

FEDERAL RESERVE BANK  
OF NEW YORK

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INTERNATIONAL BANKING FACILITIES

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

Printed below is a series of questions and answers regarding the amendments to Regulations D and Q that permit establishment of International Banking Facilities ("IBFs"). These questions and answers were prepared by the staff of the Federal Reserve Bank of New York, in consultation with the legal staff of the Board of Governors of the Federal Reserve System.

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ANTHONY M. SOLOMON,  
*President.*

Questions and Answers

1. The list of permissible IBF extensions of credit does not include demand deposits at another bank's office within the United States. Does this mean that an IBF that wishes to have a demand account in the United States for settlement purposes is restricted to having an account on the domestic books of its own bank?

*Answer:* Yes. The only entities in the United States on which an IBF may hold claims are another IBF or a United States office of its own bank. Because an IBF may not own a demand deposit at another IBF, the IBF is restricted to using an account with its own institution. This means that an IBF will have an account on the domestic books of its bank, and that account will be subject to Eurocurrency reserve requirements on a net basis. Settlement of IBF transactions in the United States will have to be performed through this account. In addition, there is no provision under the regulation for an IBF to hold

cash; accordingly, in order to hold this type of asset in the United States, the IBF will also have to hold it in the form of a balance due from the domestic books of its own institution.

2. The regulation speaks in terms of "segregating" IBF accounts on an establishing entity's books. Must IBF accounts be placed in asset and liability accounts that are separate from the domestic business asset and liability accounts on the general ledger, or may the IBF accounts be intermingled with accounts on the domestic books?

*Answer:* IBF accounts must be kept as a separate set of accounts on a subsidiary ledger. Institutions may establish a separate general ledger for their IBF accounts if they so desire. This will facilitate IBFs' completion of reporting requirements and assist Federal Reserve examiners.

3. Many customers would like to have a cash management arrangement between the United States books of their bank and the bank's IBF. Such an arrangement would allow the foreign customer to take funds from its demand account toward the end of the day and place the funds in a two-day time deposit at the IBF. May foreign customers have the bank make such transfers automatically?

*Answer:* Yes. There is no prohibition against the transfer of customer funds in either direction between the United States and IBF books of the bank. Funds may be transferred automatically from an IBF time deposit at maturity to a deposit account at a U.S. office of the bank, and funds may be transferred from an account at the U.S. office to the IBF. However, the deposit must qualify for treatment as an IBF deposit.

4. May funds placed by an IBF with another bank's IBF be passed through by the second bank to a reserve account at a Federal Reserve Bank in order to count toward the first bank's reserve requirements?

*Answer:* No. There is no provision in the regulation for use of such funds as a pass-through account. A bank would have to book funds due to its IBF on its domestic books and pass the funds to its pass-through bank in order to use IBF funds to satisfy reserve requirements on a pass-through basis; the bank would be subject to Eurocurrency reserve requirements on that borrowing.

5. Is there any requirement as to the time of day during which an overnight borrowing or two-day borrowing is booked or renewed by an IBF?

*Answer:* No. The Federal Reserve does not have any general requirement concerning the time of day during which deposits or borrowings are booked or renewed so long as the procedure is consistent with the bank's general bookkeeping procedures on banking days.

6. A sale of an asset by a domestic office of a bank to its IBF is not subject to Eurocurrency reserve requirements if the transfer takes place during the four weeks immediately following establishment of an IBF. May such a transferred asset subsequently be transferred to an offshore office of the bank without being subject to Eurocurrency reserve requirements?

*Answer:* The intent of the four-week exemption period is to allow banks to place assets with their IBFs that could have been placed there at the inception of the asset. It is not intended to serve as a "sterilization" method whereby assets may be passed through an IBF on their way to an offshore office of the bank in order to avoid the reserve requirement on sales of assets to offshore offices. Institutions will be expected to use this exemption in good faith. The Federal Reserve expects that assets transferred to IBFs in the four-week period will remain there for an indefi-

nite period. Assets that are transferred from the IBF to an offshore office within a few days of the transfer to the IBF will be looked upon with suspicion.

7. IBF deposits are defined as deposits under Regulation Q. Does this mean that provisions of Regulation Q, such as the early withdrawal penalty and various grace periods, apply to IBF time deposits?

*Answer:* An institution may not permit early withdrawal of an IBF time deposit if that would mean that it is on deposit less than two days; however, early withdrawal may be permitted, with penalty, so long as funds will have been on deposit at least two days. Grace period provisions applicable to domestic time deposits are irrelevant to IBF time deposits.

8. Section 204.8(b) of the IBF regulation requires that nonbank customers of an IBF receive a written statement concerning use of an IBF only for foreign purposes. In the case of a syndicated loan to a nonbank borrower, must all the banks in the syndicate that choose to record the loan on the books of their IBF send such a statement to the borrower, or may only the agent bank in the syndicate do so?

*Answer:* Only the agent of a syndicate needs to send the written statement. If the borrower is an affiliate of a United States resident, the return statement need be sent by the borrower to the agent only; however, the members of the syndicate should obtain a copy of the borrower's letter for their records in order to insure that the IBF regulation is being complied with.

9. Footnote 2 of the Supplemental Information to the IBF regulation states that written notice need not be given to IBF customers associated with assets transferred to the IBF within the four-week exemption period. Does this also apply to deposits that are so transferred?

*Answer:* No. Only assets are covered by the exemption. If a deposit is transferred, the bank is necessarily required to contact the customer in order to determine whether the funds in the account will be used for foreign purposes. It may be necessary for a bank to contact loan customers in order to determine the purpose of the loan, but this is not required if the bank can determine the purpose from existing loan documentation.

10. Securities issued by foreigners, including commercial paper and acceptances of other banks, may qualify as IBF assets if the proceeds are used for a foreign purpose. How may an IBF determine whether this is so, especially if it buys the security in the open market?

*Answer:* A Board of Governors' interpretation on the purchase of securities will be issued in the future.

11. Is a loan to a foreigner for purposes of importing items from the United States to be used outside the United States considered to be "foreign business"? Also, can an IBF extend credit to a wholly owned offshore shell subsidiary of a U.S. exporter for the purpose of financing exports from the United States?

*Answer:* An S-letter will be issued by the Board of Governors in the near future.

12. Section 204.8(a)(2)(ii)(C) states that no deposit or withdrawal from an IBF time deposit issued to a nonbank customer of less than \$100,000 is permitted.

- (a) Can withdrawals of interest earned on an IBF time deposit be less than \$100,000?  
(b) Can withdrawals of less than \$100,000 be made to make loan repayments to the issuing entity?  
(c) What action is required if the dollar value of foreign currency deposits drops below \$100,000?

*Answer:*

- (a) Yes. Withdrawal of interest earned on an IBF account is not regarded as a withdrawal from the account and accordingly may be less than \$100,000. This exception is made because otherwise IBF customers would likely be encouraged to limit deposits to the minimum maturity in order to withdraw interest.  
(b) No.  
(c) None. The amount of a deposit or withdrawal of foreign currency funds must have an exchange value of at least \$100,000 at the time of the transaction. A depository institution is still in compliance with Regulations D and Q if the value of the deposit drops below \$100,000 due to a change in exchange rates because no deposit or withdrawal of less than \$100,000 has occurred.

13. In addition to the foreign purpose requirement, Section 204.8(a)(2)(ii) states that nonbank IBF time deposits may be issued only to non-United States residents. Is an individual who has a residence outside the United States and a residence in the United States a non-United States resident?

*Answer:* An individual who resides principally outside the United States at the time of the transaction is a non-United States resident.

14. What is the duty of a depository institution if it discovers that an IBF time deposit or IBF loan is not in fact being used to support operations outside of the United States?

*Answer:* A depository institution must keep reserves against IBF liabilities that do not meet the requirements of Regulations D and Q and, in addition, comply with interest-rate restrictions of Regulation Q. IBF assets which do not meet those requirements must be transferred from the IBF to the domestic books. An institution will be expected to communicate with its customers to determine that the requirements are understood and followed.

15. Must the total of IBF assets equal the total of IBF liabilities?

*Answer:* IBF assets, including claims on the establishing entity, must equal IBF liabilities, including claims by the establishing entity.

16. Must the maturity of liabilities that are assumed by an IBF match the maturity of assets that are acquired?

*Answer:* Maturities of IBF assets need not match the maturities of IBF liabilities.

17. When is the written notice and acknowledgement provided for in Section 204.8(b) required to be given to a nonbank customer in connection with the opening of an IBF time deposit; in connection with establishing a nonbinding line of credit?

*Answer:* Section 204.8(b) states that a written notice must be given to an IBF customer at the time a deposit relationship or credit relationship is first established. A deposit relationship is established when a debtor/creditor relationship arises, and that occurs when funds are deposited to an account. Accordingly, the notice must be provided prior to that time. A credit relationship arises, not when the funds are disbursed, but when the commitment is made. Accordingly, the notice must be provided prior to the time that the funds are disbursed.

18. May a United States parent of a borrower from an IBF guarantee a loan made by an IBF to the borrowing foreign subsidiary?

*Answer:* Yes. The guarantee by a United States parent would not destroy the qualification of an IBF asset which otherwise qualifies under Section 204.8(a)(2).

19. May an IBF extension of credit be secured by a United States asset such as the shares of a United States company or a mortgage on United States property; may an IBF purchase United States assets subject to the obligation to resell them at a later date?

*Answer:* Yes, if the underlying transaction is a qualifying one. In determining compliance with the definition of permissible IBF assets, the type of collateral is not necessarily a relevant consideration. The identity of the borrower and application of the loan proceeds are the relevant criteria. Likewise, because a repurchase agreement is essentially a secured borrowing in economic terms, the nature of the assets subject to resale by the IBF is also not determinative.

20. If an IBF extension of credit is secured by a mortgage on U.S. property or shares of a U.S. corporation, the obligor defaults on the loan, and the creditor forecloses on the collateral, may such property or shares be held by the IBF?

*Answer:* Yes, consistent with prudent banking practice and other regulatory requirements.

21. May an IBF issue a letter of credit with a United States beneficiary?

*Answer:* Yes, if the underlying transaction qualifies within the meaning of Section 204.8(a)(2) — that is, the account party must be seeking a letter of credit for a transaction that would be a permissible loan transaction for an IBF. The drawing down of the letter of credit by means of a draft does not connect the arrangement to an impermissible transaction account. However, the IBF may not pay the draft by establishing a demand deposit account.

22. Does the requirement that an IBF time deposit “support operations outside the United States” require that the source of funds arise solely out of operations outside of the United States?

*Answer:* Not necessarily. For example, capital supplied by a United States parent to a foreign office or subsidiary may be deposited in an IBF if the purpose of the transaction was to support the non-United States operations of the company. Funds may not be deposited by a United States office to obtain indirectly the favorable regulatory treatment on an IBF deposit.

23. May an IBF’s income and expense items be considered permissible asset or liability accounts?

*Answer:* For Federal Reserve purposes these accounts are not permissible IBF assets or liabilities. However, contra accounts that are required by accounting convention to accompany an entry for a permissible IBF asset or liability may be established. However, for state tax purposes these income and expense accounts may be permissible, or even required, on an IBF’s books.

24. If an IBF’s establishing institution is a member of a bank holding company, may the other subsidiaries of the holding company that do not have IBFs be customers of the IBF?

*Answer:* Only if they otherwise qualify as IBF customers.

25. In order to determine whether a customer must acknowledge in writing the rules governing IBF deposits and extensions of credit under Sections 204.8(a)(2)(ii)(B) and 8(a)(3)(ii), what must IBFs do to determine whether a foreign company is controlled by a domestic corporation?

*Answer:* Only those corporations in which the parent owns more than 50 percent of the voting shares are covered.

26. Is a loan to a foreign corporation for the purpose of acquiring an existing United States corporation in a takeover bid considered to be for a foreign purpose?

*Answer:* No.

27. Need a bank’s IBF have a name different from that of the bank?

*Answer:* No. An IBF is neither a separate entity nor a branch. The Federal Reserve has no objec-

tion to use of a different name, but banks should ensure that use of such a name is unobjectionable to its chartering and licensing authority.

28. As to assets transferred to the IBF from a domestic office, is the amount of the asset transferred considered permanently free from the Eurocurrency reserve requirement?

*Answer:* No. There is no base amount of reserve-free transfers of assets. Only those particular assets that are transferred during the initial four-week period are exempt from Eurocurrency reserve requirements on sales of assets.

29. When an extension of credit is made, it qualifies as an IBF extension of credit, but a change in circumstances of the debtor that was not reasonably foreseeable at the time of the extension of credit causes the credit not to come within the criteria of an IBF extension of credit. For example, a loan might be made to the foreign office of a U.S. company for an eligible purpose, but during the life of the loan the company closes the foreign office. May the credit still be considered an IBF extension of credit?

*Answer:* Yes. In this case, the credit may still be considered an IBF extension of credit.

30. Is a deposit in an IBF by a foreign office of a bank a “deposit” for the purposes of Regulation Q?

*Answer:* No. However, a request for revision of Regulation Q to define such funds as “deposits” is currently pending before the Board of Governors. This may have implications for Federal tax withholding requirements.

31. May an IBF engage in bankers’ acceptance financing?

*Answer:* Yes. An IBF may accept and discount a draft presented by its customers provided the draft is held to maturity. Such a transaction is booked as a loan for report of condition purposes. An institution’s acceptance held in its own portfolio is treated as a loan, not an acceptance.

32. May an IBF hold nonvoting preferred stock as an IBF extension of credit?

*Answer:* Yes, so long as the other requirements on IBF extensions of credit are complied with.

33. Is a loan to a U.S. borrower, fully guaranteed as to principal and interest by a foreign government, an IBF extension of credit?

*Answer:* No. The transaction will be regarded as a domestic extension of credit.

34. May an IBF accept deposits from a foreign office of an Article XII investment company, a private bank, or a U.S. bank not subject to Federal Reserve reserve requirements?

*Answer:* Yes. The IBF will have to determine whether the depositor should be treated as a bank or as a nonbank entity.