bank, from other IBFs, from foreign central banks and international official institutions, as well as from the foreign branches and domestic operations of the depository institution establishing the IBF. The minimum maturity of such borrowings would be on an overnight basis.

Permissible IBF Assets

An IBF would be able to place funds derived from its deposits and borrowings in extensions of credit to foreign customers, to other IBFs, or to foreign branches and U. S. offices of its parent depository institution. Advances to U. S. offices of the same institution would be subject to the reserve requirement on Eurocurrency liabilities at the U. S. office in the same manner as balances advanced from a foreign branch to its U. S. parent depository institution.

Credit could be extended in the form of a loan, deposit, placement, advance, or investment or other similar asset. A foreign customer for purposes of extensions of credit by an IBF would be determined using the test that would be applied in determining deposit sources. In this regard, permissible extensions of credit would be limited to non-United States residents for use of the funds in their international business or business outside the United States. A foreign subsidiary or other affiliate of a United States corporation would be a permissible loan customer of an IBF only if the proceeds of such a loan would be used to finance the foreign operations of the borrower.

Foreign Currency Operations of IBFs

An IBF would be permitted to accept deposits and make loans in currencies other than U. S. dollars. The Board believes that the conduct of foreign banking business would be facilitated by allowing IBFs to engage in transactions using foreign currencies.

Supervision and Reporting Requirements

IBF operations of a depository institution would be subject to the same examination and supervision procedures that apply to the other operations of the institution and would be conducted in conjunction with examination of other operations of the office where it was located. The Board would, however, require reports of a depository institution's IBF business for purposes of monitoring monetary and credit conditions as well as for other purposes.

Beginning Date of IBF Operations

The amendments to Regulations D and Q would become effective for the reserve computation period beginning October 1, 1981, and, under current provisions, the corresponding reserve maintenance period beginning October 15, 1981. At present, New York State has adopted legislation exempting income of IBFs from State and local income taxes. The Board recognizes that, if IBFs are to be established on a nationwide basis, adequate time would be needed to permit an opportunity for other states and Federal agencies to consider changes in laws and regulations. An effective date for IBFs in October 1981 would permit other states and Federal agencies to adopt similar measures if they so desire.

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Comment is invited from all parties on the issues raised by the proposal. The Board is particularly interested in views on the minimum maturity or notice requirement and transaction size requirements for IBF time deposits, on the customers to whom IBF credit may be extended and the sources from which IBF deposits may be derived, on the implications for competitive balance among banks, and on the amount of lead time that institutions would need in order to establish IBFs. Comment should be sent by February 13, 1981, to Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551.

Pursuant to authority under sections 19, 25, and 25(a) of the Federal Reserve Act (12 U.S.C. §§ 461 et seq., 601 et seq.) and section 7 of the International Banking Act of 1978 (12 U.S.C. § 3105), the Board proposes to amend Regulation D (12 CFR Part 204) and Regulation Q (12 CFR Part 217), effective October 1, 1981, as follows:

1. In Regulation D, section 204.2, paragraph (h) would be amended as follows:

SECTION 204.2--DEFINITIONS

* * * * *

(h) "Eurocurrency liabilities" means:

(1) For a depository institution or an Edge or Agreement Corporation organized under the laws of the United States, the sum, if positive, of the following:

(i) net balances due to its non-United States offices and its international banking facilities from its United States offices;

(ii) assets (including participations) held by its non-United States offices, by non-United States offices of an affiliated Edge or Agreement Corporation, or by its international banking facilities that were acquired after October 6, 1979, from its United States offices; and

(iii) credit outstanding from its non-United States offices or international banking facilities to United States residents (other than assets acquired and net balances due from its United States offices), except credit extended (A) from its non-United States offices in the aggregate amount of \$100,000 or less to any United States resident, (B) by a non-United States office that at no time during the computation period had credit outstanding to United States residents exceeding \$1 million, or (C) to an institution that will be maintaining reserves on such credit pursuant to this Part or to another international banking facility. Credit extended from non-United States offices to a foreign branch, office, subsidiary, affiliate or other foreign establishment ("foreign affiliate") controlled by one or more domestic corporations is not regarded as credit extended to a United States resident if the proceeds will be used in its foreign business or that of other foreign affiliates of the controlling domestic corporation(s). Credit extended from international banking facilities to a foreign affiliate controlled by one or more domestic corporations is not regarded as credit extended to a United States resident if the proceeds will be used by the borrower in its international business or business outside the United States.

(2) For a United States branch or agency of a foreign bank, the sum, if positive, of the following:

(i) net balances due to its foreign bank (including offices thereof located outside the United States) and its international banking facilities after deducting an amount equal to 8 per cent of the following: The United States branch's or agency's total assets less the sum of cash items in process of collection, unposted debits, balances due from depository institutions organized under the laws of the United States, balances due from other foreign banks, its international banking facility loans (excluding any amount extended to the branch or agency), balances due from foreign central banks, and net balances due from its foreign bank, its international banking facility and the foreign bank's United States and non-United States offices;

(ii) assets (including participations) held by its foreign bank (including offices thereof located outside the United States), by its parent holding company, by non-United States offices of an affiliated Edge or Agreement Corporation, or by its international banking facilities that were acquired after October 6, 1979, from the United States branch or agency (other than assets required to be sold by Federal or State supervisory authorities); and

(iii) credit outstanding from its international banking facilities to United States residents (other than assets acquired and net balances due from its United States offices), except credit extended to an institution that will be maintaining reserves on such credit pursuant to this Part or to another international banking facility. Credit extended from international banking facilities to a foreign affiliate controlled by one or more domestic corporations is not regarded as credit extended to a United States resident if the proceeds will be used by the borrower in its international business or business outside the United States.

2. The following definitions in section 204.2 would not be amended, but are set forth for information purposes.

SECTION 204.2--DEFINITIONS

* * * * *

(o) "Foreign bank" means any bank or other similar institution organized under the laws of any country other than the United States or organized under the laws of Puerto Rico, Guam, American Samoa, the Virgin Islands, or other territory or possession of the United States.

* * * * *

(r) "United States" means the States of the United States and the District of Columbia.

(s) "United States resident" means (1) any individual residing (at the time of the transaction) in the United States; (2) any corporation, partnership, association or other entity organized in the United States ("domestic corporation"); and (3) any branch or office located in the United States of any entity that is not organized in the United States.

3. By adding a new section 204.9, as follows:

SECTION 204.9--INTERNATIONAL BANKING FACILITIES

(a) Definitions. For purposes of this section, the following definitions apply:

(1) "International banking facility" or "IBF" means a facility represented by a set of asset and liability accounts segregated on the books and records of a depository institution, United States branch or agency of a foreign bank, or an Edge or Agreement corporation that includes only international banking facility time deposits, international banking facility borrowings, and international banking facility extensions of credit.

(2) "International banking facility time deposit" or "IBF time deposit" means a deposit:

(i) that is payable:

(A) on a specified date not less than two days after the date of deposit;

(B) upon expiration of a specified period of time not less than two days after the date of deposit; or

(C) upon written notice that actually is required to be given by the depositor not less than two days prior to the date of withdrawal;

(ii) that is not issued in negotiable or bearer form;

(iii) that represents funds deposited to the credit of a non-United States resident or to a foreign branch, office, subsidiary, affiliate, or other foreign establishment ("foreign affiliate") controlled by one or more domestic corporations that are used solely to support the international or non-United States operations of the depositor or an affiliate of the depositor; and

(iv) that is held pursuant to an agreement or arrangement under which no deposit or withdrawal of less than \$500,000 is permitted.

(3) "International banking facility borrowing" or "IBF borrowing" means a borrowing, regardless of maturity, represented by a promissory note, an acknowledgment of advance, or similar obligation described in section 204.2(a)(1)(vii) that is issued:

(i) to any office located outside the United States of another depository institution or Edge or Agreement Corporation organized under the laws of the United States;

(ii) to any office located outside the United States of a foreign bank;

(iii) to a United States office or a non-United States office of the IBF's depository institution;

(iv) to another IBF; or

(v) to an institution whose time deposits are exempt from interest rate limitations under section 217.3(g) of Regulation Q (12 CFR 217.3(g)).

(4) "International banking facility extension of credit" or "IBF loan" means any transaction where an IBF supplies funds by making a loan, purchasing or acquiring a security, or placing funds in a deposit account. Such transactions may be in the form of a promissory note, acknowledgment of advance, due bill, repurchase agreement, or any other form of credit transaction. Such funds may be advanced only to:

(i) a non-United States resident for use by the borrower in its international business or business outside the United States;

(ii) a foreign branch, office, subsidiary, affiliate or other foreign establishment controlled by one or more domestic corporations for use by the borrower in its international business or business outside the United States;

(iii) another IBF; or

(iv) any office of the institution establishing the IBF.

(b) Exemption from reserve requirements. Notwithstanding any other provision of this Part, a depository institution is not required to maintain reserves against its international banking facility time deposits and international banking facility borrowings. For purposes of this Part, the business of an IBF shall be restricted solely to accepting international banking facility deposits and international banking facility borrowings and to making international banking facility extensions of credit.

(c) Establishment of an international banking facility. A depository institution, an Edge or Agreement Corporation or a United States branch or agency of a foreign bank may establish an IBF in any location where it is legally authorized to engage in IBF business as provided in paragraph (b).

(d) Notification to Federal Reserve. Fourteen days prior to the first reserve computation period that a depository institution intends to engage in IBF business as provided in paragraph (b), it shall notify the Federal Reserve Bank of the District in which it is located that it intends to establish an IBF. Such notification shall include a statement of intention by the depository institution that it shall comply with the rules of this Part concerning IBFs, including restrictions on sources and uses of funds, and recordkeeping and accounting requirements. Failure to comply with the requirements of this Part shall subject the IBF to reserve requirements or result in the revocation of the institution's authority to operate an IBF.

(e) Recordkeeping requirements. A depository institution shall segregate on its books and records the asset and liability accounts of its IBF and submit reports concerning the operations of its IBF as required by the Board.

(f) Foreign currency transactions. A transaction of an IBF may be made in any currency.

4. In Regulation Q, section 217.1 is amended in paragraphs (a) and (b) as follows:

SECTION 217.1--DEFINITIONS

(a) Demand deposits. The term "any deposit which is payable on demand," hereinafter referred to as a "demand deposit," includes every deposit which is not a "time deposit," "international banking facility time deposit," or "savings deposit," as defined in this section.

(b) Time deposits. The term "time deposits" means "time certificates of deposit," "time deposits, open account," and "international banking facility time deposit," as defined in this section.

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5. Section 217.1 is amended by adding a new paragraph (i) as follows:

SECTION 217.1--DEFINITIONS

* * * * *

(i) "International banking facility time deposit" or "IBF time deposit" means a deposit:

(i) that is payable:

(A) on a specified date not less than two days after the date of deposit;

(B) upon expiration of a specified period of time not less than two days after the date of deposit; or

(C) upon written notice which actually is required to be given by the depositor not less than two days prior to the date of withdrawal;

(ii) that is not issued in negotiable or bearer form;

(iii) that represents funds deposited to the credit of a non-United States resident or to a foreign branch, office, subsidiary, affiliate, or other foreign establishment ("foreign affiliate") controlled by one or more domestic corporations that are used solely to support the international operations of the depositor or an affiliate of the depositor; and

(iv) that is held under an agreement or arrangement under which no deposit or withdrawal of less than \$500,000 is permitted.

By order of the Board of Governors, December 16, 1980.

[signed] Theodore E. Allison

Theodore E. Allison
Secretary of the Board

[SEAL]