FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 9695
June 25, 1984]

ACTIVITIES OF EDGE CORPORATIONS

Proposed Revision of Regulation K

To All Edge Corporations, and Others Concerned,
in the Second Federal Reserve District:

Following is the text of a statement issued by the Board of Governors of the Federal Reserve System:

The Federal Reserve Board has requested comment on proposed revisions of its Regulation K — International Banking Operations — concerning chiefly the international operations of United States banking organizations.

The Board asked for comment by September 12, 1984.

The International Banking Act requires that the Board review and revise Regulation K each five years. The last revision was made in June 1979. The current proposals for revision are based on experience, and suggestions received for changes, during the past five years. The objectives of the proposed revisions are to ensure that Edge and Agreement Corporations are competitive in the light of prevailing economic conditions and banking practices. For the most part the proposals would affect the first section (Subpart A) of the regulation, dealing with activities of Edge Corporations in the United States, and related matters. Edge Corporations are corporations chartered under Section 25(a) of the Federal Reserve Act to engage in international or foreign banking or other international or foreign operations.

Four issue areas emerged from review of experience in the past five years, and form the basis for the proposed revisions of the regulation. They are:

— Activities allowable to Edge Corporations within the United States.

— Prudential provisions respecting operations of Edge Corporations.

— Procedures for approval of investments by Edge Corporations.

— Procedures respecting change of control of Edge Corporations.

A. The Board requested comment on four possible ways of enlarging the scope of Edge Corporation activities in the United States, while still retaining the international character of Edge Corporations. These are:

1. Expand the activities permissible to Edge Corporations by letting them furnish full banking services to companies that are restricted by their charters to an exclusively international business (such as foreign shipping companies, foreign airlines and the like).

2. Give Edge Corporations further flexibility, in their overall operations, by permitting them to make domestic loans to certain qualifying customers so long as 75 percent of a Corporation's total loans to all of its customers are internationally related.

3. Give Edge Corporations more flexibility in meeting the borrowing needs of their customers. Instead of requiring — as at present — that all credits must be for international purposes, allow an Edge Corporation to extend credits for domestic purposes to a customer where 75 percent of the Edge Corporation's loans to the customer are internationally related.

(OVER)

4. Allow an Edge Corporation to extend domestic loans freely up to the total of its deposits obtained from foreign and international individuals, partnerships, corporations and governments.

— This would parallel the "limited branch" authority of foreign banks in the United States (outside the state they have chosen as their home state) to extend credit for any purpose but to accept only such deposits as are permissible to Edge Corporations.

B. The Board requested comment on proposals to change the prudential financial limitations applying to Edge Corporations in two ways:

1. Raise the limitation on loans to an individual borrower from 10 percent of capital and surplus of the Edge Corporation to 15 percent (paralleling a like increase in the lending limit of national banks under recent legislation).

2. Conform the capital adequacy requirement for Edge Corporations to the capital adequacy guidelines adopted by the Board and the Comptroller of the Currency for multinational banking organizations.

Certain clarifying changes were also proposed respecting lending limits as they apply to bankers' acceptances handled by Edge Corporations.

C. The Board requested comment on two proposals for revised procedures respecting investments by Edge Corporations. These are:

1. Raise the amount that a U.S. banking organization may invest in another company under General Consent procedure[1] from the present $2 million to $15 million. The present cap of 5 percent of the investor's capital and surplus for such an investment would be retained.

2. Change the base for calculating the amount of an additional investment in a company in which the organization has already invested from historical cost to book value.

D. Current provisions of Regulation K permit transfer of ownership of an Edge Corporation in most cases without scrutiny or approval by the Board (with the exception that foreign banks must obtain specific Board approval to invest in an Edge Corporation).

The Board proposed that any individual or company be required to provide the Board with prior notice before acquiring 25 percent or more of the shares, or otherwise acquiring control, of an Edge Corporation.

The Board proposed this procedure to permit the Board to review changes in ownership for potential adverse financial and other effects on banking in the United States.

The Board would review such proposed acquisitions under the same standards as it uses for scrutinizing proposals to establish Edge Corporations. These include the financial condition and history of the applicant, the character of its management, the convenience and needs of those served by the Corporation and effects upon competition.

Procedures for assessing a proposed change in control of an Edge Corporation would parallel those used by the Board under the Change in Bank Control Act.

The proposed prior notification for change in control of an Edge Corporation would give the Board an opportunity to establish conditions that it considered necessary to protect the safety and soundness of banking in the United States.

The Board also requested comment on proposed technical amendments to other parts of Regulation K, mostly to clarify the wording of the regulation or to make minor substantive changes. Two proposals would affect Subpart B of the regulation, on foreign banking organizations. One would allow only a subsidiary "operating" company of a foreign banking organization, and not a "shell" subsidiary, to avail itself of certain exemptions. The other would clarify that a foreign banking organization may not qualify for certain exemptions based solely on banking assets and income derived from banking in Puerto Rico or U.S. territories or possessions.

Enclosed, for Edge Corporations in this District, is the text of the Board's proposal. It will be published in the *Federal Register*; in addition, single copies will be furnished upon request directed to our Circulars Division (Tel. No. 212-791-5216). Comments on the proposal should be submitted by September 12, 1984 and may be sent to our Foreign Banking Applications Department.

ANTHONY M. SOLOMON,
President.

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1 The General Consent procedure allows an Edge Corporation to proceed with an investment, under certain limits, without specific Board approval or prior notification.

Att. No. 9695

FEDERAL RESERVE SYSTEM

REGULATION K

[12 C.F.R. Part 211]

(Docket No. R-0520)

International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The International Banking Act of 1978 (P. L. 95-369) requires the Board to review and revise its regulation governing the operation of Edge corporations every five years. As a result of its review under this provision, the Board is proposing for comment several changes to Subpart A of Regulation K. Comments are invited on several alternatives that would expand the ability of Edge corporations to provide services in the United States. Several changes are also proposed to the investment, capitalization, and lending limit sections of Subpart A. In addition, there are proposed several amendments to Subpart B concerning U. S. activities of foreign banking organizations.

DATE: Written comments must be submitted to the Board on or before September 12, 1984.

ADDRESS: All comments, which should refer to Docket No. R-0520, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551, or delivered to the C Street entrance, 20th and

Constitution Avenue, N. W., Washington, D. C., between the hours of 8:45 a.m. and 5:15 p.m. weekdays. All comments received will be available for inspection in room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

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

SUPPLEMENTARY INFORMATION: The International Banking Act of 1978 ("IBA") requires the Board to review and revise its rules issued under section 25(a) of the Federal Reserve Act (the Edge Act) at least once every five years to ensure that the purposes of the Edge Act are being served in the light of prevailing economic conditions and banking practices. Edge corporations are international banking and financial vehicles through which U. S. banking organizations offer international banking services and through which they compete with similar foreign-owned institutions in the United States and abroad. The purposes of the Act include affording U. S. commerce, industry and agriculture a means of financing international trade, especially U. S. exports, and stimulating competition in the provision of those international banking and financing services throughout the United States.

As a result of the review of the rules governing Edge corporations completed in 1979, Regulation K was extensively reorganized and revised. The changes included authorizing establishment of domestic branches, removal of some restrictions on funding activities, an expansion of an Edge corporation's ability to engage in activities abroad, and reduced administrative review of proposed investments. The objectives of the changes appear to have been satisfactorily met in view of the significant expansion in Edge operations since 1979. As a result of the current review, the Board has determined that there are four major areas that warrant some attention. These are: (1) activities of Edge corporations in the United States; (2) prudential limitations on operations of Edge corporations; (3) investment approval procedures; and (4) change of control of Edge corporations.

Activities of Edge Corporations in the United States

An Edge corporation is limited by statute to engaging only in such activities in the United States as are "incidental" to international or foreign business. The Board, however, has broad discretionary authority to determine what U. S. activities would be incidental to international or foreign business of an Edge corporation. The Board has interpreted this provision to require that all deposits of domestic residents must be related to or for the purpose of carrying out international transactions, and all credit transactions with domestic residents must be related to

identifiable international transactions. This transaction-by-transaction approach serves as a constraint on the operations of Edge corporations, but is designed to assure that an Edge corporation cannot be used as a means to evade restrictions on full-service interstate banking in the United States.

In 1979, the Board considered modifying the transaction-by-transaction approach by proposing the qualified business entity ("QBE") concept. This proposal linked the requisite international or foreign business connection to the nature of the overall business activities of its customers. The standard proposed was that the qualified customer be "principally engaged in international or foreign commerce." To meet the test, a customer would be required to be so extensively involved in international commerce that its deposit or loan transactions with the Edge corporation would be presumed to be for an international purpose even if an individual transaction did not have a separate foreign nexus. For customers meeting the requirements of a QBE, an Edge corporation would be permitted to provide full banking services. However, business firms not so extensively involved in international commerce could continue to do business with the Edge corporation only on an approved transaction-by-transaction basis.

The Board did not adopt the proposal in 1979 due to the difficulty of devising a test that could accurately measure

the amount of international business of a customer and also due to the difficulty in assessing the effectiveness of the proposal in terms of the number and character of the firms that would qualify. As a result of the current review, the Board has reconsidered the concept with several modifications designed to eliminate or reduce the previous difficulties, as well as several alternatives for expansion of the U. S. activities of Edge corporations.

QBE concept.

A difficulty with the previous QBE proposal was the lack of data on firms that might qualify and how to measure the international aspect of their business. In order to avoid this problem, the Board is proposing to identify certain categories of companies that, by the character of their business, may be considered qualifying business entities.

Instead of qualifying on the basis of a certain percentage of the company's business, qualifying companies would be those that by their charter or license are restricted to an international business. These companies would include foreign airlines, foreign shipping companies, Domestic International Sales Corporations ("DISCs") (26 U.S.C. 992), Western Hemisphere Trade Corporations (26 U.S.C. 921), and export trading companies owned by bank holding companies (12 U.S.C. 1843(c)(14)). As with the original qualifying business customer proposal, an Edge corporation would be able to provide full banking services -- including deposits and loans -- to this class of customer. Any domestic element in those services

would, of course, be very small due to the legal restrictions on the business of the customer. The Board requests particular comments on whether there are other companies that could qualify under this approach because their charter or license restricts their business to predominantly international business.

Another variant of the QBE concept would be to identify -- as was proposed in 1979 -- certain businesses that are principally, although not exclusively, engaged in international business. Under this variant, an Edge corporation would then be able to offer qualifying customers a full range of credit services as long as 75 percent of the credit extensions of the Edge corporation meets the current transaction standards in Regulation K; the Edge could lend to qualified customers for domestic purposes in an aggregate amount not exceeding 25 percent of the total lending by the Edge corporation. Although this approach would not eliminate entirely the transaction-by-transaction requirement of the current regulation, it would permit Edge corporations to compete more effectively for the business of customers that engage primarily in foreign business by being able to offer domestic credits as well. The proposal should not raise some of the earlier concerns, however, since it does not permit expansion of an Edge corporation's deposit-taking capabilities.

The difficulty with the proposal is the same that was presented in the 1979 proposal, that is, how to measure the international business of the customer. As proposed in 1979, a

QBE was required to derive two-thirds of its business from international commerce, measured by either costs or revenues (e.g., "costs of materials, goods and services directly imported plus the direct costs of producing goods and services for export").

The Board requests specific comment on the feasibility of this proposal and on the appropriate measurement standards for the business of such customers. Data on the number of businesses that might qualify for designation as a QBE under the proposal would be useful to the Board's consideration.

Transactional leeway.

Another approach would be to allow an Edge corporation to provide credit to any customer for domestic purposes so long as the bulk of the credits extended to that customer (at least 75 percent) were for international purposes and met the transactions test. All deposit-taking would still be required to be related to international transactions.

This approach would maintain an essentially international linkage on the asset side of an Edge corporation's activities, since the bulk of its assets would remain exclusively international in character. At the same time, it would provide a margin of flexibility or leeway in accommodating the credit needs of each customer and thus enhance the ability of Edge corporations to compete with

foreign banks and others. This approach would address the criticism that Edge corporations are hindered in their operations by the inability to provide some domestic financing when their relationship with a customer is primarily international. The argument presented is that a customer has a stream of financing requirements ranging from those that are purely domestic to those that are exclusively international in character, and that the inability to provide services throughout this continuum acts as a handicap to an Edge corporation in seeking out and obtaining customers for international banking services.

Under this alternative, Edge corporations would have to maintain records sufficient to permit examiners to verify that 75 percent of the customer's borrowings met the transactions test. However, this would represent an improvement over the 100 percent verification requirement under the present rules, and the reduction in burden may be greater than that suggested by the arithmetic since inconsequential transactions frequently are the most difficult to verify.

"Limited Branch" concept.

A much broader approach to expanding the activities of Edge corporations would be to reduce substantially the limitations on domestic lending transactions while the deposit-taking activities that fund those credit transactions remain limited, as they have been, to international or foreign

banking transactions. If this were done, it would have the result of making Edge corporations comparable to the limited branches of foreign banks that were authorized by the IBA. Under section 5 of the IBA (12 U.S.C. 3103), limited branches may extend credit to any person for any purpose; however, their deposit-taking capabilities are limited to those permitted Edge corporations.

This alternative would allow an Edge corporation to extend credit for domestic purposes to the extent that it was funded from international and foreign source deposits from individuals, partnerships, and corporations. Credit transactions with domestic residents in excess of the amount of such funding would continue to be justified, as now, on a transaction-by-transaction basis as internationally related. A basis for this approach is that the operations of the Edge corporation could be considered "incidental" to international business by reason of the link to international deposits.

The link of domestic lending to foreign source deposits is also made necessary by the ability of Edge corporations to raise funds in domestic money markets. Regulation K, as revised in 1979, permits Edge corporations to obtain funds from other banks through the Federal funds market and otherwise. Without some restriction on the source of funding for these domestic credits, it could be said that the Edge corporation was doing a full-scale domestic banking business.

The Board requests comment on the appropriateness of the limited branch approach as a means of making Edge corporations more competitive while retaining the international character of their business as required by statute.

Prudential limitations on Edge corporations.

Section 211.6 of Regulation K contains the prudential limitations that have been established on the operations of Edge corporations--notably, limits on acceptances, lending limits, and capital requirements. Proposed amendments in these areas are designed to clarify these provisions and to update them in light of other related changes in supervision and regulation since 1979.

Bankers acceptances.

Two clarifying changes are proposed for the provision of Regulation K dealing with bankers' acceptances. The first clarifies that a separate lending limit applies to acceptances of the kinds described in section 13 of the Federal Reserve Act (so-called eligible acceptances); all other acceptance credits (so-called ineligible acceptance credits) are included in the general lending limit.

The other clarifying change is concerned with the treatment of acceptance participations. Under the present version, neither the single customer limit nor the aggregate limit applies if the Edge corporation is covered by participation agreements. However, the section does not describe what constitutes an adequate participation agreement

for this purpose. In 1983, the Board defined a participation agreement in a bankers' acceptance (12 C.F.R. 250.165) and established minimum criteria for member banks that would have to be met in order that the participated part of a bankers' acceptance not be included in the acceptance limits of the issuing bank. The change would explicitly apply the same definition to acceptance participations by Edge corporations.

Lending limits.

Under Regulation K, a limit of 10 percent of capital and surplus applies to loans to individual borrowers, subject to certain exceptions. Since the regulation was last revised, the National Bank Act has been amended to raise the basic lending limit of national banks from 10 to 15 percent of capital and surplus. Because the lending limits applicable to Edge corporations generally have been patterned after those applicable to national banks, the revision proposed for this section would parallel this change by increasing the lending limit for Edges to 15 percent of capital and surplus as well. No changes are proposed in the requirement of consolidation for purposes of the parent bank's lending limit.

Capitalization.

When it revised Regulation K in 1979, the Board determined that banking Edge corporations should have leveraging limits based on their own capital because these corporations have a separate corporate structure, their depositors are not insured, and not all Edge corporations are

subsidiaries of insured U. S. banks. The Board also decided to base the limit on "risk assets," rather than total assets, because many Edge corporations engaged heavily in clearing activities for their parent banks and, consequently, had large amounts of float with domestic banks.

Since 1979, two developments have occurred that are relevant to the capital standards set for Edge corporations. First, the Board and the Comptroller of the Currency have established for national and state member banks specific capital requirements based on total assets. Second, same-day interbank settlement procedures have been adopted that substantially reduced the amount of float booked at Edge corporations. As a consequence, clearing activities no longer distort the financial ratios of Edge corporations, as they did in 1979.

Because of these developments, the Board proposes that the capitalization requirements of Edge corporations should conform to those set forth in the Board's Capital Adequacy Guidelines (12 C.F.R. Part 225, Appendix A) and that the capital adequacy standard in Regulation K should be amended to require a banking Edge to maintain minimum capital at a level not less than that for multinational banking organizations

under the Board's guidelines.[1/] The change would be accomplished by cross-reference to the capital adequacy guidelines, which could then be changed without requiring amendments to Regulation K.

Investment procedures.

Under Regulation K, investors (i.e., Edge and Agreement corporations, member banks, and bank holding companies) may make investments in foreign organizations subject to certain limitations. These limitations are designed to ensure that investments that present significant financial or policy issues come to the attention of the Board through specific consent or receive thorough review by System staff through a prior notice procedure. General consent is available for certain investments that pose no issues.

As structured, the procedures have worked well, have simplified the administrative process and have reduced the regulatory burden on the industry. The current procedures and investment limitations have been reexamined to assure their continued appropriateness and certain changes are proposed.

1/ In the proposal, capital has not been redefined to be equivalent to primary capital as used for member banks. However, as a practical matter, the definition of "capital and surplus" employed in Regulation K would not differ from primary capital since Edge corporations have not issued the type of debt instruments that would qualify as primary capital. Under the proposed revision, subordinated capital notes or debentures would no longer be included in capital for capital adequacy purposes. This kind of debt has only rarely been issued by Edge corporations.

Under the general consent procedures currently contained in Regulation K, an initial investment may be made in a company engaged in permissible activities if the amount to be invested is $2 million or five percent of the investor's capital and surplus, whichever is less.

The Board proposes to retain, for general consent, the current system that uses a combination of an absolute dollar amount and a percentage of capital. The Board believes that the 5 percent of capital standard continues to be appropriate. However, the Board believes that the dollar limitation is low relative to the size of the largest banking organizations and it is proposing that the absolute dollar amount that may be invested under general consent be raised to $15 million. The Board requests specific comment on this amount as the appropriate level for initial investments without some prior Board review.

The current regulation also permits additional investments to be made each year without prior Board consent provided that new investments are a fraction of the investor's existing investment in the company, based on historical cost.

This provision has been criticized on two counts. First, it is criticized as too restrictive on investments initially made under the general consent. This criticism is addressed by the proposed liberalization of the general consent as it affects new investments. Second, the additional investment limit is perceived to be unnecessarily complicated

by the use of historical cost. Accordingly, the Board is proposing that the calculation of the amount of additional investment under general consent be based on book value. This change would also simplify the recordkeeping involved in supervising foreign subsidiaries and joint ventures.

The Board also proposes a change in the general consent procedures to address a situation that arises when a U. S. bank acquires a majority interest in an existing foreign company that may have some activities not permissible under Regulation K. At present, a U. S. banking organization cannot avail itself of the general consent to invest in such a company even where these activities are very small in relation to the totality of the company's business. It is proposed that the regulation provide a de minimis exception for such circumstances, where the impermissible activities amount to no more than 2 percent of the company's business as measured by assets or revenues. The Board requests comments on this proposal and the level of such impermissible activity.

Change in control of Edge corporations.

The growth in Edge corporations since 1979 has been substantial, partly as a result of the regulatory changes made then. At the end of 1983, Edge corporations engaged in banking in the United States numbered 90, an increase of 20 over 1979. The number of Edge corporation offices in the United States has shown even greater growth over this period, a reflection of the ability of Edge corporations to establish domestic branches,

nearly tripling to reach a total of 203. Total assets of banking Edge corporations at the end of 1983 were $17.7 billion. Edge corporations also participate extensively in the interbank market, as a result of authority given in the 1979 revision of Regulation K.

Because of the growing importance of these corporations, the Board has determined that it is appropriate to propose adopting a procedure to govern a change in control of an Edge corporation. Because there is currently no procedure to review a change in ownership of an Edge corporation, the Board does not now have the ability to review the competitive, financial and managerial factors associated with a proposal by a company to acquire an Edge corporation, factors the Board routinely considers in proposals to form an Edge corporation. As a result, an Edge corporation could be transferred to a banking organization that does not have the financial strength or sufficient international expertise to support the operations of the corporation. This could result in harm to both the Edge corporation and the bank owner. In addition to concerns with respect to financial and managerial resources in such transfers, there are other issues that are presented where the acquiring company is a nonbank concern, in that the mingling of banking and commerce generally can result in adverse effects such as unsound banking practices, concentration of resources and conflicts of interest.

The Board has exclusive jurisdiction over chartering, supervising and examining Edge corporations. The governing statute and the Board's regulations establish a comprehensive scheme requiring the prior approval of the Board for the formation and establishment of Edges, extension of an Edge's corporate existence, changes to the Edge's articles of association, an Edge's investments in organizations and its engaging in new activities. Moreover, paragraph 4 of the Edge Act provides that an Edge corporation may prescribe "by-laws not inconsistent with law or with the regulations of the Board . . . regulating the manner in which its stock shall be transferred. . . ." This framework provides authority for the Board to adopt a procedure for review of the transfer of ownership of an Edge corporation. In view of the Board's responsibility with respect to Edge corporations, it appears desirable and appropriate to put into place change in control provisions.

Accordingly, the Board proposes an amendment to Regulation K requiring that a person (individual or company) provide the Board with prior notice before acquiring 25 percent or more of the shares or otherwise acquiring control of an Edge corporation. The procedures would generally parallel those under the Change in Bank Control Act. In adopting such a procedure, it is proposed that the Board use the same standards for review of acquisitions of an Edge corporation that the Board has in place for establishment of an Edge corporation.

The proposed regulation reserves to the Board the authority to impose any conditions necessary to prevent adverse effects resulting from any change in ownership of an Edge corporation. Such conditions may be needed, for example, because a nonbank company is not subject to statutory prohibitions against tying of services as are banks and, by regulation, bank holding companies. Similarly, a nonbank owner of an Edge corporation is not subject to restraints on interaffiliate transactions that could adversely impact the condition of the Edge corporation. Thus, under the proposed regulation, if the acquisition of an Edge corporation could be shown to result in possible adverse effects, appropriate conditions could be imposed.

In summary, the recommended procedure is intended to permit the Board to consider the effects of a transfer on the acquiror, if it is a bank, and the Edge corporation itself, and to determine whether adverse effects could result from affiliation of an Edge corporation with a nonbanking concern. The Board requests comments on the procedures and the standards to be used in evaluating a proposed change in control of an Edge corporation.

Other proposed revisions.

There are a number of other changes that are proposed in order to clarify the regulation.

Under current Regulation K, an organization is considered engaged in business or activities in the United

States if it has in the United States either a subsidiary or an office, other than a representative office. Questions have arisen concerning the scope of activities that may be conducted through a representative office. The Board is of the opinion that only traditional representational functions may be exercised through a representative office, such as liaison between customers and head office. A representative office should not be transacting business for its own account (other than what is necessary to maintain its presence here and carry out its limited functions) or have authority to make credit or other business decisions for its head office. The Board is proposing a definition of representative office that incorporates this interpretation.

Under further powers of foreign branches of member banks, section 211.3(b)(2) relating to acceptances has been eliminated as no longer necessary. It should be noted, however, that since foreign branches are integral parts of member banks, any acceptances issued by foreign branches and outstanding that are of the type described in paragraphs 7 and 12 of section 13 of the FRA are subject to the limits contained therein. Any other type of acceptance issued by a foreign branch and outstanding is subject to the member bank's limit on loans to a single borrower.

The section dealing with activities of Edge corporations in the United States has been reorganized and includes several activities that represent modest expansion of the listed activities, such as providing personal banking services to officers and employees of an Edge corporation and its affiliates and offering merger and acquisition advice with respect to foreign transactions.

The provisions in sections 211.5(c) and 211.23(f)(5) concerning prohibitions on securities activities in the United States have been restated to clarify that no part of the prohibited underwriting process may take place in the United States and that the prohibition on the activity does not depend on the activity being conducted through an office or subsidiary in the United States.

With respect to U. S. activities of foreign banking organizations under Subpart B, sections 2(h) and 4(c)(9) of the BHC Act afford certain exemptions from the nonbanking prohibitions of the Act to foreign banks that are principally engaged in banking outside the United States. The Board's regulations implementing these exemptions are designed to impose a stringent test for qualification for the exemptions in order to ensure that the foreign company is both foreign in nature and principally engaged in banking. The Board determined that a foreign institution must disregard its U. S. banking assets in meeting the numerical tests of the regulation

that require that more than half of the foreign institution's worldwide business be in banking and more than half its banking business be outside the U. S. in order to be considered a qualifying foreign banking organization. This test was designed to limit the availability of the foreign nonbanking exemptions only to actual foreign banks whose overseas affiliations with other foreign institutions would be severely disrupted by strict application of the Act's nonbanking prohibitions. The test accordingly prevents an organization, which is not principally and substantially foreign, from bootstrapping itself into qualification on the basis of its banking assets subject to U. S. jurisdiction.

In order to clarify the rule so as to prevent such bootstrapping by companies that are not primarily foreign banks, the first proposed change would include banking assets in Puerto Rico and U. S. territories as "in the United States" for purposes of qualifying for the nonbanking exemptions. The locations specified to be included as "in the United States" correspond to those specified in the definition of "bank" in section 2(b) of the BHC Act. The Act requires Board approval before a company may acquire a bank in "any territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands."

The change would prevent the unintended result, for example, of a shell holding company, which is not otherwise a

"foreign bank," from taking advantage of the exemptions by acquiring a bank in Puerto Rico and engaging in nonbanking activities both in the United States and abroad up to 50 percent of its business. The Board requests comment on the appropriateness of this amendment.

The second proposed amendment relates to the nonbanking exemptions afforded by section 2(h) of the BHC Act. Section 2(h) permits foreign banks to own foreign companies that engage in nonbanking activities in the United States if the U. S. activities are in the same general line of business as the company's foreign activities. The exemption is intended to prevent disruptions in the foreign affiliations of foreign banks and foreign nonbanking companies that would occur if the foreign nonbank affiliates were completely barred from U. S. markets. However, the exemption was intended to be available to commercial and industrial companies and not to companies that engage in financial or financially-related activities.

The proposed amendment would prevent a foreign shell company from taking advantage of the exemption where it does not actually conduct an operating business. For example, a foreign company that engages only in acquiring noncontrolling interests in other companies could not use the section 2(h) exemption to engage in the United States in activities conducted by such companies. Under the amendment, a foreign company engaged, for example, in acquiring oil and gas

properties abroad as investments could not rely on the section 2(h) exemption to engage in the oil and gas business in the United States or to engage generally in investing in such properties in the United States. Comment is also requested on this proposal.

The Board welcomes comment on all of these proposals, including those changes not noted above but set forth in the attached draft regulation.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 et seq.), the Board certifies that the regulation will not have a significant economic impact on a substantial number of small entities.

List of subjects in 12 CFR Part 211

Banks, banking; Federal Reserve System; Foreign banking, Investments, Reporting and recordkeeping requirements, Export trading companies, Allocated transfer risk reserve.

For the reasons set out in the preamble, Part 211 of Chapter II of Title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 211--INTERNATIONAL BANKING OPERATIONS

Subpart A--International Operations of United States Banking Organizations

Sec.
211.1 Authority, purpose, and scope.
211.2 Definitions.
211.3 Foreign branches of U. S. banking organizations.
211.4 Edge and agreement corporations.
211.5 Investments and activities abroad.

INTERPRETATIONS

SUBPART A - INTERNATIONAL OPERATIONS OF UNITED STATES BANKING ORGANIZATIONS

SECTION 211.1 - 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 Federal Reserve Act ("FRA") (12 U.S.C. 221 et seq.); the Bank Holding Company Act of 1956 ("BHC Act") (12 U.S.C. 1841 et seq.); and the International Banking Act of 1978 ("IBA") (92 Stat. 607; 12 U.S.C. 3101 et seq.).

(b) Purpose. This subpart sets out rules governing the international and foreign activities of U. S. banking organizations, including procedures for establishing foreign branches and Edge corporations to engage in international banking and for investments in foreign organizations, and specifies the activities they may undertake through foreign and domestic affiliates.

(c) Scope. This subpart applies to corporations organized under section 25(a) of the FRA (12 U.S.C. 611-631), "Edge corporations"; to corporations having an agreement or undertaking with the Board under section 25 of the FRA (12 U.S.C. 601-604a), "Agreement corporations"; to member banks with respect to their foreign branches and investments in foreign banks under section 25 of the FRA (12 U.S.C. 601-604a);[1/] and to bank holding companies with respect to

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1/ Section 25 of the FRA, which refers to national banking associations, also applies to state member banks of the Federal Reserve System by virtue of section 9 of the FRA (12 U.S.C. 321).

the exemption from the nonbanking prohibitions of the BHC Act afforded by section 4(c)(13) of the BHC Act (12 U.S.C. 1843(c)(13)).

SECTION 211.2 - Definitions

Unless otherwise specified, for the purposes of this subpart:

(a) An "affiliate" of an organization means (1) any entity of which the organization is a direct or indirect subsidiary; or (2) any direct or indirect subsidiary of the organization or such entity.

(b) "Capital and surplus" means paid-in and unimpaired capital and surplus, and includes undivided profits but does not include the proceeds of capital notes or debentures.

(c) "Directly or indirectly" when used in reference to activities or investments of an organization means activities or investments of the organization or of any subsidiary of the organization.

(d) An Edge corporation is "engaged in banking" if it is ordinarily engaged in the business of accepting deposits in the United States from nonaffiliated persons.

(e) "Engaged in business" or "engaged in activities" in the United States means maintaining and operating an office (other than a representative office) or subsidiary in the United States.

(f) "Foreign" or "foreign country" refers to one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and the Commonwealth of Puerto Rico.

(g) "Foreign bank" means an organization that: is organized under the laws of a foreign country; engages in the business of banking; is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations; receives deposits to a substantial extent in the regular course of its business; and has the power to accept demand deposits.

(h) "Foreign branch" means an office of an institution that is located outside the country under the laws of which the institution is organized, at which a banking or financing business is conducted.

(i) "Investment" means the ownership or control of shares (including partnership interests or other interests evidencing ownership), binding commitments to acquire shares, contributions to the capital and surplus of an organization, and the holding of an organization's subordinated debt when shares of the organization are also held by the investor or the investor's affiliate.

(j) "Investor" means an Edge corporation, Agreement corporation, bank holding company, or member bank.

(k) "Joint venture" means an organization that has 20 percent or more of its voting shares held directly or

indirectly by the investor or by an affiliate of the investor, but which is not a subsidiary of the investor.

(l) "Organization" means a corporation, government, partnership, association, or any other legal or commercial entity.

(m) "Person" means an individual or an organization.

(n) "Portfolio investment" means an investment in an organization other than a subsidiary or joint venture.

(o) "Representative office" means an office that engages solely in representational functions such as solicitation of new business for or liaison between the organization's head office and customers in the United States, and does not have authority to make business decisions for the account of the organization represented.

(p) "Subsidiary" means an organization more than 50 percent of the voting shares of which is held directly or indirectly by the investor, or which is otherwise controlled or capable of being controlled by the investor or an affiliate of the investor.

SECTION 211.3 - Foreign branches of U. S. banking organizations

(a) Establishment of foreign branches.

(1) Right to establish branches. Foreign branches may be established by any member bank having capital and surplus of $1,000,000 or more, an Edge corporation, an Agreement corporation, or by a subsidiary of any of these or of a bank holding company. Unless otherwise provided in this

section, the establishment of a foreign branch requires the specific prior approval of the Board.

(2) Branching within a foreign country. Unless the organization has been notified otherwise, no prior Board approval is required for an organization to establish additional branches in any foreign country where it operates one or more branches.2/

(3) Branching into additional foreign countries. After giving the Board 45 days' prior written notice, an organization that operates branches in two or more foreign countries may establish a branch in an additional foreign country, unless notified otherwise by the Board.2/

(4) Expiration of branching authority. Authority to establish branches through prior approval or prior notice shall expire one year from the date the authority is received, unless the Board extends the period.

(5) Reporting. Any organization that opens, closes, or relocates a branch shall notify the Board within 30 days of the action and furnish the address of the branch.

(b) Further powers of foreign branches of member banks. In addition to its general banking powers, and to the extent consistent with its charter, a foreign branch of a

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2/ For the purpose of this paragraph, a subsidiary other than a bank or an Edge or Agreement corporation is considered to be operating a branch in a foreign country if it has an affiliate that operates an office (other than a representative office) in that country.

member bank may engage in the following activities so far as usual in connection with the business of banking in the country where it transacts business:

(1) Guarantees. Guarantee customers' debts, or otherwise agree for their benefit to make payments on the occurrence of readily ascertainable events,[3/] if the guarantee or agreement specifies a maximum monetary liability; but except to the extent that the member bank is fully secured, it may not have liabilities outstanding for any person on account of such guarantees or agreements which when aggregated with other unsecured obligations of the same person exceed the limit contained in paragraph (a)(1) of section 5200 of the Revised Statutes (12 U.S.C. 84);

(2) Investments. Invest in: (i) the securities of the central bank, clearing houses, governmental entities, and government-sponsored development banks of the country in which the foreign branch is located; (ii) other debt securities eligible to meet local reserve or similar requirements; and (iii) shares of professional societies, schools, and the like necessary to the business of the branch; however, the total investments of the bank's branches in that country under this paragraph (exclusive of securities held as required by the law of that country or as authorized under section 5136 of the

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3/ "Readily ascertainable events" include, but are not limited to, events such as nonpayment of taxes, rentals, customs duties, or costs of transport and loss or nonconformance of shipping documents.

Revised Statutes (12 U.S.C. 24)) may not exceed one percent of the total deposits of the bank's branches in that country on the preceding year-end call report date (or on the date of acquisition of the branch in the case of a branch that has not so reported);

(3) Government obligations. Underwrite, distribute, buy, and sell obligations of: (i) the national government of the country in which the branch is located; (ii) an agency or instrumentality of the national government; and (iii) a municipality or other local or regional governmental entity of the country; however, no member bank may hold, or be under commitment with respect to, such obligations for its own account in an aggregate amount exceeding 10 percent of its capital and surplus;

(4) Credit extensions to bank's officers. Extend credit to an officer of the bank residing in the country in which the foreign branch is located to finance the acquisition or construction of living quarters to be used as the officer's residence abroad, provided the credit extension is reported promptly to the branch's home office and any extension of credit exceeding $100,000 (or the equivalent in local currency) is reported also to the bank's board of directors;

(5) Insurance. Act as insurance agent or broker;

(6) Employee benefits program. Pay to an employee of the branch, as part of an employee benefits

program, a greater rate of interest than that paid to other depositors of the branch;

(7) Repurchase agreements. Engage in repurchase agreements involving securities and commodities that are the functional equivalents of extensions of credit; and

(8) Other activities. With the Board's prior approval, engage in other activities that the Board determines are usual in connection with the transaction of the business of banking in the places where the member bank's branches transact business.

(c) Reserves of foreign branches of member banks. Reserves shall be maintained against foreign branch deposits when required by Part 204 of this chapter (Regulation D).

SECTION 211.4 - Edge and Agreement corporations

(a) Organization.

(1) Permit. A proposed Edge corporation shall become a body corporate when the Board issues a permit approving its proposed name, articles of association, and organization certificate.

(2) Name. The name shall include "international," "foreign," "overseas," or some similar word, but may not resemble the name of another organization to an extent that might mislead or deceive the public.

(3) Articles of association. In addition to the information required by section 25(a) of the FRA, the articles of association shall include the amount of capital stock and of

surplus (excluding undivided profits) of the Edge corporation.

(4) Federal Register notice. The Board will publish in the Federal Register notice of any proposal to organize an Edge corporation and will give interested persons an opportunity to express their views on the proposal.

(5) Factors considered by the Board. The factors considered by the Board in acting on a proposal to organize an Edge corporation include:

(i) the financial condition and history of the applicant;

(ii) the general character of its management;

(iii) the convenience and needs of the community to be served with respect to international banking and financing services; and

(iv) the effects of the proposal on competition.

(6) Authority to commence business. After the Board issues a permit, the Edge corporation may elect officers and otherwise complete its organization, invest in obligations of the United States Government, and maintain deposits authorized by paragraph (e) of this section, but it may not exercise any other powers until at least 25 percent of the authorized capital stock specified in the articles of association has been paid in cash, and each shareholder has paid in cash at least 25 percent of that shareholder's stock

subscription. Authority to commence business as an Edge corporation shall expire one year after issuance of the permit, unless the Board extends the period.

(7) Amendments to articles of association. No amendment to the articles of association shall become effective until approved by the Board.

(b) Nature and ownership of shares.

(1) Shares. Shares of stock in an Edge corporation may not include no-par value shares and shall be issued and transferred only on its books and in compliance with section 25(a) of the FRA and this subpart. The share certificates of an Edge corporation shall:

(i) name and describe each class of shares indicating its character and any unusual attributes such as preferred status or lack of voting rights; and

(ii) conspicuously set forth the substance of:

(A) limitations upon the rights of ownership and transfer of shares imposed by section 25(a) of the FRA and this subpart; and

(B) rules that the Edge corporation prescribes in its bylaws to ensure compliance with this paragraph. Any change in status of a shareholder that causes a violation of section 25(a) of the FRA shall be reported to the Board as soon as possible, and the Edge corporation shall take such action as the Board may direct.

(2) Ownership of Edge corporations by foreign institutions.

(i) Prior Board approval. One or more foreign or foreign-controlled domestic institutions referred to in paragraph 13 of section 25(a) of the FRA (12 U.S.C. 619) may apply for the Board's prior approval to acquire directly or indirectly a majority of the shares of the capital stock of an Edge corporation.

(ii) Conditions and requirements. A foreign institution shall:

(A) provide the Board information related to its financial condition and activities and such other information as may be required by the Board;

(B) ensure that any funding by its Edge corporation of an affiliate[4/] is on an arm's-length basis and that the Edge corporation will not provide funding on a continual or substantial basis to any affiliate or office of the foreign institution through transactions that would be inconsistent with the international and foreign business purposes for which Edge corporations are organized;

(C) in the case of a foreign institution not subject to section 4 of the BHC Act: (i) comply with any conditions that the Board may impose that are

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4/ For purposes of this paragraph, "affiliate" means any organization that would be an "affiliate" under section 23A of the FRA (12 U.S.C. 371c) if the foreign institution were a member bank.

necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States; and (ii) give the Board 45 days' prior written notice, in a form to be prescribed by the Board, before engaging in any non-banking activity in the United States, or making any initial or additional investments in another organization, that would require prior Board approval or notice by an organization subject to section 4 of the BHC Act; in connection with such notice, the Board may impose conditions necessary to prevent adverse effects that may result from such activity or investment; and

(D) invest in Edge corporations no more than 10 percent of its capital and surplus.

(3) Change in control.

(i) Prior notice. Any person, other than a foreign or foreign-controlled domestic institution that applies under paragraph (b)(2) of this section, shall give the Board 60 days' prior written notice, in a form to be prescribed by the Board, before acquiring, directly or indirectly, 25 percent or more of the voting shares, or otherwise acquiring control, of an Edge corporation; the Board may extend the 60-day period for an additional 30 days by notifying the acquiring party; and

(ii) Conditions. In reviewing a notice filed under this paragraph, the Board shall consider the

factors set forth in paragraph (a) of this section and may impose any conditions that it finds necessary to assure the safe and sound operation of the Edge corporation, to assure the international character of its operation, and to prevent adverse effects such as decreased or unfair competition, conflicts of interest, or undue concentration of resources.

(c) Domestic branches. An Edge corporation may establish branches in the United States 45 days after the Edge corporation has given notice to its Reserve Bank, unless the Edge corporation is notified to the contrary within that time. The notice to the Reserve Bank shall include a copy of the notice of the proposal published in a newspaper of general circulation in the communities to be served by the branch. The newspaper notice shall be placed in the classified advertising legal notices section of the newspaper and may appear no earlier than 90 calendar days prior to submission of notice of the proposal to the Reserve Bank. The newspaper notice must provide an opportunity for the public to give written comment on the proposal to the appropriate Federal Reserve Bank for at least 30 days after the date of publication. The factors considered in acting upon a proposal to establish a branch are enumerated in paragraph (a)(5) of this section. Authority to open a branch under prior notice shall expire one year from the earliest date on which it could have been opened, unless the Board extends the period.

(d) Reserve requirements and interest rate limitations. The deposits of an Edge or Agreement corporation are subject to Parts 204 and 217 of this chapter (Regulations D and Q) in the same manner and to the same extent as if the Edge or Agreement corporation were a member bank.

(e) Permissible activities in the United States. An Edge corporation may engage directly or indirectly in activities in the United States that are permitted by the sixth paragraph of section 25(a) of the FRA and are incidental to international or foreign business, and in such other activities as the Board determines are incidental to international or foreign business. The following activities will ordinarily be considered incidental to an Edge corporation's international or foreign business:

(1) Deposit activities.

(i) Deposits from foreign governments and foreign persons. An Edge corporation may receive in the United States transaction accounts, savings, and time deposits (including negotiable certificates of deposits) from foreign governments and their agencies and instrumentalities; offices or establishments located abroad; and individuals residing abroad.

(ii) Deposits from other persons. An Edge corporation may receive from any other person in the United States transaction accounts, savings, and time deposits (including negotiable certificates of deposit) if such deposits:

(i) are to be transmitted abroad;

(ii) consist of funds to be used for payment of obligations to the Edge corporation or collateral securing such obligations;

(iii) consist of the proceeds of collections abroad that are to be used to pay for exported or imported goods or for other costs of exporting or importing or that are to be periodically transferred to the depositor's account at another financial institution;

(iv) consist of the proceeds of extensions of credit by the Edge corporation; or

(v) represent compensation to the Edge corporation for extensions of credit or services to the customer.

(2) Liquid funds. Funds of an Edge or Agreement corporation not currently employed in its international or foreign business, if held or invested in the United States, shall be in the form of cash, deposits with depository institutions, as described in Part 204 of this chapter (Regulation D), other Edge and Agreement corporations, and money market instruments such as bankers' acceptances, obligations of or fully guaranteed by federal, state, and local governments and their instrumentalities, repurchase agreements, federal funds sold, and commercial paper.

(3) Borrowings.

(i) Borrow from domestic offices of other Edge and Agreement corporations, banks, and depository institutions (as described in Part 204 of this chapter) or issue obligations to the United States or any of its agencies;

(ii) Incur indebtedness from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof that the Edge corporation is obligated to repurchase;

(iii) Issue long-term subordinated debt that does not qualify as a "deposit" under Part 204 of this chapter (Regulation D).

(4) Credit activities.

(i) Finance the following: (A) contracts, projects, or activities performed substantially abroad; (B) the importation into or exportation from the United States of goods, whether direct or through brokers or other intermediaries; (C) the domestic shipment or temporary storage of goods being imported or exported (or accumulated for export); and (D) the assembly or repackaging of goods imported or to be exported;

(ii) Finance the costs of production of goods and services for which export orders have been received or which are identifiable as being directly for export;

(iii) Assume or acquire participations in extensions of credit, or acquire obligations arising from transactions the Edge corporation could have financed;

(iv) Guarantee a customer's debts, or otherwise agree for the customer's benefit to make payments on the occurrence of readily ascertainable events,[5/] if the guarantee or agreement specifies the maximum monetary liability thereunder and is related to a type of transaction described in paragraphs (e)(4)(i) and (ii) of this section;

(v) Provide personal banking services to the officers and employees of the Edge corporation and its affiliates; however, loans to such persons shall be subject to the restrictions of Part 215 of this chapter (Regulation O) as if the Edge corporation were a member bank.

(5) Payments and collections. Receive checks, bills, drafts, acceptances, notes, bonds, coupons, and other instruments for collection abroad, and collect such instruments in the United States for a customer abroad.

(6) Foreign exchange. Buy and sell spot and forward foreign exchange.

(7) Fiduciary and investment advisory activities.

(i) Hold securities in safekeeping for, or buy and sell securities upon the order and for the account and

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5/ "Readily ascertainable events" include, but are not limited to, events such as nonpayment of taxes, rentals, customs duties, or cost of transport and loss or nonconformance of shipping documents.

risk of, a person, provided such services for U. S. persons shall be with respect to foreign securities only;

(ii) Act as paying agent for securities issued by foreign governments or other entities organized under foreign law;

(iii) Act as trustee, registrar, conversion agent, or paying agent with respect to any class of securities issued to finance foreign activities and distributed solely outside the United States;

(iv) Make private placements of participations in its investments and extensions of credit; however, except to the extent permissible for member banks under section 5136 of the Revised Statutes (12 U.S.C. 24), no Edge corporation may otherwise engage in the business of selling or distributing securities in the United States;

(v) Act as investment or financial adviser by providing portfolio investment advice and portfolio management with respect to securities, other financial instruments, real property interests and other investment assets,[6/] and advice on mergers and acquisitions, provided such services for U. S. persons shall be with respect to foreign assets only; and

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6/ For purposes of this section, management of an investment portfolio does not include operational management of real property, or industrial or commercial assets.

(vi) Provide general economic information and advice, general economic statistical forecasting services and industry studies, provided such services for U. S. persons shall be with respect to foreign economies and industries only.

(8) Other activities. With the Board's prior approval, engage in other activities in the United States that the Board determines are incidental to the international or foreign business of Edge corporations.

(f) Agreement corporations. With the prior approval of the Board, a member bank or bank holding company may invest in a federally- or state-chartered corporation that has entered into an agreement or undertaking with the Board that it will not exercise any power that is impermissible for an Edge corporation under this subpart.

SECTION 211.5 - Investments and activities abroad

(a) General policy. Activities of investors abroad, whether conducted directly or indirectly, shall be confined to those of a banking or financial nature and those that are necessary to carry on such activities. In doing so, investors shall at all times act in accordance with high standards of banking or financial prudence, having due regard for diversification of risks, suitable liquidity, and adequacy of capital. Subject to these considerations and the other provisions of this section, it is the Board's policy to allow activities abroad to be organized and operated as best meets corporate policies.

(b) Investment requirements.

(1) Eligible investments.

(i) An investor may directly or indirectly:

(A) invest in a subsidiary that engages solely in activities listed in paragraph (d) of this section or in such other activities as the Board has determined in the circumstances of a particular case are permissible; except that, in the case of an acquisition of a going concern, existing activities that are not otherwise permissible for a subsidiary may account for not more than two percent of either the subsidiary's consolidated assets or revenues;

(B) invest in a joint venture provided that, unless otherwise permitted by the Board, not more than 10 percent of the joint venture's consolidated assets or revenues shall be attributable to activities not listed in paragraph (d) of this section; and

(C) make portfolio investments (including securities held in trading or dealing accounts) in an organization if the total direct and indirect portfolio investments in organizations engaged in activities that are not permissible for joint ventures does not at any time exceed 100 percent of the investor's capital and surplus.7/

(ii) A member bank's direct investments under section 25 of the FRA shall be limited to foreign banks

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7/ For this purpose, a direct subsidiary of a member bank is deemed to be an investor.

and to foreign organizations formed for the sole purpose of either holding shares of a foreign bank or performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or foreign bank affiliate of the member bank.

(2) Investment limit. In computing the amount that may be invested in any organization under this section, there shall be included any unpaid amount for which the investor is liable and any investments by affiliates.

(3) Divestiture. An investor shall dispose of an investment promptly (unless the Board authorizes retention) if:

(i) the organization invested in

(A) underwrites, sells, or distributes securities in the United States;

(B) engages in the general business of buying or selling goods, wares, merchandise, or commodities in the United States;

(C) engages directly or indirectly in business in the United States that is not permitted to an Edge corporation in the United States; or

(D) engages in impermissible activities to an extent not permitted under paragraph (b)(1) of this section; or

(ii) after notice and opportunity for hearing, the investor is advised by the Board that its

investment is inappropriate under the FRA, the BHC Act, or this subpart.

(c) Investment procedures.[8/] Direct and indirect investments shall be made in accordance with the general consent, prior notice, or specific consent procedures contained in this paragraph. The Board may at any time, upon notice, suspend the general consent and prior notice procedures with respect to any investor or with respect to the acquisition of shares of organizations engaged in particular kinds of activities. An investor shall apply for and receive the prior specific consent of the Board for its first investment in a subsidiary or joint venture unless an affiliate has made such an investment. Authority to make investments under prior notice or specific consent shall expire one year from the date on which the authority is received, unless the Board extends the period.

(1) General consent. The Board grants its general consent for the following:

(i) any investment in a joint venture or subsidiary, and any portfolio investment, if:

(A) the organization invested in is not engaged in business in the United States other than that

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8/ When necessary, the general consent and prior notice provisions of this section constitute the Board's approval under the eighth paragraph of section 25(a) of the FRA for investments in excess of the limitations therein based on capital and surplus.