At. Cir. No. 10485

October 23, 1991

To all Depository Institutions in the Second Federal Reserve District, and Others Maintaining Sets of Board Regulations:

Enclosed is a copy of a revised Regulation K pamphlet, "International Banking Operations," as amended effective May 24, 1991, by the Board of Governors of the Federal Reserve System.

The revised pamphlet supersedes the previous printing of this regulation and any subsequent amendments thereto.

Circulars Division
FEDERAL RESERVE BANK OF NEW YORK

Board of Governors of the Federal Reserve System

A-Cir. No. 10485

Regulation K
International Banking Operations

12 CFR 211; as amended effective May 24, 1991

Any inquiry relating to this regulation should be addressed to the Federal Reserve Bank of the Federal Reserve District in which the inquiry arises.

July 1991

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Regulation K
International Banking Operations

12 CFR 211; as amended effective May 24, 1991

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 USC 221 et seq.); the Bank Holding Company Act of 1956 ("BHC Act") (12 USC 1841 et seq.); and the International Banking Act of 1978 ("IBA") (12 USC 3101 et seq.). Requirements for the collection of information contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 USC 3501 et seq. and have been assigned OMB Nos. 7100-0107; 7100-0109; 7100-0110; 7100-0069; 7100-0086, and 7100-0073.

(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.

(c) *Scope.* This subpart applies to—

(1) corporations organized under section 25(a) of the FRA (12 USC 611–631), "Edge corporations";

(2) corporations having an agreement or undertaking with the Board under section 25 of the FRA (12 USC 601–604a), "agreement corporations";

(3) member banks with respect to their foreign branches and investments in foreign banks under section 25 of the FRA (12 USC 601–604a);[1] and

(4) bank holding companies with respect to the exemption from the nonbanking prohibitions of the BHC Act afforded by section 4(c)(13) of the BHC Act (12 USC 1843(c)(13)).

[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 USC 321).

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 Adequacy Guidelines" means the Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (12 CFR 208, App. A) [at 3–1506.1].

(c) "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.

(d) "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.

(e) "Eligible country" means a country that, since 1980, has restructured its sovereign debt held by foreign creditors, and any other country that the Board deems to be eligible.

(f) 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.

(g) "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.

(h) "Equity" means an ownership interest in an organization, whether through—
(1) voting or nonvoting shares;
(2) general or limited partnership interests;
(3) any other form of interest conferring ownership rights, including warrants, debt, or any other interests that are convertible into shares or other ownership rights in the organization; or
(4) loans that provide rights to participate in the profits of an organization, unless the investor receives a determination that such loans should not be considered equity in the circumstances of the particular investment.

(i) "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.

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

(k) "Foreign branch" means an office of an organization (other than a representative office) that is located outside the country under the laws of which the organization is established, at which a banking or financing business is conducted.

(*l*) "Foreign person" means an office or establishment located, or individual residing, outside the United States.

(m) "Investment" means—
(1) the ownership or control of equity;
(2) binding commitments to acquire equity;
(3) contributions to the capital and surplus of an organization; and
(4) the holding of an organization's subordinated debt when the investor and the investor's affiliates hold more than 5 percent of the equity of the organization.

(n) "Investor" means an Edge corporation, agreement corporation, bank holding company, or member bank.

(o) "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.

(p) "Loans and extensions of credit" means all direct and indirect advances of funds to a person made on the basis of any obligation of that person to repay funds.

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

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

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

(t) "Representative office" means an office that—

(1) engages solely in representational and administrative functions such as solicitation of new business for or liaison between the organization's head office and customers in the United States, and

(2) does not have authority to make business decisions for the account of the organization represented.

(u) "Subsidiary" means an organization more than 50 percent of the voting shares of which is held directly or indirectly, or which is otherwise controlled or capable of being controlled, by the investor or an affiliate of the investor under any authority. Among other circumstances, an investor is considered to control an organization if the investor or an affiliate is a general partner of the organization or if the investor and its affiliates directly or indirectly own or control more than 50 percent of the equity of the organization.

(v) "Tier 1 capital" has the same meaning as provided under the Capital Adequacy Guidelines (12 CFR 208, app. A).

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 a subsidiary held pursuant to this subpart. 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 earliest date on which the authority could have been exercised, unless the Board extends the period.

(5) *Reporting.* Any organization that opens, closes, or relocates a branch shall report such change in a manner prescribed by the Board.

(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 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 debts, or otherwise agree 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

[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.

[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.

of the same person, exceed the limit contained in paragraph (a)(1) of section 5200 of the Revised Statutes (12 USC 84) for loans and extensions of credit;

(2) *Government obligations.* Underwrite, distribute, buy, sell, and hold obligations of—

(i) the national government of the country in which the branch is located;

(ii) an agency or instrumentality of the national government where supported by the taxing authority, guarantee, or full faith and credit of the national government; and

(iii) a political subdivision of the country;

Provided however that, no member bank may hold, or be under commitment with respect to, such obligations for its own account in an aggregate amount exceeding the greater of:

(A) 10 percent of its tier 1 capital; or

(B) 10 percent of the total deposits of the bank's branches in that country on the preceding year-end call report date (or the date of acquisition of the branch in the case of a branch that has not been so reported);

(3) *Other investments.* Invest in—

(i) the securities of the central bank, clearinghouses, governmental entities other than those authorized under paragraph (b)(2) of this section, 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 automated electronic payments networks, professional societies, schools, and the like necessary to the business of the branch;

Provided however that, 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 Revised Statutes (12 USC 24, Seventh)) may not exceed 1 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);

(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 however that—

(i) the credit extension is reported promptly to the branch's home office; and

(ii) any extension of credit exceeding $100,000 (or the equivalent in local currency) is reported also to the bank's board of directors;

(5) *Real estate loans.* Take liens or other encumbrances on foreign real estate in connection with its extensions of credit, whether or not of first priority and whether or not the real estate has been improved.

(6) *Insurance.* Act as insurance agent or broker;

(7) *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;

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

(9) *Investment in subsidiaries.* With the Board's prior approval, acquire all of the shares of a company (except where local law requires other investors to hold directors' qualifying shares or similar types of instruments) that engages solely in activities—

(i) in which the member bank is permitted to engage; or

(ii) that are incidental to the activities of the foreign branch; and

(10) *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.* Member banks shall maintain reserves

against foreign branch deposits when required by part 204 of this chapter (Regulation D).

SECTION 211.4—Edge and Agreement Corporations

(a) *Organization.*

(1) *Board authority.* The Board shall have the authority to approve—

(i) the establishment of Edge corporations; and

(ii) investments by member banks and bank holding companies in agreement corporations.

(2) *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.

(3) *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.

(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.*

(i) 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 with depository institutions, 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.

(ii) Unexercised 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.

(8) *Shareholders meeting.* An Edge corporation shall provide in its bylaws that—

(i) a shareholders meeting shall be convened at the request of the Board within five days after the Board gives notice of the request to the Edge corporation;

(ii) any shareholder or group of shareholders that owns or controls 25 percent or more of the shares of the Edge corporation shall attend such a meeting in person or by proxy; and

(iii) failure by a shareholder or authorized representative to attend any such meeting in person or by proxy may result in removal or barring of such shareholders or any representatives from further participation in the management or affairs of the Edge corporation.

(b) *Nature and ownership of shares.*

(1) *Shares.*

(i) 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.

(ii) The share certificates of an Edge corporation shall—

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

(B) conspicuously set forth the substance of—

(*1*) any limitations upon the rights of ownership and transfer of shares imposed by section 25(a) of the FRA; and

(*2*) any rules that the Edge corpo-

ration prescribes in its bylaws to ensure compliance with this paragraph.

(iii) 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 USC 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.* Such an institution shall—

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

(B) ensure that any transaction by an Edge corporation with an affiliate[4] is on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions by the Edge corporation with nonaffiliated persons, and does not involve more than the normal risk of repayment or present other unfavorable features;

(C) ensure 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;

(D) invest no more than 10 percent of the institution's capital and surplus in the aggregate amount of stock held in all Edge corporations; and

(E) in the case of a foreign institution not subject to section 4 of the BHC Act—

(*1*) comply with any conditions that the Board may impose that are necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States; and

(*2*) give the Board 45 days' prior written notice, in a form to be prescribed by the Board, before engaging in any nonbanking 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.

(3) *Change in control.*

(i) *Prior notice.* Any person 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. A notice under this paragraph need not be filed where a change in control is effected through a transaction requiring the Board's approval under section 3 of the BHC Act (12 USC 1842).

(ii) *Board review.* In reviewing a notice filed under this paragraph, the Board shall consider the factors set forth in paragraph (a)(5) of this section and may disapprove a notice or 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.*

(1) *Prior notice.* (i) An Edge corporation

[4] For purposes of this paragraph, "affiliate" means any organization that would be an "affiliate" under section 23A of the FRA (12 USC 371c) if the Edge corporation were a member bank.

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.

(ii) 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.

(iii) The newspaper notice 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.

(2) The factors considered in acting upon a proposal to establish a branch are enumerated in paragraph (a)(4) of this section.

(3) *Expiration of authority.* Authority to open a branch under prior notice shall expire one year from the earliest date on which that authority could have been exercised, 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 issuing negotiable certificates of deposits) from foreign governments and their agencies and instrumentalities, and from foreign persons.

(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 issuing negotiable certificates of deposit) if such deposits—

(A) are to be transmitted abroad;

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

(C) 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;

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

(E) represent compensation to the Edge corporation for extensions of credit or services to the customer;

(F) are received from Edge or agreement corporations, foreign banks and other depository institutions (as described in part 204 of this chapter (Regulation D));

(G) are received from an organization that by its charter, license or enabling law is limited to business that is of an international character, including foreign sales corporations (26 USC 921); transportation organizations engaged exclusively in the international transportation of passengers or in the movement of goods, wares, commodities or merchandise in international or foreign commerce; and export trading companies that are exclusively engaged in activities related to international trade.

(2) *Liquid funds.* Funds of an Edge or agreement corporation that are not currently employed in its international or foreign business, if held or invested in the United States, shall be in the form of—

(i) cash;

(ii) deposits with depository institutions, as described in part 204 of this chapter (Regulation D), and other Edge and agreement corporations;

(iii) money market instruments (including repurchase agreements with respect to such instruments), such as banker's acceptances, federal funds sold, and commercial paper; and

(iv) short- or long-term obligations of, or fully guaranteed by, federal, state, and local governments and their instrumentalities.

(3) *Borrowings.* An Edge corporation may—

(i) borrow from offices of other Edge and agreement corporations, foreign banks, and depository institutions (as described in part 204 of this chapter (Regulation D) or issue obligations to the United States or any of its agencies or instrumentalities;

(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 or instrumentality 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.* An Edge corporation may—

(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 including acquisition of obligations of foreign governments;

(iv) guarantee debts, or otherwise agree 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; and

(v) Provide credit and other banking services for domestic and foreign purposes to foreign governments and their agencies and instrumentalities; foreign persons; and organizations of the type described in paragraph (e)(1)(ii)(G) of this section.

(5) *Payments and collections.* An Edge corporation may 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; and may transmit and receive wire transfers of funds and securities for depositors.

(6) *Foreign exchange.* An Edge corporation may engage in foreign exchange activities.

(7) *Fiduciary and investment advisory activities.* An Edge corporation may—

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

[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.

pations in its investments and extensions of credit; however, except to the extent permissible for member banks under section 5136 of the Revised Statutes (12 USC 24, Seventh), no Edge corporation may otherwise engage in the business of underwriting, distributing, or buying or selling 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 by providing advice on mergers and acquisitions, provided such services for U.S. persons shall be with respect to foreign assets only; and

(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) *Banking services for employees.* Provide banking services, including deposit services, to the officers and employees of the Edge corporation and its affiliates; however, extensions of credit 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.

(9) *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 abroad, whether conducted directly or indirectly, shall be confined to activities 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.* Subject to the limitations in paragraph (b)(2) of this section, an investor may directly or indirectly—

(i) 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; provided however 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 5 percent of either the consolidated assets or revenues of the acquired organization;

(ii) 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 are attributable to activities not listed in paragraph (d) of this section; and

(iii) make protfolio investments in an organization, provided however that—

(A) the total direct and indirect portfolio investments by the investor and its affiliates in organizations engaged in activities that are not permissible for joint ventures do not exceed—

(*1*) 40 percent of the total equity of the organization, when combined with shares in the organization held in trading or dealing accounts pursuant to paragraph (d)(14) of this section and shares in the organization held under any other authority; or

(*2*) 25 percent of the investor's tier

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

1 capital where the investor is a bank holding company or 100 percent of tier 1 capital for any other investor, when combined with underwriting commitments and shares held in trading or dealing accounts pursuant to paragraph (d)(14) of this section;[7] and

(B) any loans and extensions of credit made by an investor or its affiliates to the organization are on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions between the investor or its affiliates and nonaffiliated persons.

(2) *Direct investments by member banks.* A member bank's direct investments under section 25 of the FRA shall be limited to—

(i) foreign banks;

(ii) 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; and

(iii) subsidiaries established pursuant to section 211.3(b)(9) of this subpart.

(3) *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 in the same organization held by affiliates under any authority.

(4) *Divestiture.* An investor shall dispose of an investment promptly (unless the Board authorizes retention) if—

(i) the organization invested in—

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

(B) engages directly or indirectly in other business in the United States that is not permitted to an Edge corporation in the United States except that an investor may hold up to 5 percent of the shares of a foreign company that engages directly or indirectly in business in the United States that is not permitted to an Edge corporation; or

(C) 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. Except as the Board may otherwise determine, in order for an investor to make investments under the general consent procedure, the investor and any other investor of which it is a subsidiary shall be in compliance with applicable minimum standards for capital adequacy. The Board may at any time, upon notice, modify or 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 initial investment in its first 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 earliest date on which the authority could have been exercised, unless the Board extends the period.

(1) *General consent.* Subject to the other limitations of this section, the Board grants its general consent for the following:[9]

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

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

[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.

[9] In determining compliance with these limits, an investor shall combine the value of all shares of an organization held in trading or dealing accounts under paragraph (d)(14) of this section with investments in the same organization. Shares held in trading or dealing accounts are also subject to the limits in paragraph (d)(14) of this section.

if the total amount invested (in one transaction or in a series of transactions) does not exceed the lesser of—

(A) $25 million; or

(B) 5 percent of the investor's tier 1 capital in the case of a member bank, bank holding company, or Edge corporation engaged in banking, or 25 percent of the investor's tier 1 capital in the case of an Edge corporation not engaged in banking;

(ii) any additional investment in an organization in any calendar year so long as—

(A) the total amount invested in that calendar year does not exceed 10 percent of the investor's tier 1 capital; and

(B) the total amount invested under section 211.5 (including investments made pursuant to specific consent or prior notice) in that calendar year does not exceed cash dividends reinvested under paragraph (c)(1)(iii) of this section plus 10 percent of the investor's direct and indirect historical cost[10] in the organization, which investment authority, to the extent unexercised, may be carried forward and accumulated for up to five consecutive years;

(iii) any additional investment in an organization in an amount equal to cash dividends received from that organization during the preceding 12 calendar months; or

(iv) any investment that is acquired from an affiliate at net asset value.

(2) *Prior notice.* An investment that does not qualify under the general-consent procedure may be made after the investor has given 45 days' prior written notice to the Board. The Board may waive the 45-day period if it finds immediate action is required by the circumstances presented. The notice period shall commence at the time the notice is accepted. The Board may suspend the period or act on the investment under the Board's specific-consent procedures.

(3) *Specific consent.* Any investment that does not qualify for either the general-consent or the prior-notice procedure shall not be consummated without the specific consent of the Board.

(d) *Permissible activities.* The Board has determined that the following activities are usual in connection with the transaction of banking or other financial operations abroad:

(1) commercial and other banking activities;

(2) financing, including commercial financing, consumer financing, mortgage banking, and factoring;

(3) leasing real or personal property, or acting as agent, broker, or advisor in leasing real or personal property, if the lease serves as the functional equivalent of an extension of credit to the lessee of the property;

(4) acting as fiduciary;

(5) underwriting credit life insurance and credit accident and health insurance;

(6) performing services for other direct or indirect operations of a United States banking organization, including representative functions, sale of long-term debt, name saving, holding assets acquired to prevent loss on a debt previously contracted in good faith, and other activities that are permissible domestically for a bank holding company under sections 4(a)(2)(A) and 4(c)(1)(C) of the BHC Act;

(7) holding the premises of a branch of an Edge corporation or member bank or the premises of a direct or indirect subsidiary, or holding or leasing the residence of an officer or employee of a branch or subsidiary;

(8) providing investment, financial, or economic advisory services;

(9) general insurance agency and brokerage;

(10) data processing;

(11) organizing, sponsoring, and managing a mutual fund if the fund's shares are not sold or distributed in the United States

[10] The "historical cost" of an investment consists of the actual amounts paid for shares or otherwise contributed to the capital accounts, as measured in dollars at the exchange rate in effect at the time each investment was made. It does not include subordinated debt or unpaid commitments to invest even though these may be considered investments for other purposes of this part. For investments acquired indirectly as a result of acquiring a subsidiary, the historical cost to the investor is measured as of the date of acquisition of the subsidiary at the net asset value of the equity interest in the case of subsidiaries and joint ventures, and in the case of portfolio investments, at the book carrying value.

or to U. S. residents and the fund does not exercise managerial control over the firms in which it invests;

(12) performing management consulting services provided that such services when rendered with respect to the U.S. market shall be restricted to the initial entry;

(13) underwriting, distributing, and dealing in debt securities outside the United States;

(14) underwriting, distributing, and dealing in equity securities outside the United States as follows:

(i) by an investor, or an affiliate, that had commenced such activities prior to March 27, 1991, and subject to limitations in effect at that time (12 CFR 211 (1990)); or

(ii) with the approval of the Board, underwriting equity securities if—

(A) commitments by an investor and its affiliates for the shares of an organization do not in the aggregate exceed the lesser of $60 million or 25 percent of the investor's tier 1 capital unless the underwriter is covered by binding commitments from subunderwriters or other purchasers obtained by the investor or its affiliates; and

(B) commitments by an investor and its affiliates for the shares of an organization in excess of those permitted by paragraph (d)(14)(ii)(A) of this section provided that—

(*1*) the underwriting level approved by the Board for the investor and its affiliates in excess of the limitations of paragraph (d)(14)(ii)(A) of this section is fully deducted from the capital of the bank holding company, and from the capital of the bank where the securities activities are conducted by a subsidiary of a U.S. bank;[11] and

(*2*) in the Board's judgment such bank holding company and bank would remain strongly capitalized after such deduction from capital; and

(iii) with the approval of the Board, dealing in the shares of an organization (including the shares of a U.S. organization with respect to foreign persons only and subject to the limitations on owning or controlling shares of a company in section 4 of the BHC Act and the Board's Regulation Y (12 CFR 225)) where the shares held in the trading or dealing accounts of an investor and its affiliates, when combined with any shares held pursuant to the authority provided under paragraph (b) of this section, do not in the aggregate exceed the lesser of $30 million or 10 percent of the investor's tier 1 capital, provided however that—

(A) for purposes of determining compliance with the limitations of this paragraph (d)(14)(iii) and paragraph (b)(1)(iii)(A)(2) of this section, long and short positions in the same security may be netted and positions in a security may be offset by futures, forwards, options, and similar instruments referenced to the same security through hedging methods approved by the Board, except that any position in a security shall not be deemed to have been reduced by more than 75 percent;

(B) any shares held in trading or dealing accounts for longer that 90 days shall be reported to the senior management of the investor;

(C) any shares acquired pursuant to an underwriting commitment for up to 90 days after the payment date for such underwriting shall not be subject to the dollar and percentage limitations of paragraph (d)(14)(iii) of this section or the investment provisions of paragraph (b) of this section, other than the aggregate limits in paragraph (b)(1)(iii)(A)(2) of this section; and

(D) shares of an organization held in all trading and dealing accounts, when combined with all other equity interests in the organization held by the investor and its affiliates, other than underwriting commitments for shares and shares held pursuant to an underwriting for 90 days following the payment date for such shares, must con-

[11] Fifty percent of such capital deductions shall be from tier 1 capital.

form to the permissible limits for investments in an organization under paragraph (b) of this section.[12]

(iv) underwriting commitments for shares and shares held by an affiliate authorized to underwrite equity securities under section 4(c)(8) of the BHC Act shall not be included in determining compliance with the aggregates limits in paragraph (b)(1)(iii)(A)(2) and the limits of paragraphs (d)(14)(ii)(A) and (iii) of this section, except that shares held by such an affiliate shall be included for purposes of determining compliance with paragraph (d)(14)(iii)(D) of this section.

(15) operating a travel agency provided that the travel agency is operated in connection with financial services offered abroad by the investor or others;

(16) underwriting life, annuity, pension fund–related, and other types of insurance, where the associated risks have been previously determined by the Board to be actuarially predictable, provided however that—

(i) investments in, and loans and extensions of credit (other than loans and extensions of credit fully secured in accordance with the requirements of section 23A of the FRA (12 USC 371c) or with such other standards as the Board may require) to, the company by the investor or its affiliates are deducted from the capital of the investor;[13] and

(ii) activities conducted directly or indirectly by a subsidiary of a U.S. insured bank are excluded from the authority of this paragraph.

(17) acting as a futures commission merchant for financial instruments of the type, and on exchanges, that the Board has previously approved, provided however, that—

(i) activities are conducted in accordance with the standards set forth in section 225.25(b)(18) of the Board's Regulation Y (12 CFR 225.25(b)(18)); and

(ii) prior approval must be obtained for activities conducted on an exchange that requires members to guarantee or otherwise contract to cover losses suffered by other members.

(18) acting as principal or agent in swap transactions[14] subject to any limitations applicable to state member banks under the Board's Regulation H (12 CFR 208), except that where such activities involve contracts related to a commodity, such contracts must provide an option for cash settlement and the option must be exercised upon settlement.

(19) engaging in activities that the Board has determined in Regulation Y (12 CFR 225.25(b)) are closely related to banking under section 4(c)(8) of the BHC Act; and

(20) with the Board's specific approval, engaging in other activities that the Board determines are usual in connection with the transaction of the business of banking or other financial operations abroad and are consistent with the FRA or the BHC Act.

(e) *Debts previously contracted.* Shares or other ownership interests acquired to prevent a loss upon a debt previously contracted in good faith are not subject to the limitations or procedures of this section; however, they shall be disposed of promptly but in no event later than two years after their acquisition, unless the Board authorizes retention for a longer period.

(f) *Investments made through debt-for-equity conversions.*

(1) *Permissible investments.* A bank holding company may make investments through the conversion of sovereign or private debt obligations of an eligible country, either through direct exchange of the debt obligations for the investment or by a payment for the debt in local currency, the proceeds of which, including an additional cash investment not exceeding in the aggregate more than 10 percent of the fair value

[12] Underwriting commitments are combined with shares held by an investor and its affiliates (other than an affiliate authorized to deal in shares under section 4(c)(8) of the BHC Act) in dealing or trading accounts and with portfolio investments for purposes of determining compliance with the aggregate limits in paragraph (b)(1)(iii)(A)(2) of this section.

[13] Fifty percent of such capital deduction shall be from tier 1 capital.

[14] Swap transactions involving equity instruments are separately authorized under paragraph (d)(14) of this section.

of the debt obligations being converted as part of such investment, are used to purchase the following investments:

(i) *Public-sector companies.* A bank holding company may acquire up to and including 100 percent of the shares of (or other ownership interests in) any foreign company located in an eligible country if the shares are acquired from the government of the eligible country or from its agencies or instrumentalities.

(ii) *Private-sector companies.* A bank holding company may acquire up to and including 40 percent of the shares, including voting shares, of (or other ownership interests in) any other foreign company located in an eligible country subject to the following conditions:

(A) a bank holding company may acquire more than 25 percent of the voting shares of the foreign company only if another shareholder or control group of shareholders unaffiliated with the bank holding company holds a larger block of voting shares of the company;

(B) the bank holding company and its affiliates may not lend or otherwise extend credit to the foreign company in amounts greater than 50 percent of the total loans and extensions of credit to the foreign company; and

(C) the bank holding company's representation on the board of directors or on management committees of the foreign company may be no more than proportional to its shareholding in the foreign company.

(2) *Investments by bank subsidiary of bank holding company.* Upon application, the Board may permit an indirect investment to be made pursuant to this paragraph through an insured bank subsidiary of the bank holding company where the bank holding company demonstrates that such ownership is consistent with the purposes of the FRA. In granting its consent, the Board may impose such conditions as it deems necessary or appropriate to prevent adverse effects, including prohibiting loans from the bank to the company in which the investment is made.

(3) *Divestiture.*

(i) *Time limits for divestiture.* The bank holding company shall divest the shares of, or other ownership interests in, any company acquired pursuant to this paragraph (unless the retention of the shares or other ownership interest is otherwise permissible at the time required for divestiture) within the longer of —

(A) ten years from the date of acquisition of the investment except that the Board may extend such period if, in the Board's judgment, such an extension would not be detrimental to the public interest; or

(B) two years from the date on which the bank holding company is permitted to repatriate in full the investment in the foreign company;

Provided however that, in either event divestiture occurs within 15 years of the date of the acquisition.

(ii) *Report to Board.* The bank holding company shall report to the Board on its plans for divesting an investment made under this paragraph two years prior to the final date for divestiture, in a manner to be prescribed by the Board.

(iii) *Other conditions requiring divestiture.* All investments made pursuant to this paragraph are subject to paragraphs (b)(4)(i)(A) and (B) of this section requiring prompt divestiture (unless the Board upon application authorizes retention) if the company invested in engages in impermissible business in the United States that exceeds in the aggregate 10 percent of the company's consolidated assets or revenues calculated on an annual basis; provided however that, such company may not engage in activities in the United States that consist of banking or financial operations (as defined in section 211.23(f)(5)(iii)(B) of this chapter), or types of activities permitted by regulation or order under section 4(c)(8) of the BHC Act, except under regulations of the Board or with the prior approval of the Board.

(4) *Investment procedures.*

(i) *General consent.* Subject to the other limitations of this paragraph, the Board

grants its general consent for investments made under this paragraph if the total amount invested does not exceed the greater of $25 million or 1 percent of the tier 1 capital of the investor.

(ii) All other investment shall be made in accordance with the procedures of paragraph (c) of this section requiring prior notice or specific consent.

(5) *Conditions.*

(i) *Name.* Any company acquired pursuant to this paragraph shall not bear a name similar to the name of the acquiring bank holding company or any of its affiliates.

(ii) *Confidentiality.* Neither the bank holding company nor its affiliates shall provide to any company acquired pursuant to this paragraph any confidential business information or other information concerning customers that are engaged in the same or related lines of business as the company.

SECTION 211.6—Lending Limits and Capital Requirements

(a) *Acceptances of Edge corporations.*

(1) *Limitations.* An Edge corporation shall be and remain fully secured for—

(i) all acceptances outstanding in excess of 200 percent of its tier 1 capital; and

(ii) all acceptances outstanding for any one person in excess of 10 percent of its tier 1 capital;

Provided however that, these limitations apply only to acceptances of the types described in paragraph 7 of section 13 of the FRA (12 USC 372).

(2) *Exceptions.* These limitations do not apply if the excess represents the international shipment of goods and the Edge corporation is—

(i) fully covered by primary obligations to reimburse it that are guaranteed by banks or bankers; or

(ii) covered by participation agreements from other banks, as such agreements are described in section 250.165 of this chapter.

(b) *Loans and extensions of credit to one person.*

(1) *Limitations.* Except as the Board may otherwise specify:

(i) the total loans and extensions of credit outstanding to any person by an Edge corporation engaged in banking and its direct or indirect subsidiaries may not exceed 15 percent of the Edge corporation's tier 1 capital;[15] and

(ii) the total loans and extensions of credit to any person by a foreign bank or Edge corporation subsidiary of a member bank, and by majority-owned subsidiaries of a foreign bank or Edge corporation, when combined with the total loans and extensions of credit to the same person by the member bank and its majority-owned subsidiaries, may not exceed the member bank's limitation on loans and extensions of credit to one person.

(2) *"Loans and extensions of credit"* has the meaning set forth in section 211.2(p) of this part[16] and, for purposes of this paragraph, include—

(i) acceptances outstanding that are not of the types described in paragraph 7 of section 13 of the FRA (12 USC 372);

(ii) any liability of the lender to advance funds to or on behalf of a person pursuant to a guarantee, standby letter of credit, or similar agreements;

(iii) investments in the securities of another organization except where the organization is a subsidiary, and

(iv) any underwriting commitments to an issuer of securities where no binding commitments have been secured from subunderwriters or other purchasers.

[15] For purposes of this subsection, "subsidiary" includes subsidiaries controlled by the Edge corporation but does not include companies otherwise controlled by affiliates of the Edge corporation.

[16] In the case of a foreign government, these include loans and extensions of credit to the foreign government's departments or agencies deriving their current funds principally from general tax revenues. In the case of a partnership or firm, these include loans and extensions of credit to its members and, in the case of a corporation, these include loans and extensions of credit to the corporation's affiliates where the affiliate incurs the liability for the benefit of the corporation.

(3) *Exceptions.* The limitations of paragraph (b)(1) of this section do not apply to—

(i) deposits with banks and federal funds sold;

(ii) bills or drafts drawn in good faith against actual goods and on which two or more unrelated parties are liable;

(iii) any banker's acceptance of the kind described in paragraph 7 of section 13 of the FRA that is issued and outstanding;

(iv) obligations to the extent secured by cash collateral or by bonds, notes, certificates of indebtedness, or Treasury bills of the United States;

(v) loans and extensions of credit that are covered by bona fide participation agreements; or

(vi) obligations to the extent supported by the full faith and credit of the following:

(A) the United States or any of its departments, agencies, establishments, or wholly owned corporations (including obligations to the extent insured against foreign political and credit risks by the Export-Import Bank of the United States or the Foreign Credit Insurance Association), the International Bank for Reconstruction and Development, the International Finance Corporation, the International Development Association, the Inter-American Development Bank, the African Development Bank, the Asian Development Bank; or the European Bank for Reconstruction and Development;

(B) any organization if at least 25 percent of such an obligation or of the total credit is also supported by the full faith and credit of, or participated in by, any institution designated in paragraph (b)(3)(vi)(A) of this section in such manner that default to the lender will necessarily include default to that entity. The total loans and extensions of credit under this paragraph (b)(3)(vi)(B) to any person shall at no time exceed 100 percent of the tier 1 capital of the Edge corporation.

(c) *Capitalization.* An Edge corporation shall at all times be capitalized in an amount that is adequate in relation to the scope and character of its activities. In the case of an Edge corporation engaged in banking, after December 31, 1992, its minimum ratio of qualifying total capital to weighted-risk assets, as determined under the Capital Adequacy Guidelines, shall not be less than 10 percent, of which at least 50 percent shall consist of tier 1 capital; provided however that for purposes of this paragraph, no limitation shall apply as to the inclusion of subordinated debt that qualifies as tier 2 capital under the Capital Adequacy Guidelines.

SECTION 211.7—Supervision and Reporting

(a) *Supervision.*

(1) *Foreign branches and subsidiaries.* Organizations conducting international banking operations under this subpart shall supervise and administer their foreign branches and subsidiaries in such a manner as to ensure that their operations conform to high standards of banking and financial prudence. Effective systems of records, controls, and reports shall be maintained to keep management informed of their activities and condition. Such systems shall provide, in particular, information on risk assets, liquidity management, operations, internal controls, and conformance to management policies. Reports on risk assets shall be sufficient to permit an appraisal of credit quality and assessment of exposure to loss, and for this purpose provide full information on the condition of material borrowers. Reports on the operations and controls shall include internal and external audits of the branch or subsidiary.

(2) *Joint ventures.* Investors shall maintain sufficient information with respect to joint ventures to keep informed of their activities and condition. Such information shall include audits and other reports on financial performance, risk exposure, management policies, operations, and controls. Complete information shall be maintained on all

transactions with the joint venture by the investor and its affiliates.

(3) *Availability of reports to examiners.* The reports and information specified in paragraphs (a)(1) and (2) of this section shall be made available to examiners of the appropriate bank supervisory agencies.

(b) *Examinations.* Examiners appointed by the Board shall examine each Edge corporation once a year. An Edge corporation shall make available to examiners sufficient information to assess its condition and operations and the condition and activities of any organization whose shares it holds.

(c) *Reports.*

(1) *Reports of condition.* Each Edge corporation shall make reports of condition to the Board at such times and in such form as the Board may prescribe. The Board may require that statements of condition or other reports be published or made available for public inspection.

(2) *Foreign operations.* Edge and agreement corporations, member banks, and bank holding companies shall file such reports on their foreign operations as the Board may require.

(3) *Acquisition or disposition of shares.* A member bank, Edge or agreement corporation or a bank holding company shall report, in a manner prescribed by the Board, any acquisition or disposition of shares.

(d) *Filing and processing procedures.*

(1) Unless otherwise directed by the Board, applications, notifications, and reports required by this part shall be filed with the Federal Reserve Bank of the District in which the parent bank or bank holding company is located or, if none, the Reserve Bank of the District in which the applying or reporting institution is located. Instructions and forms for such applications, notifications and reports are available from the Reserve Banks.

(2) The Board shall act on an application or notification under this subpart within 60 calendar days after the Reserve Bank has accepted the application or notification unless the Board notifies the investor that the 60-day period is being extended and states the reasons for the extension.

SUBPART B—FOREIGN BANKING ORGANIZATIONS

SECTION 211.21—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 Bank Holding Company Act of 1956 (12 USC 1841 et seq.) ("BHCA"); and the International Banking Act of 1978 (12 USC 3101 et seq.) ("IBA").

(b) *Purpose and Scope.* This subpart is in furtherance of the purposes of the BHC Act and the IBA. It applies to foreign banks and foreign banking organizations with respect to—

(1) the limitations on interstate banking under section 5 of the IBA (12 USC 3103); and

(2) the exemptions from the nonbanking prohibitions of the BHC Act and the IBA afforded by sections 2(h) and 4(c)(9) of the BHC Act (12 USC 1841(h) and 1843(c)(9)).

SECTION 211.22—Interstate Banking Operations of Foreign Banking Organizations

(a) *Definitions.* The definitions of section 211.2 in subpart A apply to this section subject to the following:

(1) "*Agency*" means any office or any place of business of a foreign bank located in any state of the United States or the District of Columbia at which credit balances are maintained, checks are paid, or money is lent, but at which deposits may not be accepted from a citizen or resident of the United States. Obligations shall not be considered credit balances unless they:

(i) are incidental to, or arise out of the exercise of other lawful banking powers; (ii) are to serve a specific purpose; (iii)

are not solicited from the general public; (iv) are not used to pay routine operating expenses in the United States such as salaries, rent, or taxes; (v) are withdrawn within a reasonable period of time after the specific purpose for which they were placed has been accomplished; and (vi) are drawn upon in a manner reasonable in relation to the size and nature of the account.

(2) *"Banking subsidiary,"* with respect to a specified foreign bank, means a bank that is a subsidiary as the terms "bank" and "subsidiary" are defined in section 2 of the BHC Act (12 USC 1841).

(3) *"Commercial lending company"* means any organization, other than a bank or an organization operating under section 25 of the FRA, organized under the laws of any state of the United States or the District of Columbia, that maintains credit balances as may be maintained by an agency and engages in the business of making commercial loans.

(4) *"Domestic branch"* means any office or any place of business of a foreign bank located in any state of the United States or the District of Columbia that may accept domestic deposits and deposits that are incidental to or for the purpose of carrying out transactions in foreign countries.

(5) *"Foreign bank,"* for purposes of this section, is an organization that is organized under the laws of a foreign country and that engages in the business of banking.

(b) *Determination of home state.*

(1) A foreign bank selecting its home state shall do so by filing with the Board a declaration of home state within 180 days of the effective date of this subpart. In the absence of such selection, the Board shall designate a foreign bank's home state. Within one year after the home state of a foreign bank has been determined, unless the Board authorizes a longer period:

(i) the foreign bank shall close domestic branches whose activities are not permissible under section 5(b) of the IBA, convert such domestic branches to agencies, or enter into an agreement with the Board regarding the deposits of such branches as prescribed in section 5(a) of the IBA; and

(ii) the foreign bank shall divest voting shares of interests in, or assets of banks that are not permissible under section 5(b) of the IBA.

(2) A foreign bank that currently does not operate a domestic branch or banking subsidiary shall not be required to select a home state and shall not have its home state designated by the Board.

(3) A foreign bank (except a foreign bank to which paragraph (b)(5) of this section applies) that has any combination of domestic branches, banking subsidiaries, agencies, or commercial lending company subsidiaries that, before July 27, 1978, were established or applied for in more than one state may select its home state only from those states in which the foreign bank has continuously operated such offices.

(4) A foreign bank that established or applied for one domestic branch or one banking subsidiary before July 27, 1978, and that was not otherwise engaged in banking in the United States on that date, shall have as its home state the state in which such domestic branch or banking subsidiary is located.

(5) A foreign bank that before July 27, 1978, had no domestic branches or banking subsidiaries or had only agencies or commercial lending companies, and, after that date, has established or establishes any domestic branch or banking subsidiary shall have as its home state that state in which its initial domestic branch or banking subsidiary is located.

(c) *Change of home state.* A foreign bank may change its home state once if:

(1) 30 days' prior notification of the proposed change is filed with the Board; and

(2) domestic branches established and investments in banks acquired in reliance on its original home state selection are conformed to those that would have been permissible had the new home state been selected as its home state originally.

(d) *Bank mergers.* (1) A foreign bank with one or more banking subsidiaries that selects as its home state a state other than

that in which a banking subsidiary is located, and that proposes to acquire through its subsidiary bank all or substantially all of the assets of a bank larger than its subsidiary bank (in terms of deposits) located outside the foreign bank's home state shall give 60 days' notification to the Board prior to consummation of the proposed transaction.

(2) If, after receiving the notification, the Board makes a preliminary determination within that period that the proposed acquisition would be inconsistent with the foreign bank's home state selection, the foreign bank shall:

(i) redesignate as its home state the state in which its subsidiary bank is located; or

(ii) show cause why in the facts and circumstances of its case its home state should not be redesignated (the foreign bank's submission may include a request for a hearing).

(3) On the basis of information available, the Board shall:

(i) direct that the foreign bank redesignate as its home state the state in which its subsidiary bank is located; or

(ii) take no action with respect to the foreign bank's home state.

(4) Factors to be considered by the Board in making its preliminary and final determinations include the size of the proposed acquisition relative to the foreign bank's other operations in the United States and the ability of the foreign bank to change its home state.

(e) *Attribution of home state.* (1) A foreign bank or organization and the other foreign banks or organizations over which it exercises actual control shall be regarded as one foreign bank and shall be entitled to one home state.

(2) Actual control shall be conclusively presumed to exist in the case of a bank or organization that owns or controls a majority of the voting shares of another bank or organization.

(3) Where it appears to the Board that a foreign bank or organization exercises actual control over the management or policies of another foreign bank or organization, the Board may inform the parties that a preliminary determination of control has been made on the basis of the facts summarized in the communication. In the event of a preliminary determination of control by the Board, the parties shall within 30 days (or such longer period as may be permitted by the Board):

(i) indicate to the Board a willingness to terminate the control relationship; or

(ii) set forth such facts and circumstances as may support the contention that actual control does not exist (and may request a hearing to contest the Board's preliminary determination); or

(iii) accede to the Board's preliminary determination, in which event the parties shall be regarded as one foreign bank and shall be entitled to one home state.

SECTION 211.23—Nonbanking Activities of Foreign Banking Organizations

(a) *Definitions.* The definitions of section 211.2 in subpart A apply to this section subject to the following:

(1) "*Directly or indirectly*" when used in reference to activities or investments of a foreign banking organization means activities or investments of the foreign banking organization or of any subsidiary of the foreign banking organization.

(2) "*Foreign banking organization*" means a foreign bank (as defined in section 1(b)(7) of the IBA) that operates a branch, agency, or commercial lending company subsidiary in the United States or that controls a bank in the United States; and a company of which such foreign bank is a subsidiary.

(3) "*Subsidiary*" means any organization 25 percent or more of whose voting shares is directly or indirectly owned, controlled or held with power to vote by a foreign banking organization, or which is otherwise controlled or capable of being controlled by a foreign banking organization.

(b) *Qualifying foreign banking organizations.* Unless specifically made eligible for the exemptions by the Board, a foreign banking organization shall qualify for the exemptions af-

forded by this section only if, disregarding its United States banking, more than half of its worldwide business is banking; and more than half of its banking business is outside the United States.[1] In order to qualify, a foreign banking organization shall—

(1) meet at least two of the following requirements:

(i) banking assets held outside the United States exceed total worldwide nonbanking assets;

(ii) revenues derived from the business of banking outside the United States exceed total revenues derived from its worldwide nonbanking business; or

(iii) net income derived from the business of banking outside the United States exceeds total net income derived from its worldwide nonbanking business; and

(2) meet at least two of the following requirements:

(i) banking assets held outside the United States exceed banking assets held in the United States;

(ii) revenues derived from the business of banking outside the United States exceed revenues derived from the business of banking in the United States;

(iii) net income derived from the business of banking outside the United States exceeds net income derived from the business of banking in the United States.

(c) *Determining assets, revenues, and net income.* (1) For purposes of paragraph (b), the total assets, revenues, and net income of an organization may be determined on a consolidated or combined basis. Assets, revenues and net income of companies in which the foreign banking organization owns 50 percent or more of the voting shares shall be included when determining total assets, revenues, and net income. The foreign banking organization may include assets, revenues, and net income of companies in which it owns 25 percent or more of the voting shares if all such companies within the organization are included;

(2) Assets devoted to, or revenues or net income derived from, activities listed in section 211.5(d) of this part shall be considered banking assets, or revenues or net income derived from the banking business, when conducted within the foreign banking organization by a foreign bank or its subsidiaries.

(d) *Loss of eligibility for exemptions.* (1) A foreign banking organization that qualified under paragraph (b) of this section shall cease to be eligible for the exemptions of this section if it fails to meet the requirements of paragraph (b) of this section for two consecutive years as reflected in its annual reports (FR Y-7) filed with the Board.

(2) A foreign banking organization that ceases to be eligible for the exemptions of this section may continue to engage in activities or retain investments commenced or acquired prior to the end of the first fiscal year for which its annual report reflects nonconformance with paragraph (b) of this section. Activities commenced or investments made after that date shall be terminated or divested within three months of the filing of the second annual report unless the Board grants consent to continue the activity or retain the investment under paragraph (e) of this section.

(3) A foreign banking organization that ceases to qualify under paragraph (b) of this section, or an affiliate of such foreign banking organization, that requests a specific determination of eligibility under paragraph (e) of this section may, prior to the Board's determination on eligibility, continue to engage in activities and make investments under the provisions of paragraphs (f)(1), (2) and (4) of this section.

(e) *Specific determination of eligibility for nonqualifying foreign banking organizations.* (1) A foreign banking organization that does not qualify under paragraph (b) of this section for the exemptions afforded by this section, or that has lost its eligibility for the exemptions under paragraph (d) of this

[1] None of the assets, revenues, or net income, whether held or derived directly or indirectly, of a subsidiary bank, branch, agency, commercial lending company, or other company engaged in the business of banking in the United States (including any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands) shall be considered held or derived from the business of banking "outside the United States."

section, may apply to the Board for a specific determination of eligibility for the exemptions.

(2) A foreign banking organization may apply for a specific determination prior to the time it ceases to be eligible for the exemptions afforded by this section.

(3) In determining whether eligibility for the exemptions would be consistent with the purposes of the BHC Act and in the public interest, the Board shall consider—

(i) the history and the financial and managerial resources of the organization;

(ii) the amount of its business in the United States;

(iii) the amount, type, and location of its nonbanking activities, including whether such activities may be conducted by U.S. banks or bank holding companies; and

(iv) whether eligibility of the foreign banking organization would result in undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(4) Such determination shall be subject to any conditions and limitations imposed by the Board, including any requirements to cease activities or dispose of investments.

(5) Determinations of eligibility would generally not be granted where a majority of the business of the foreign banking organization derives from commercial or industrial activities or where the U.S. banking business of the organization is larger than the non-U.S. banking business conducted directly by the foreign bank or banks (as defined in section 211.2(j) of this part) of the organization.

(f) *Permissible activities and investments.* A foreign banking organization that qualifies under paragraph (b) may—

(1) engage in activities of any kind outside the United States;

(2) engage directly in activities in the United States that are incidental to its activities outside the United States;

(3) own or control voting shares of any company that is not engaged, directly or indirectly, in any activities in the United States other than those that are incidental to the international or foreign business of such company:

(4) own or control voting shares of any company in a fiduciary capacity under circumstances that would entitle such shareholding to an exemption under section 4(c)(4) of the BHC Act if the shares were held or acquired by a bank;

(5) own or control voting shares of a foreign company that is engaged directly or indirectly in business in the United States other than that which is incidental to its international or foreign business, subject to the following limitations:

(i) More than 50 percent of the foreign company's consolidated assets shall be located, and consolidated revenues derived from, outside the United States; provided however that, if the foreign company fails to meet the requirements of the paragraph for two consecutive years (as reflected in annual reports (F R Y-7)) filed with the Board by the foreign banking organization, the foreign company shall be divested or its activities terminated within one year of the filing of the second consecutive annual report that reflects nonconformance with the requirements of this paragraph, unless the Board grants consent to retain the investment under paragraph (g) of this section;

(ii) The foreign company shall not directly underwrite, sell, or distribute, nor own or control more than 5 percent of the voting shares of a company that underwrites, sells, or distributes securities in the United States except to the extent permitted bank holding companies;

(iii) If the foreign company is a subsidiary of the foreign banking organization, the foreign company must be, or must control, an operating company, and its direct or indirect activities in the United States shall be subject to the following limitations:

(A) The foreign company's activities in the United States shall be the same kind of activities or related to the activities engaged in directly or indirectly by the foreign company abroad as measured by the "establishment" categories of the Standard Industrial Clas-

sification (SIC) (an activity in the United States shall be considered related to an activity outside the United States if it consists of supply, distribution, or sales in furtherance of the activity);

(B) The foreign company may engage in activities in the United States that consist of banking securities, insurance or other financial operations, or types of activities permitted by regulation or order under section 4(c)(8) of the BHC Act, only under regulations of the Board or with the prior approval of the Board.

(*1*) Activities within Division H (Finance, Insurance, and Real Estate) of the SIC shall be considered banking or financial operations for this purpose, with the exception of acting as operators of nonresidential buildings (SIC 6512), operators of apartment buildings (SIC 6513), operators of dwellings other than apartment buildings (SIC 6514), and operators of residential mobile home sites (SIC 6515); and operating title abstract offices (SIC 6541); and

(*2*) The following activities shall be considered financial activities and may be engaged in only with the approval of the Board under subsection (g): credit reporting services (SIC 7323); computer and data processing services (SIC 7371, 7372, 7373, 7374, 7375, 7376, 7377, 7378, and 7379); armored car services (SIC 7381); management consulting (SIC 8732, 8741, 8742, and 8748); certain rental and leasing activities (SIC 4741, 7352, 7353, 7359, 7513, 7514, 7515, and 7519); accounting, auditing and bookkeeping services (SIC 8721); courier services (SIC 4215 and 4513); and arrangement of passenger transportation (SIC 4724, 4725, and 4729).

(g) *Exemptions under section 4(c)(9) of the BHC Act.* A foreign organization that is of the opinion that other activities or investments may, in particular circumstances, meet the conditions for an exemption under section 4(c)(9) of the BHC Act may apply to the Board for such a determination by submitting to the Reserve Bank of the District in which its banking operations in the United States are principally conducted a letter setting forth the basis for that opinion.

(h) *Reports.*

(1) The foreign banking organization shall inform the Board through the organization's Reserve Bank within 30 days after the close of each quarter of all shares of companies engaged, directly or indirectly, in activities in the United States that were acquired during such quarter under the authority of this section.

(2) The foreign banking organization shall also report any direct activities in the United States commenced during such quarter by a foreign subsidiary of the foreign banking organization. This information shall (unless previously furnished) include a brief description of the nature and scope of each company's business in the United States, including the 4-digit SIC numbers of the activities in which the company engages. Such information shall also include the 4-digit SIC numbers of the direct parent of any U.S. company acquired, together with a statement of total assets and revenues of the direct parent.

(i) *Availability of information.* If any information required under this section is unknown and not reasonably available to the foreign banking organization, either because obtaining it would involve unreasonable effort or expense or because it rests peculiarly within the knowledge of a company that is not controlled by the organization, the organization shall—

(1) give such information on the subject as it possesses or can reasonably acquire together with the sources thereof; and

(2) include a statement either showing that unreasonable effort or expense would be involved or indicating that the company whose shares were acquired is not controlled by the organization and stating the result of a request for information.

SUBPART C—EXPORT TRADING COMPANIES

SECTION 211.31—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 Bank Holding Company Act of 1956, as amended (12 USC 1841 et seq.) ("BHC Act"), the Bank Export Services Act (title II, Pub. L. 97-290, 96 Stat. 1235 (1982)) ("BESA"), and the Export Trading Company Act Amendments of 1988 (title III, Pub. L. 100-418, 102 Stat. 1384 (1988)) ("ETC Act Amendments").

(b) *Purpose and scope.* This subpart is in furtherance of the purposes of the BHC Act, the BESA, and the ETC Act Amendments, the latter two statutes being designed to increase U.S. exports by encouraging investments and participation in export trading companies by bank holding companies and the specified investors. The provisions of this subpart apply to the following (hereinafter referred to as "eligible investors"):

(1) bank holding companies as defined in section 2 of the BHC Act (12 USC 1841(a));

(2) Edge and agreement corporations, as described in section 211.1(c) of this part, that are subsidiaries of bank holding companies but are not subsidiaries of banks;

(3) banker's banks as described in section 4(c)(14)(F)(iii) of the BHC Act (12 USC 1843(c)(14)(F)(iii)); and

(4) foreign banking organizations as defined in section 211.23(a)(2) of this part.

SECTION 211.32—Definitions

The definitions of section 211.2 in subpart A apply to this subpart subject to the following:

(a) "Export trading company" means a company that is exclusively engaged in activities related to international trade and, by engaging in one or more export trade services, derives—

(1) At least one-third of its revenues in each consecutive four-year period from the export of, or from facilitating the export of, goods and services produced in the United States by persons other than the export trading company or its subsidiaries; and

(2) More revenues in each four-year period from export activities as described in paragraph (a)(1) of this section than it derives from the import, or facilitating the import, into the United States of goods or services produced outside the United States.

For purposes of this subsection, "revenues" shall include net sales revenues from exporting, importing, or third-party trade in goods by the export trading company for its own account and gross revenues derived from all other activities of the export trading company.

(b) The terms "bank," "company," and "subsidiary" have the same meanings as those contained in section 2 of the BHC Act (12 USC 1841).

SECTION 211.33—Investments and Extensions of Credit

(a) *Amount of investments.* In accordance with the procedures of section 211.34 of this subpart, an eligible investor may invest no more than 5 percent of its consolidated capital and surplus in one or more export trading companies, except that an Edge or agreement corporation not engaged in banking may invest as much as 25 percent of its consolidated capital and surplus but no more than 5 percent of the consolidated capital and surplus of its parent bank holding company.

(b) *Extensions of credit.*

(1) *Amount.* An eligible investor in an export trading company or companies may extend credit directly or indirectly to the export trading company or companies in a total amount that at no time exceeds 10 percent of the investor's consolidated capital and surplus.

(2) *Terms.*

(i) An eligible investor in an export trading company may not extend credit directly or indirectly to the export trading company or any of its customers or to any other investor holding 10 percent or more of the shares of the export trading

company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extensions of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(ii) For the purposes of this provision, an investor in an export trading company includes any affiliate of the investor.

(3) *Collateral requirements.* Covered transactions between a bank and an affiliated export trading company in which a bank holding company has invested pursuant to this subpart are subject to the collateral requirements of section 23A of the Federal Reserve Act (12 USC 371c), except where a bank issues a letter of credit or advances funds to an affiliated export trading company solely to finance the purchase of goods for which—

(i) the export trading company has a bona fide contract for the subsequent sale of the goods; and

(ii) the bank has a security interest in the goods or in the proceeds from their sale at least equal in value to the letter of credit or the advance.

SECTION 211.34—Procedures for Filing and Processing Notices

(a) *Filing notice.*

(1) *Prior notice of investment.* An eligible investor shall give the Board 60 days' prior written notice of any investment in an export trading company.

(2) *Subsequent notice.*

(i) An eligible investor shall give the Board 60 days' prior written notice of changes in the activities of an export trading company that is a subsidiary of the investor if the export trading company expands its activities beyond those described in the initial notice to include—

(A) taking title to goods where the export trading company does not have a firm order for the sale of those goods;

(B) product research and design;

(C) product modification; or

(D) activities not specifically covered by the list of activities contained in section 4(c)(14)(F)(ii) of the BHC Act.

(ii) Such an expansion of activities shall be regarded as a proposed investment under this subpart.

(b) *Time period for Board action.*

(1) A proposed investment that has not been disapproved by the Board may be made 60 days after the Reserve Bank accepts the notice for processing. A proposed investment may be made before the expiration of the 60-day period if the Board notifies the investor in writing of its intention not to disapprove the investment.

(2) The Board may extend the 60-day period for an additional 30 days if the Board determines that the investor has not furnished all necessary information or that any material information furnished is substantially inaccurate. The Board may disapprove an investment if the necessary information is provided within a time insufficient to allow the Board reasonably to consider the information received.

(3) Within three days of a decision to disapprove an investment, the Board shall notify the investor in writing and state the reasons for the disapproval.

(c) *Time period for investment.* An investment in an export trading company that has not been disapproved shall be made within one year from the date of the notice not to disapprove, unless the time period is extended by the Board or by the appropriate Federal Reserve Bank.

(d) *Time period for calculating revenues.* For any export trading company that commenced operations two years or more prior to August 23, 1988, the four-year period within which to calculate revenues derived from its activities under section 211.32(a) of this part shall be deemed to have commenced with the beginning of the 1988 fiscal year for that export trading company. For all other export trading companies, the four-year period shall commence with the first fiscal year after the respective export trading company has been in operation for two years.

SUBPART D—INTERNATIONAL LENDING SUPERVISION

SECTION 211.41—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 International Lending Supervision Act of 1983 (Pub. L. 98-181, title IX, 97 Stat. 1153) ("International Lending Supervision Act"); the Federal Reserve Act (12 USC 221 et seq.) ("FRA"), and the Bank Holding Company Act of 1956, as amended (12 USC 1841 et seq.) ("BHC Act").

(b) *Purpose and scope.* This subpart is issued in furtherance of the purposes of the International Lending Supervision Act. It applies to state banks that are members of the Federal Reserve System ("state member banks"); corporations organized under section 25(a) of the FRA (12 USC 611–631) ("Edge corporations"); corporations operating subject to an agreement with the Board under section 25 of the FRA (12 USC 601–604a) ("agreement corporations"); and bank holding companies (as defined in section 2 of the BHC Act (12 USC 1841(a)) but not including a bank holding company that is a foreign banking organization as defined in section 211.23(a)(2) of this regulation.

SECTION 211.42—Definitions

For the purposes of this subpart—

(a) "Banking institution" means a state member bank; bank holding company; Edge corporation and agreement corporation engaged in banking. "Banking institution" does not include a "foreign banking organization" as defined in section 211.23(a)(2) of this regulation.

(b) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

(c) "International assets" means those assets required to be included in banking institutions' Country Exposure Report forms (FFIEC No. 009).

(d) "International loan" means a loan as defined in the instructions to the Report of Condition and Income for the respective banking institution (FFIEC Nos. 031, 032, 033 and 034) and made to a foreign government, or to an individual, a corporation, or other entity not a citizen of, resident in, or organized or incorporated in the United States.

(e) "International syndicated loan" means a loan characterized by the formation of a group of "managing" banking institutions and, in the usual case, assumption by them of underwriting commitments and participation in the loan by other banking institutions.

(f) "Loan agreement" means the documents signed by all of the parties to a loan, containing the amount, terms and conditions of the loan, and the interest and fees to be paid by the borrower.

(g) "Restructured international loan" means a loan that meets the following criteria:

(1) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inability of public and private-sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, needed foreign exchange in the country; and

(2) the terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or

(3) a new loan is made to, or for the benefit of, the borrower, enabling the borrower to service or refinance the existing debt.

(h) "Transfer risk" means the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on the availability of, needed foreign exchange in the country of the obligor.

SECTION 211.43—Allocated Transfer Risk Reserve

(a) *Establishment of allocated transfer risk reserve.* A banking institution shall establish

an allocated transfer risk reserve (ATRR) for specified international assets when required by the Board in accordance with this section.

(b) *Procedures and standards.*

(1) *Joint agency determination.* At least annually, the federal banking agencies shall determine jointly, based on the standards set forth in subparagraph (b)(2) of this section, the following:

(i) which international assets subject to transfer risk warrant establishment of an ATRR;

(ii) the amount of the ATRR for the specified assets; and

(iii) whether an ATRR established for specified assets may be reduced.

(2) *Standards for requiring ATRR.*

(i) *Evaluation of assets.* The federal banking agencies shall apply the following criteria in determining whether an ATRR is required for particular international assets:

(A) whether the quality of a banking institution's assets has been impaired by a protracted inability of public or private obligors in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as whether—

(*1*) such obligors have failed to make full interest payments on external indebtedness;

(*2*) such obligors have failed to comply with the terms of any restructured indebtedness; or

(*3*) a foreign country has failed to comply with any International Monetary Fund or other suitable adjustment program; or

(B) whether no definite prospects exist for the orderly restoration of debt service.

(ii) *Determination of amount of ATRR.*

(A) In determining the amount of the ATRR, the federal banking agencies shall consider—

(*1*) the length of time the quality of the asset has been impaired;

(*2*) recent actions taken to restore debt-service capability;

(*3*) prospects for restored asset quality; and

(*4*) such other factors as the federal banking agencies may consider relevant to the quality of the asset.

(B) The initial year's provision for the ATRR shall be 10 percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the federal banking agencies. Additional provision, if any, for the ATRR in subsequent years shall be 15 percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the federal banking agencies.

(3) *Board notification.* Based on the joint agency determinations under subparagraph (1) of this paragraph, the Board shall notify each banking institution holding assets subject to an ATRR—

(i) of the amount of the ATRR to be established by the institution for specified international assets; and

(ii) that an ATRR established for specified assets may be reduced.

(c) *Accounting treatment of ATRR.*

(1) *Charge to current income.* A banking institution shall establish an ATRR by a charge to current income and the amounts so charged shall not be included in the banking institution's capital or surplus.

(2) *Separate accounting.* A banking institution shall account for an ATRR separately from the "allowance for possible loan losses," and shall deduct the ATRR from "gross loans and leases" to arrive at "net loans and leases." The ATRR must be established for each asset subject to the ATRR in the percentage amount specified.

(3) *Consolidation.* A banking institution shall establish an ATRR, as required, on a consolidated basis. For banks, consolidation should be in accordance with the procedures and tests of significance set forth in the instructions for preparation of Consolidated Reports of Condition and Income (FFIEC Nos. 031, 032, 033 and 034). For bank holding companies, the consolidation shall be in accordance with the principles

set forth in the instructions to the Bank Holding Company Financial Supplement to Report FR Y-6 (Form FR Y-9). Edge and agreement corporations engaged in banking shall report in accordance with instructions for preparation of the Report of Condition for Edge and Agreement Corporations (Form FR 2886b).

(4) *Alternative accounting treatment.* A banking institution need not establish an ATRR if it writes down in the period in which the ATRR is required, or has written down in prior periods, the value of the specified international assets in the requisite amount for each such asset. For purposes of this paragraph, international assets may be written down by a charge to the allowance for possible loan losses or a reduction in the principal amount of the asset by application of interest payments or other collections on the asset. However, the allowance for possible loan losses must be replenished in such amount necessary to restore it to a level which adequately provides for the estimated losses inherent in the banking institution's loan portfolio.

(5) *Reduction of ATRR.* A banking institution may reduce an ATRR when notified by the Board or, at any time, by writing down such amount of the international asset for which the ATRR was established.

SECTION 211.44—Reporting and Disclosure of International Assets

(a) *Requirements.*

(1) Pursuant to section 907(a) of the International Lending Supervision Act of 1983 (title IX, Pub. L. 98-181, 97 Stat. 1153) (ILSA), a banking institution shall submit to the Board, at least quarterly, information regarding the amounts and composition of its holdings of international assets.

(2) Pursuant to section 907(b) of ILSA, a banking institution shall submit to the Board information regarding concentrations in its holdings of international assets that are material in relation to total assets and to capital of the institution, such information to be made publicly available by the Board on request.

(b) *Procedures.* The format, content and reporting and filing dates of the reports required under paragraph (a) of this section shall be determined jointly by the federal banking agencies. The requirements to be prescribed by the agencies may include changes to existing reporting forms (such as the Country Exposure Report, Form FFIEC No. 009) or such other requirements as the agencies deem appropriate. The agencies also may determine to exempt from the requirements of paragraph (a) of this section banking institutions that, in the agencies' judgment, have de minimis holdings of international assets.

(c) *Reservation of authority.* Nothing contained in this rule shall preclude the Board from requiring from a banking institution such additional or more frequent information on the institution's holdings of international assets as the Board may consider necessary.

SECTION 211.45—Accounting for Fees on International Loans

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge any fee in connection with a restructured international loan unless all fees exceeding the banking institution's administrative costs, as described in subsection (c)(2) of this section, are deferred and recognized over the term of the loan as an interest-yield adjustment.

(b) *Amortizing fees.* Except as otherwise provided by this section, fees received on international loans shall be deferred and amortized over the term of the loan. The interest method should be used during the loan period to recognize the deferred fee revenue in relation to the outstanding loan balance. If it is not practicable to apply the interest method during the loan period, the straight-line method shall be used.

(c) *Accounting treatment of international loan or syndication administrative costs and corresponding fees.*

(1) Administrative costs of originating, re-

structuring or syndicating an international loan shall be expensed as incurred. A portion of the fee income equal to the banking institution's administrative costs may be recognized as income in the same period such costs are expensed.

(2) The administrative costs of originating, restructuring, or syndicating an international loan include those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related benefits of employees engaged in the international lending function and, where applicable, the syndication function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(d) *Fees received by managing banking institutions in an international syndicated loan.* Fees received on international syndicated loans representing an adjustment of the yield on the loan shall be recognized over the loan period using the interest method. If the interest-yield portion of a fee received on an international syndicated loan by a managing banking institution is unstated or differs materially from the pro rata portion of fees paid other participants in the syndication, an amount necessary for an interest-yield adjustment shall be recognized. This amount shall at least be equivalent (on a pro rata basis) to the largest fee received by a loan participant in the syndication that is not a managing banking institution. The remaining portion of the syndication fee may be recognized as income at the loan closing date to the extent that it is identified and documented as compensation for services in arranging the loan. Such documentation shall include the loan agreement. Otherwise, the fee shall be deemed an adjustment of yield.

(e) *Loan-commitment fees.*

(1) Fees which are based upon the unfunded portion of a credit for the period until it is drawn and represent compensation for a binding commitment to provide funds or for rendering a service in issuing the commitment shall be recognized as income over the term of the commitment period using the straight-line method of amortization. Such fees for revolving-credit arrangements, where the fees are received periodically in arrears and are based on the amount of the unused loan commitment, may be recognized as income when received provided the income result would not be materially different.

(2) If it is not practicable to separate the commitment portion from other components of the fee, the entire fee shall be amortized over the term of the combined commitment and expected loan period. The straight-line method of amortization should be used during the commitment period to recognize the fee revenue. The interest method should be used during the loan period to recognize the remaining fee revenue in relation to the outstanding loan balance. If the loan is funded before the end of the commitment period, any unamortized commitment fees shall be recognized as revenue at that time.

(f) *Agency fees.* Fees paid to an agent banking institution for administrative services in an international syndicated loan shall be recognized at the time of the loan closing or as the service is performed, if later.

FEDERAL RESERVE ACT

SECTION 25—Foreign Branches

1. Capital and Surplus Required to Exercise Powers

Any national banking association possessing a capital and surplus of $1,000,000 or more may file application with the Board of Governors of the Federal Reserve System for permission to exercise, upon such conditions and under such regulations as may be prescribed by the said board, the following powers:

[12 USC 601. As amended by act of Sept. 7, 1916 (39 Stat. 755), which completely revised this section, and by act of July 1, 1966 (80 Stat. 241).]

2. Establishment of Foreign Branches

First. To establish branches in foreign countries or dependencies or insular possessions of the United States for the furtherance of the foreign commerce of the United States, and to act if required to do so as fiscal agents of the United States.

[12 USC 601. As amended by act of Sept. 7, 1916 (39 Stat. 755), which completely revised this section.]

3. Purchase of Stock in Corporations Engaged in Foreign Banking

Second. To invest an amount not exceeding in the aggregate ten per centum of its paid-in capital stock and surplus in the stock of one or more banks or corporations chartered or incorporated under the laws of the United States or of any State thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions.

[12 USC 601. As added by act of Sept. 7, 1916 (39 Stat. 755), which completely revised this section.]

4. Acquisition of Ownership of Foreign Banks

Third. To acquire and hold, directly or indirectly, stock or other evidences of ownership in one or more banks organized under the law of a foreign country or a dependency or insular possession of the United States and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the Board of Governors of the Federal Reserve System, shall be incidental to the international or foreign business of such foreign bank; and, notwithstanding the provisions of section 23A of this Act, to make loans or extensions of credit to or for the account of such bank in the manner and within the limits prescribed by the Board by general or specific regulation or ruling.

[12 USC 601. As added by act of July 1, 1966 (80 Stat. 241).]

5. Right of National Banks to Invest in Foreign Banking Corporations until January 1, 1921

Until January 1, 1921, any national banking association, without regard to the amount of its capital and surplus, may file application with the Board of Governors of the Federal Reserve System for permission, upon such conditions and under such regulations as may be prescribed by said board, to invest an amount not exceeding in the aggregate 5 per centum of its paid-in capital and surplus in the stock of one or more corporations chartered or incorporated under the laws of the United States or of any State thereof and, regardless of its location, principally engaged in such phases of international or foreign financial operations as may be necessary to facilitate the export of goods, wares, or merchandise from the United States or any of its dependencies or insular possessions to any foreign country: *Provided, however,* That in no event shall the total investments authorized by this section by any one national bank exceed 10 per centum of its capital and surplus.

[12 USC 601. As added by act of Sept. 17, 1919 (41 Stat. 285). This paragraph, by its terms, is now obsolete.]

6. Application for Permission to Exercise Powers

Such application shall specify the name and capital of the banking association filing it, the powers applied for, and the place or places where the banking or financial operations proposed are to be carried on. The Board of Governors of the Federal Reserve System shall have power to approve or to reject such application in whole or in part if for any reason the granting of such application is deemed inexpedient, and shall also have power from time to time to increase or decrease the number of places where such banking operations may be carried on.

[12 USC 601. As amended by act of Sept. 7, 1916 (39 Stat. 755), which completely revised this section; and by act of Sept. 17, 1919 (41 Stat. 286).]

7. Examinations and Reports of Condition

Every national banking association operating foreign branches shall be required to furnish information concerning the conditions of such branches to the Comptroller of the Currency upon demand, and every member bank investing in the capital stock of banks or corporations described above shall be required to furnish information concerning the condition of such banks or corporations to the Board of Governors of the Federal Reserve System upon demand, and the Board of Governors of the Federal Reserve System may order special examinations of the said branches, banks, or corporations at such time or times as it may deem best.

[12 USC 602. As amended by act of Sept. 7, 1916 (39 Stat. 755), which completely revised this section; and by act of Sept. 17, 1919 (41 Stat. 286).]

8. Agreement to Restrict Operations

Before any national bank shall be permitted to purchase stock in any such corporation the said corporation shall enter into an agreement or undertaking with the Board of Governors of the Federal Reserve System to restrict its operations or conduct its business in such manner or under such limitations and restrictions as the said board may prescribe for the place or places wherein such business is to be conducted. If at any time the Board of Governors of the Federal Reserve System shall ascertain that the regulations prescribed by it are not being complied with, said board is hereby authorized and empowered to institute an investigation of the matter and to send for persons and papers, subpoena witnesses, and administer oaths in order to satisfy itself as to the actual nature of the transactions referred to. Should such investigation result in establishing the failure of the corporation in question, or of the national bank or banks which may be stockholders therein, to comply with the regulations laid down by the said Board of Governors of the Federal Reserve System, such national banks may be required to dispose of stock holdings in the said corporation upon reasonable notice.

[12 USC 603. Added by act of Sept. 7, 1916 (39 Stat. 755), which completely revised this section.]

9. Accounts of Foreign Branches

Every national banking association operating foreign branches shall conduct the accounts of each foreign branch independently of the accounts of other foreign branches established by it and of its home office, and shall at the end of each fiscal period transfer to its general ledger the profit or loss accrued at each branch as a separate item.

[12 USC 604. As amended by act of Sept. 7, 1916 (39 Stat. 755), which completely revised this section.]

10. Additional Banking Powers Authorized

Regulations issued by the Board of Governors of the Federal Reserve System under this section, in addition to regulating powers which a foreign branch may exercise under other provisions of law, may authorize such a foreign branch, subject to such conditions and requirements as such regulations may prescribe, to exercise such further powers as may be usual in connection with the transaction of the business of banking in the places where such foreign branch shall transact business. Such regulations shall not authorize a foreign branch to engage in the general business of producing, distributing, buying or selling goods, wares, or merchandise; nor, except to such limited extent as the Board may deem to be necessary with respect to securities issued

by any "foreign state" as defined in section 25(b) of this Act, shall such regulations authorize a foreign branch to engage or participate, directly or indirectly, in the business of underwriting, selling, or distributing securities.

[12 USC 604a. As added by act of Aug. 15, 1962 (76 Stat. 388).]

SECTION 25(a)—Banking Corporations Authorized to Do Foreign Banking Business

1. Organization

Corporations to be organized for the purpose of engaging in international or foreign banking or other international or foreign financial operations, or in banking or other financial operations in a dependency or insular possession of the United States, either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions as provided by this section, and to act when required by the Secretary of the Treasury as fiscal agents of the United States, may be formed by any number of natural persons, not less in any case than five: *Provided,* That nothing in this section shall be construed to deny the right of the Secretary of the Treasury to use any corporation organized under this section as depositaries in Panama and the Panama Canal Zone, or in the Philippine Islands and other insular possessions and dependencies of the United States.

The congress hereby declares that it is the purpose of this section to provide for the establishment of international banking and financial corporations operating under Federal supervision with powers sufficiently broad to enable them to compete effectively with similar foreign-owned institutions in the United States and abroad; to afford to the United States exporter and importer in particular, and to United States commerce, industry, and agriculture in general, at all times a means of financing international trade, especially United States exports; to foster the participation by regional and smaller banks throughout the United States in the provision of international banking and financing services to all segments of United States agriculture, commerce, and industry, and, in particular small business and farming concerns; to stimulate competition in the provision of international banking and financing services, throughout the United States; and, in conjunction with each of the preceding purposes, to facilitate and stimulate the export of United Stated goods, wares, merchandise, commodities, and services to achieve a sound United States international trade position. The Board of Governors of the Federal Reserve System shall issue rules and regulations under this section consistent with and in furtherance of the purposes described in the preceding sentence, and, in accordance therewith, shall review and revise any such rules and regulations at least once every five years, the first such period commencing with the effective date of rules and regulations issued pursuant to section 3(a) of the International Banking Act of 1978, in order to ensure that such purposes are being served in light of prevailing economic conditions and banking practices.

[12 USC 611. As added by act of Dec. 24, 1919 (41 Stat. 378); and amended by act of Feb. 27, 1921 (41 Stat. 1145) and Sept. 17, 1978 (92 Stat. 609). Presidential Proclamation No. 2695 of July 4, 1946 (60 Stat. 1352; 12 USC 1394 note) recognizes the independence of the Philippine Islands. Therefore, the words "in the Philippine Islands and" have been omitted from the U.S. Code.]

2. Articles of Association

Such persons shall enter into articles of association which shall specify in general terms the objects for which the association is formed and may contain any other provisions not inconsistent with law which the association may see fit to adopt for the regulation of its business and the conduct of its affairs.

[12 USC 612. As added by act of Dec. 24, 1919 (41 Stat. 378).]

3. Execution of Articles of Association; Contents of Organization Certificate

Such articles of association shall be signed by all of the persons intending to participate in the organization of the corporation and, thereafter, shall be forwarded to the Board of Governors of the Federal Reserve System and

shall be filed and preserved in its office. The persons signing the said articles of association shall, under their hands, make an organization certificate which shall specifically state:

First. The name assumed by such corporation, which shall be subject to the approval of the Board of Governors of the Federal Reserve System.

Second. The place or places where its operations are to be carried on.

Third. The place in the United States where its home office is to be located.

Fourth. The amount of its capital stock and the number of shares into which the same shall be divided.

Fifth. The names and places of business or residence of the persons executing the certificate and the number of shares to which each has subscribed.

Sixth. The fact that the certificate is made to enable the persons subscribing the same, and all other persons, firms, companies, and corporations, who or which may thereafter subscribe to or purchase shares of the capital stock of such corporation, to avail themselves of the advantages of this section.

[12 USC 613. As added by act of Dec. 24, 1919 (41 Stat. 379).]

4. Filing Organization Certificate; Issuance of Permit

The persons signing the organization certificate shall duly acknowledge the execution thereof before a judge of some court of record or notary public, who shall certify thereto under the seal of such court or notary, and thereafter the certificate shall be forwarded to the Board of Governors of the Federal Reserve System to be filed and preserved in its office. Upon duly making and filing articles of association and an organization certificate, and after the Board of Governors of the Federal Reserve System has approved the same and issued a permit to begin business, the association shall become and be a body corporate, and as such and in the name designated therein shall have power to adopt and use a corporate seal, which may be changed at the pleasure of its board of directors; to have succession for a period of twenty years unless sooner dissolved by the act of the shareholders owning two-thirds of the stock or by an Act of Congress or unless its franchises become forfeited by some violation of law; to make contracts; to sue and be sued, complain, and defend in any court of law or equity; to elect or appoint directors; and, by its board of directors, to appoint such officers and employees as may be deemed proper, define their authority and duties, require bonds of them, and fix the penalty thereof, dismiss such officers or employees, or any thereof, at pleasure and appoint others to fill their places; to prescribe, by its board of directors, by-laws not inconsistent with law or with the regulations of the Board of Governors of the Federal Reserve System regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers and employees appointed, its property transferred, and the privileges granted to it by law exercised and enjoyed.

[12 USC 614. As added by act of Dec. 24, 1919 (41 Stat. 379) and Sept. 17, 1978 (92 Stat. 609).]

5. Powers; Regulations of Board of Governors of the Federal Reserve System

Each corporation so organized shall have power, under such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe:

[12 USC 615. As added by act of Dec. 24, 1919 (41 Stat. 379).]

6. Banking Powers

(a) To purchase, sell, discount, and negotiate, with or without its indorsement or guaranty, notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to purchase and sell with or without its indorsement or guaranty, securities, including the obligations of the United States or of any State thereof but not including shares of stock in any corporation except as herein provided; to accept bills or drafts drawn upon it subject to such limitations and restrictions as the Board of Governors of the Federal Reserve System may impose; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to

issue debentures, bonds, and promissory notes under such general conditions as to security and such limitations as the Board of Governors of the Federal Reserve System may prescribe; to receive deposits outside of the United States and to receive only such deposits within the United States as may be incidental to or for the purpose of carrying out transactions in foreign countries or dependencies or insular possessions of the United States; and generally to exercise such powers as are incidental to the powers conferred by this Act or as may be usual, in the determination of the Board of Governors of the Federal Reserve System, in connection with the transaction of the business of banking or other financial operations in the countries, colonies, dependencies, or possessions in which it shall transact business and not inconsistent with the powers specifically granted herein. Nothing contained in this section shall be construed to prohibit the Board of Governors of the Federal Reserve System, under its power to prescribe rules and regulations, from limiting the aggregate amount of liabilities of any or all classes incurred by the corporation and outstanding at any one time. Whenever a corporation organized under this section receives deposits in the United States authorized by this section it shall carry reserves in such amounts as the Board of Governors of the Federal Reserve System may prescribe for member banks of the Federal Reserve System.

[12 USC 615(a). As added by act of Dec. 24, 1919 (41 Stat. 379); and amended by act of Sept. 17, 1978 (92 Stat. 609).]

7. Branches

(b) To establish and maintain for the transaction of its business branches or agencies in foreign countries, their dependencies or colonies, and in the dependencies or insular possessions of the United States, at such places as may be approved by the Board of Governors of the Federal Reserve System and under such rules and regulations as it may prescribe, including countries or dependencies not specified in the original organization certificate.

[12 USC 615(b). As added by act of Dec. 24, 1919 (41 Stat. 379).]

8. Ownership of Stock in Other Corporations

(c) With the consent of the Board of Governors of the Federal Reserve System to purchase and hold stock or other certificates of ownership in any other corporation organized under the provisions of this section, or under the laws of any foreign country or a colony or dependency thereof, or under the laws of any State, dependency, or insular possession of the United States but not engaged in the general business of buying or selling goods, wares, merchandise or commodities in the United States, and not transacting any business in the United States except such as in the judgment of the Board of Governors of the Federal Reserve System may be incidental to its international or foreign business: *Provided, however,* That, except with the approval of the Board of Governors of the Federal Reserve System, no corporation organized hereunder shall invest in any one corporation an amount in excess of 10 per centum of its own capital and surplus, except in a corporation engaged in the business of banking, when 15 per centum of its capital and surplus may be so invested: *Provided further,* That no corporation organized hereunder shall purchase, own, or hold stock or certificates of ownership in any other corporation organized hereunder or under the laws of any State which is in substantial competition therewith, or which holds stock or certificates of ownership in corporations which are in substantial competition with the purchasing corporation.

[12 USC 615(c). As added by act of Dec. 24, 1919 (41 Stat. 380).]

9. Purchase of Stock to Prevent Loss on Debt Previously Contracted

Nothing contained herein shall prevent corporations organized hereunder from purchasing and holding stock in any corporation where such purchase shall be necessary to prevent a loss upon a debt previously contracted in good faith; and stock so purchased or acquired in corporations organized under this section shall within six months from such purchase be sold or disposed of at public or private sale unless the time to so dispose of same is ex-

tended by the Board of Governors of the Federal Reserve System.

[12 USC 615(c). As added by act of Dec. 24, 1919 (41 Stat. 380).]

10. Restrictions on Business in United Sates

No corporation organized under this section shall carry on any part of its business in the United States except such as, in the judgment of the Board of Governors of the Federal Reserve System, shall be incidental to its international or foreign business: *And provided further,* That except such as is incidental and preliminary to its organization no such corporation shall exercise any of the powers conferred by this section until it has been duly authorized by the Board of Governors of the Federal Reserve System to commence business as a corporation organized under the provisions of this section.

[12 USC 616. As added by act of Dec. 24, 1919 (41 Stat. 381).]

11. Corporation Trading in Commodities or Attempting to Control Prices

No corporation organized under this section shall engage in commerce or trade in commodities except as specifically provided in this section, nor shall it either directly or indirectly control or fix or attempt to control or fix the price of an such commodities. The charter of any corporation violating this provision shall be subject to forfeiture in the manner hereinafter provided in this section. It shall be unlawful for any director, officer, agent, or employee of any such corporation to use or to conspire to use the credit; the funds, or the power of the corporation to fix or control the price of any such commodities, and any such person violating this provision shall be liable to a fine of not less than $1,000 and not exceeding $5,000 or imprisonment not less than one year and not exceeding five years, or both, in the discretion of the court.

[12 USC 617. As added by act of Dec. 24, 1919 (41 Stat. 81).]

12. Capital Stock

No corporation shall be organized under the provisions of this section with a capital stock of less than $2,000,000, one-quarter of which must be paid in before the corporation may be authorized to begin business, and the remainder of the capital stock of such corporation shall be paid in installments of at least 10 per centum on the whole amount to which the corporation shall be limited as frequently as one installment at the end of each succeeding two months from the time of the commencement of it business operations until the whole of the capital stock shall be paid in: *Provided, however,* That whenever $2,000,000 of the capital stock of any corporation is paid in the remainder of the corporation's capital stock or any unpaid part of such remainder may, with the consent of the Board of Governors of the Federal Reserve System and subject to such regulations and conditions as it may prescribe, be paid in upon call from the board of directors; such unpaid subscriptions, however, to be included in the maximum of 10 per centum of the national bank's capital and surplus which a national bank is permitted under the provisions of this Act to hold in stock of corporations engaged in business of the kind described in this section and in section 25 of the Federal Reserve Act as amended. The capital stock of any such corporation may be increased at any time, with the approval of the Board of Governors of the Federal Reserve System, by a vote of two-thirds of its shareholders or by unanimous consent in writing of the shareholders without a meeting and without a formal vote, but any such increase of capital shall be fully paid in within ninety days after such approval; and may be reduced in like manner, provided that in no event shall it be less than $2,000,000. No corporation, except as herein provided, shall during the time it shall continue its operations, withdraw or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. Any national banking association may invest in the stock of any corporation organized under the provisions of this section, but the aggregate amount of stock held in all corporations engaged in business of the kind described in this section and in section 25 of the

Federal Reserve Act as amended shall not exceed 10 per centum of the subscribing bank's capital and surplus.

[12 USC 618. As added by act of Dec. 24, 1919 (41 Stat. 381); and amended by act of June 14, 1921 (42 Stat. 28).]

13. Citizenship of Stockholders

Except as otherwise provided in this section, a majority of the shares of the capital stock of any such corporation shall at all times be held and owned by citizens of the United States, by corporations the controlling interest in which is owned by citizens of the United States, chartered under the laws of the United States or of a State of the United States, or by firms or companies, the controlling interest in which is owned by citizens of the United States. Notwithstanding any other provisions of this section, one or more foreign banks, institutions organized under the laws of foreign countries which own or control foreign banks, or banks organized under the laws of the United States, the States of the United States, or the District of Columbia, the controlling interests in which are owned by any such foreign banks or institutions, may, with the prior approval of the Board of Governors of the Federal Reserve System and upon such terms and conditions and subject to such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe, own and hold 50 per centum or more of the shares of the capital stock of any corporation orgaized under this section, and any such corporation shall be subject to the same provisions of law as any other corporation organized under this section, and the terms 'controls' and 'controlling interest' shall be construed consistently with the definition of 'control' in section 2 of the Bank Holding Company Act of 1956. For the purposes of the preceding sentence of this paragraph the term 'foreign bank' shall have the meaning assigned to it in the International Banking Act of 1978. Any company, other than a bank as defined in section 2 of the Bank Holding Company Act of 1956, that after March 5, 1987, directly or indirectly acquires control of a corporation organized or operating under the provisions of this section or section 25 shall be subject to the provisions of the Bank Holding Company Act of 1956 in the same manner and to the same extent that bank holding companies are subject thereto, except that such company shall not by reason of this paragraph be deemed a bank holding company for the purpose of section 3 of the Bank Holding Company Act of 1956.

[12 USC 619. As added by act of Sept. 17, 1978 (92 Stat. 609) and amended by act of Aug. 10, 1987 (101 Stat. 566).]

14. Members of Board of Governors of the Federal Reserve System as Directors, Officers or Stockholders

No member of the Board of Governors of the Federal Reserve System shall be an officer or director of any corporation organized under the provisions of this section, or of any corporation engaged in similar business organized under the laws of any State, nor hold stock in any such corporation, and before entering upon his duties as a member of the Board of Governors of the Federal Reserve System he shall certify under oath to the Secretary of the Treasury that he has complied with this requirement.

[12 USC 620. As added by act of Dec. 24, 1919 (41 Stat. 382).]

15. Shareholders' Liability; Corporation Not to Become Member of Federal Reserve Bank

Shareholders in any corporation organized under the provision of this section shall be liable for the amount of their unpaid stock subscriptions. No such corporation shall become a member of any Federal reserve bank.

[12 USC 621. As added by act of Dec. 24, 1919 (41 Stat. 382).]

16. Forfeiture of Charter for Violation of Law

Should any corporation organized hereunder violate or fail to comply with any of the provisions of this section, all of its rights, privileges, and franchises derived herefrom may thereby be forfeited. Before any such corporation shall be declared dissolved, or its rights, privileges, and franchises forfeited, any noncompliance with, or violation of such laws shall, however, be determined and adjudged by a court of the United States of competent jurisdiction, in a

suit brought for that purpose in the district or territory in which the home office of such corporation is located, which suit shall be brought by the United States at the insistence of the Board of Governors for the Federal Reserve System or the Attorney General. Upon adjudication of such noncompliance or violation, each director and officer who participated in, or assented to, the illegal act or acts, shall be liable in his personal or individual capacity for all damages which the said corporation shall have sustained in consequence thereof. No dissolution shall take away or impair any remedy against the corporation, its stockholders, or officers for any liability or penalty previously incurred.

[12 USC 622. As added by act of Dec. 24, 1919 (41 Stat. 382).]

17. Voluntary Liquidation

Any such corporation may go into voluntary liquidation and be closed by a vote of its shareholders owning two-third of its stock.

[12 USC 623. As added by act of Dec. 24, 1919 (41 Stat. 382.)]

18. Insolvency; Appointment of Receiver

Whenever the Board of Governors of the Federal Reserve System shall become satisfied of the insolvency of any such corporation, it may appoint a receiver who shall take possession of all the property and assets of the corporation and exercise the same rights, privileges, powers, and authority with respect thereto as are now exercised by receivers of national banks appointed by the Comptroller of the Currency of the United States: *Provided, however,* That the assets of the corporation subject to the laws of other countries or jurisdictions shall be dealt with in accordance with the terms of such laws.

[12 USC 624. As added by act of Dec. 24, 1919 (41 Stat. 382.)]

19. Stockholders' Meetings; Records; Reports; Examinations

Every corporation organized under the provisions of this section shall hold a meeting of its stockholders annually upon a date fixed in its bylaws, such meeting to be held at its home office in the United States. Every such corporation shall keep at its home office books containing the names of all stockholders thereof, and the names and addresses of the members of its board of directors, together with copies of all reports made by it to the Board of Governors of the Federal Reserve System. Every such corporation shall make reports to the Board of Governors of the Federal Reserve System at such times and in such form as it may require; and shall be subject to examination once a year and at such other times as may be deemed necessary by the Board of Governors of the Federal Reserve System by examiners appointed by the Board of Governors of the Federal Reserve System, the cost of such examinations, including the compensation of the examiners, to be fixed by the Board of Governors of the Federal Reserve System and to be paid by the corporation examined.

[12 USC 625. As added by act of Dec. 24, 1919 (41 Stat. 382).]

20. Dividends and Surplus Fund

The directors of any corporation organized under the provisions of this section may, semiannually, declare a dividend of so much of the net profits of the corporation as they shall judge expedient; but each corporation shall, before the declaration of a dividend, carry one-tenth of its net profits of the preceding half year to its surplus fund until the same shall amount to 20 per centum of its capital stock.

[12 USC 626. As added by act of Dec. 24, 1919 (41 Stat. 383).]

21. Taxation

Any corporation organized under the provisions of this section shall be subject to tax by the State within which its home office is located in the same manner and to the same extent as other corporations organized under the laws of that State which are transacting a similar character of business. The shares of stock in such corporation shall also be subject to tax as the personal property of the owners or holders thereof in the same manner and to the

same extent as the shares of stock in similar State corporations.

[12 USC 627. As added by act of Dec. 24, 1919 (41 Stat. 383).]

22. Extension of Corporate Existence

Any corporation organized under the provisions of this section may at any time within the two years next previous to the date of the expiration of its corporate existence, by a vote of the shareholders owning two-thirds of its stock, apply to the Board of Governors of the Federal Reserve System for its approval to extend the period of its corporate existence for a term of not more than twenty years, and upon certified approval of the Board of Governors of the Federal Reserve System such corporation shall have its corporate existence for such extended period unless sooner dissolved by the act of the shareholders owning two-thirds of its stock, or by an Act of Congress or unless its franchise becomes forfeited by some violation of law.

[12 USC 628. As added by act of Dec. 24, 1919 (41 Stat. 383).]

23. Conversion of State Corporation into Federal Corporation

Any bank or banking institution, principally engaged in foreign business, incorporated by special law of any State or of the United States or organized under the general laws of any State or of the United States and having an unimpaired capital sufficient to entitle it to become a corporation under the provisions of this section may, by the vote of the shareholders owning not less than two-thirds of the capital stock of such bank or banking association, with the approval of the Board of Governors of the Federal Reserve System, be converted into a Federal corporation of the kind authorized by this section with any name approved by the Board of Governors of the Federal Reserve System: *Provided, however,* That said conversion shall not be in contravention of the State law. In such case the articles of association and organization certificate may be executed by a majority of the directors of the bank or banking institution, and the certificate shall declare that the owners of at least two-thirds of the capital stock have authorized the directors to make such certificate and to change or convert the bank or banking institution into a Federal corporation. A majority of the directors, after executing the articles of association and the organization certificate shall have power to execute all other papers and to do whatever may be required to make its organization perfect and complete as a Federal corporation. The shares of any such corporation may continue to be for the same amount each as they were before the conversion, and the directors may continue to be directors of the corporation until others are elected or appointed in accordance with the provisions of this section. When the Board of Governors of the Federal Reserve System has given to such corporation a certificate that the provisions of this section have been complied with, such corporation and all its stockholders, officers, and employees, shall have the same powers and privileges, and shall be subject to the same duties, liabilities, and regulations, in all respects, as shall have been prescribed by this section for corporations originally organized hereunder.

[12 USC 629. As added by act of Dec. 24, 1919 (41 Stat. 383).]

24. Criminal Offenses of Directors, Officers, and Employees

Every officer, director, clerk, employee, or agent of any corporation organized under this section who embezzles, abstracts, or willfully misapplies any of the moneys, funds, credits, securities, evidences of indebtedness or assets of any character of such corporation; or who, without authority from the directors, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, debenture, draft, bill of exchange, mortgage, judgment, or decree; or who makes any false entry in any book, report, or statement of such corporation with intent, in either case, to injure or defraud such corporation or any other company, body politic or corporate, or any individual person, or to deceive any officer of such corporation, the Board of Governors of the Federal Reserve System, or any agent or examiner appointed to examine the affairs of any such cor-

poration; and every receiver of any such corporation and every clerk or employee of such receiver who shall embezzle, abstract, or willfully misapply or wrongfully convert to his own use any moneys, funds, credits, or assets of any character which may come into his possession or under his control in the execution of his trust or the performance of the duties of his employment; and every such receiver or clerk or employee of such receiver who shall, with intent to injure or defraud any person, body politic or corporate, or to deceive or mislead the Board of Governors of the Federal Reserve System, or any agent or examiner appointed to examine the affairs of such receiver, shall make any false entry in any book, report, or record of any matter connected with the duties of such receiver; and every person who with like intent aids or abets any officer, director, clerk, employee, or agent of any corporation organized under this section, or receiver or clerk or employee of such receiver as aforesaid in any violation of this section, shall upon conviction thereof be imprisoned for not less than two years nor more than ten years, and may also be fined not more than $5,000, in the discretion of the court.

[12 USC 630. As added by act of Dec. 24, 1919 (41 Stat. 384).]

25. Representation that United States is Liable for Obligations

Whoever being connected in any capacity with any corporation organized under this section represents in any way that the United States is liable for the payment of any bond or other obligation, or the interest thereon, issued or incurred by any corporation organized hereunder, or that the United States incurs any liability in respect of any act or omission of the corporation, shall be punished by a fine of not more than $10,000 and by imprisonment for not more than five years.

[12 USC 631. As added by act of Dec. 24, 1919 (41 Stat. 384).]

BANK HOLDING COMPANY ACT OF 1956

SECTION 2—Definitions

* * * * *

(h) * * *

(2) Except as provided in paragraph (3), the prohibitions of section 4 of this Act shall not apply to shares of any company organized under the laws of a foreign country (or to shares held by such company in any company engaged in the same general line of business as the investor company or in a business related to the business of the investor company) that is principally engaged in business outside the United States if such shares are held or acquired by a bank holding company organized under the laws of a foreign country that is principally engaged in the banking business outside the United States. For the purpose of this subsection, the term "section 2(h)(2) company" means any company whose shares are held pursuant to this paragraph.

(3) Nothing in paragraph (2) authorizes a section 2(h)(2) company to engage in (or acquire or hold more than 5 percent of the outstanding shares of any class of voting securities of a company engaged in) any banking, securities, insurance, or other financial activities, as defined by the Board, in the United States. This paragraph does not prohibit a section 2(h)(2) company from holding shares that were lawfully acquired before the date of enactment of the Competitive Equality Banking Act of 1987.

(4) No domestic office or subsidiary of a bank holding company or subsidiary thereof holding shares of a section 2(h)(2) company may extend credit to a domestic office or subsidiary of such section 2(h)(2) company on terms more favorable than those afforded similar borrowers in the United States.

(5) No domestic banking office or bank subsidiary of a bank holding company that controls a section 2(h)(2) company may offer or market products or services of such section 2(h)(2) company, or permit its products or services to be offered or marketed by or through such section 2(h)(2)

company, unless such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date.

[12 USC 1841(h). As added by act of July 1, 1966 (80 Stat. 236) and amended by act of Aug. 10, 1987 (101 Stat. 584).]

SECTION 4—Interests in Nonbanking Organizations

* * * * *

(c) *Exemptions.* The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of the Internal Revenue Code of 1986, or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred, or (ii) a company covered in 1970 more than 85 per centum of the voting stock of which was collectively owned on June 30, 1968, and continuously thereafter, directly or indirectly, by or for members of the same family, or their spouses, who are lineal descendants of common ancestors: and such prohibitions shall not, with respect to any other bank holding company, apply to—

* * * * *

(9) shares held or activities conducted by any company organized under the laws of a foreign country the greater part of whose business is conducted outside the United States, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this Act and would be in the public interest;

* * * * *

(13) shares of, or activities conducted by, any company which does no business in the United States except as an incident to its international or foreign business, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this Act and would be in the public interest; or

(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

(A)(i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up to another thirty days the period during which such disapproval may be issued.

(ii) The period for disapproval may be extended for such additional thirty-day period only if the Board determines that a bank holding company proposing to invest in an export trading company has not furnished all the information required to be submitted or that in the Board's judgment any material information submitted is substantially inaccurate.

(iii) The notice required to be filed by a bank holding company shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

(iv) The Board may disapprove any proposed investment only if—

(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest;

(II) the Board finds that such investment would affect the financial or managerial resources of a bank holding company to an extent which is likely to have a materially adverse

effect on the safety and soundness of any subsidiary bank of such bank holding company, or

(III) the bank hoding company fails to furnish the information required under clause (iii).

(v) The Board may not disapprove any proposed investment solely on the basis of the anticipated or proposed asset-to-equity ratio of the export trading company with respect to which such investment is proposed, unless the anticipated or proposed annual average asset-to-equity ratio is greater than 20-to-1.

(vi) Within three days after a decision to disapprove an investment, the Board shall notify the bank holding company in writing of the disapproval and shall provide a written statement of the basis for the disapproval.

(vii) A proposed investment may be made prior to the expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

(B)(i) The total amount of extensions of credit by a bank holding company which invests in an export trading company, when combined with all such extensions of credit by all the subsidiaries of such bank holding company, to an export trading company shall not exceed at any one time 10 per centum of the bank holding company's consolidated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

(ii) No provision of any other Federal law in effect on October 1, 1982, relating specifically to collateral requirements shall apply with respect to any such extension of credit.

(iii) No bank holding company or subsidiary of such company which invests in an export trading company may extend credit to such export trading company or to customers of such export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(C) For purposes of this paragraph, an export trading company—

(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that any bank holding company which invests in such export trading company may do so under applicable Federal and State banking laws and regulations; and

(ii) may not engage in agricultural production activities or in manufacturing, except for such incidental product modification including repackaging, reassembling or extracting byproducts, as is necessary to enable United States goods or services to conform with requirements of a foreign country and to facilitate their sale in foreign countries.

(D) A bank holding company which invests in an export trading company may be required, by the Board, to terminate its investment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodity contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

(E) Notwithstanding any other provision of law, an Edge Act corporation, organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611–631), which is a subsidiary of a bank holding company, or an agreement corporation, operating subject to section 25 of the Federal Reserve Act (12 U.S.C. 601–604(a)), which is a subsidiary of a bank holding company, may invest directly and indirectly in the aggregate up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of a corporation not engaged in

banking) in the voting stock or other evidences of ownership in one or more export trading companies.

(F) For purposes of this paragraph—

(i) the term "export trading company" means a company which does business under the laws of the United States or any State, which is exclusively engaged in activities related to international trade, and which is organized and operated principally for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services.

(ii) the term "export trade services" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance (other than acting as principal, agent or broker in the sale of insurance on risks resident or located, or activities performed, in the United States, except for insurance covering the transportation of cargo from any point of origin in the United States to a point of final destination outside the United States), product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States;

(iii) the term "bank holding company" shall include a bank which (I) is organized solely to do business with other banks and their officers, directors, or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank, owning stock in a bank described in this clause that invests in an export trading company, shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; and

(iv) the term "extension of credit" shall have the same meaning given such term in the fourth paragraph of section 23A of the Federal Reserve Act.

(G)(i) For purposes of determining whether an export trading company is operated principally for the purposes described in subparagraph (F)(i)—

(I) the operations of such company during the 2-year period beginning on the date such company commences operations shall not be taken into account in making any such determination; and

(II) not less than 4 consecutive years of operations of such company (not including any portion of the period referred to in subclause (I)) shall be taken into account in making any such determination.

(ii) A company shall not be treated as operated principally for the purposes described in subparagraph (F)(i) unless—

(I) the revenues of such company from the export, or facilitating the export, of goods or services produced in the United States exceed the revenues of such company from the import, or facilitating the import, into the United States of goods or services produced outside the United States; and

(II) at least $\frac{1}{3}$ of such company's total revenues are revenues from the export, or facilitating the export, of goods or services produced in the United States by persons not affiliated with such company.

(H)(i) The Board may not prescribe by regulation any maximum dollar amount limitation on the value of goods which an export trading company may maintain in inventory at any time.

(ii) Notwithstanding clause (i), the Board may issue an order establishing

a maximum dollar amount limitation on the value of goods which a particular export trading company may maintain in inventory at any time (after such company has been operating for a reasonable period of time) if the Board finds that, under the facts and circumstances, such limitation is necessary to prevent risks that would affect the financial or managerial resources of an investor bank holding company to an extent which would be likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company.

In the event of the failure of the Board to act on any application for an order under paragraph (8) of this subsection within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. The Board shall include in its annual report to the Congress a description and a statement of the reasons for approval of each activity approved by it by order or regulation under such paragraph during the period covered by the report.

* * * * *

[12 USC 1843(c). As amended by acts of July 1, 1966 (80 Stat. 238); Dec. 31, 1970 (84 Stat. 1763); Nov. 16, 1977 (91 Stat. 1389); Nov. 10, 1978 (92 Stat. 3671); Oct. 22, 1986 (100 Stat. 2095); and Aug. 23, 1988 (102 Stat. 1384).]

INTERNATIONAL BANKING ACT OF 1978

SECTION 1—Short Title; Definitions and Rules of Construction

(a) This Act may be cited as the "International Banking Act of 1978".

(b) For the purposes of this Act—

(1) "agency" means any office or any place of business of a foreign bank located in any State of the United States at which credit balances are maintained incidental to or arising out of the exercise of banking powers, checks are paid, or money is lent but at which deposits may not be accepted from citizens or residents of the United States;

(2) "Board" means the Board of Governors of the Federal Reserve System;

(3) "branch" means any office or any place of business of a foreign bank located in any State of the United States at which deposits are received;

(4) "Comptroller" means the Comptroller of the Currency;

(5) "Federal agency" means an agency of a foreign bank established and operating under section 4 of this Act;

(6) "Federal branch" means a branch of a foreign bank established and operating under section 4 of this Act;

(7) "foreign bank" means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, which engages in the business of banking, or any subsidiary or affiliate, organized under such laws, of any such company. For the purposes of this Act the term "foreign bank" includes, without limitation, foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating;

(8) "foreign country" means any country other than the United States, and includes any colony, dependency, or possession of any such country;

(9) "commercial lending company" means any institution, other than a bank or an organization operating under section 25 of the Federal Reserve Act, organized under the laws of any State of the United States, or the District of Columbia which maintains credit balances incidental to or arising out of the exercise of banking powers and engages in the business of making commercial loans;

(10) "State" means any State of the United States or the District of Columbia;

(11) "State agency" means an agency of a foreign bank established and operating under the laws of any State;

(12) "State branch" means a branch of a foreign bank established and operating un-

der the laws of any State;
(13) the terms "bank", "bank holding company", "company", "control", and "subsidiary" have the same meanings assigned to those terms in the Bank Holding Company Act of 1956, and the terms "controlled" and "controlling" shall be construed consistently with the term "control" as defined in section 2 of the Bank Holding Company Act of 1956; and
(14) "consolidated" means consolidated in accordance with generally accepted accounting principles in the United States consistently applied.

[12 USC 3101.]

SECTION 3—Purpose

(a) It is the purpose of this section to eliminate or modify provisions in section 25(a) of the Federal Reserve Act that (1) discriminate against foreign-owned banking institutions, (2) disadvantage or unnecessarily restrict or limit corporations organized under section 25(a) of the Federal Reserve Act in competing with foreign-owned banking institutions in the United States or abroad or (3) impede the attainment of the Congressional purposes set forth in section 25(a) of the Federal Reserve Act as amended by subsection (b) of this section. In furtherance of such purpose, the Congrees believes that the Board should review and revise its rules, regulations, and interpretations issued pursuant to section 25(a) of the Federal Reserve Act to eliminate or modify any restrictions, conditions, or limitations not required by section 25(a) of the Federal Reserve Act, as amended, that (1) discriminate against foreign-owned banking institutions, (2) disadvantage or unnecessarily restrict or limit corporations organized under section 25(a) of the Federal Reserve Act in competing with foreign-owned banking institutions in the United States or abroad, or (3) impede the attainment of the Congressional purposes set forth in section 25(a) of the Federal Reserve Act as amended by subsection (b) of this section. Rules and regulations pursuant to this subsection and section 25(a) of the Federal Reserve Act shall be issued not later than 150 days after the date of enactment of this section and shall be issued in final form and become effective not later than 120 days after they are first issued.

[12 USC 611a note.]

* * * * *

[Paragraph (f) amended Federal Reserve Act section 25(a), paragraph 13 by adding "Except as otherwise provided in sections 611 to 631 of this title" preceding "a majority of the shares" and by adding the provision relating to the ownership of 50 percent of the shares of capital stock by a foreign bank with prior approval of the Board of Governors of the Federal Reserve System.]

(h) As part of its annual report pursuant to section 10 of the Federal Reserve Act, the Board shall include its assessment of the effects of the amendments made by this Act on the capitalization and activities of corporations organized or operating under section 25 or 25(a) of the Federal Reserve Act, and on commercial banks and the banking system.

[12 USC 247 note.]

* * * * *

SECTION 5—Interstate Banking by Foreign Banks

(a) Except as provided by subsection (b), (1) no foreign bank may directly or indirectly establish and operate a Federal branch outside of its home State unless (A) its operation is expressly permitted by the State in which it is to be operated, and (B) the foreign bank shall enter into an agreement or undertaking with the Board to receive only such deposits at the place of operation of such Federal branch as would be permissible for a corporation organized under section 25(a) of the Federal Reserve Act under rules and regulations administered by the Board; (2) no foreign bank may directly or indirectly establish and operate a State branch outside of its home State unless (A) it is approved by the bank regulatory authority of the State in which such branch is to be operated, and (B) the foreign bank shall enter into an agreement or undertaking with the Board to receive only such deposits at the place of operation of such State branch as would be permissible for a corporation organized under section 25(a) of the Federal Reserve Act under rules and regulations admin-

istered by the Board; (3) no foreign bank may directly or indirectly establish and operate a Federal agency outside of its home State unless its operation is expressly permitted by the State in which it is to be operated; (4) no foreign bank may directly or indirectly establish and operate a State agency or commercial lending company subsidiary outside of its home State, unless its establishment and operation is approved by the bank regulatory authority of the State in which it is to be operated; and (5) no foreign bank may directly or indirectly acquire any voting shares of, interest in, or substantially all of the assets of a bank located outside of its home State if such acquisition would be prohibited under section 3(d) of the Bank Holding Company Act of 1956 if the foreign bank were a bank holding company the operations of whose banking subsidiaries were principally conducted in the foreign bank's home State. Notwithstanding any other provisions of Federal or State law, deposits received by any Federal or State branch subject to the limitations of an agreement or undertaking imposed under this subsection shall not be subject to any requirement of mandatory insurance by the Federal Deposit Insurance Corporation.

(b) Unless its authority to do so is lawfully revoked otherwise than pursuant to this section, a foreign bank, notwithstanding any restriction or limitation imposed under subsection (a) of this section, may establish and operate, outside its home State, any State branch, State agency, or bank or commercial lending company subsidiary which commenced lawful operation or for which an application to commence business had been lawfully filed with the appropriate State or Federal authority, as the case may be, on or before July 27, 1978.

(c) For the purposes of this section, the home State of a foreign bank that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination thereof, in more than one State, is whichever of such State is so determined by election of the foreign bank, or, in default of such election, by the Board.

[12 USC 3103.]

SECTION 7—Authority of Federal Reserve System

(a)(1)(A) Except as provided in paragraph (2) of this subsection, subsections (a), (b), (c), (d), (f), (g), (i), (j), (k), and the second sentence of subsection (e) of section 19 of the Federal Reserve Act shall apply to every Federal branch and Federal agency of a foreign bank in the same manner and to the same extent as if the Federal branch or Federal agency were a member bank as that term is defined in section 1 of the Federal Reserve Act; but the Board either by general or specific regulation or ruling may waive the minimum and maximum reserve ratios prescribed under section 19 of the Federal Reserve Act and may prescribe any ratio, not more than 22 per centum, for any obligation of any such Federal branch or Federal agency that the Board may deem reasonable and appropriate, taking into consideration the character of business conducted by such institutions and the need to maintain vigorous and fair competition between and among such institutions and member banks. The Board may impose reserve requirements on Federal branches and Federal agencies in such graduated manner as it deems reasonable and appropriate.

(B) After consultation and in cooperation with the State bank supervisory authorities, the Board may make applicable to any State branch or State agency any requirement made applicable to, or which the Board has authority to impose upon, any Federal branch or agency under subparagraph (A) of this paragraph.

(2) A branch or agency shall be subject to this subsection only if (A) its parent foreign bank has total worldwide consolidated bank assets in excess of $1,000,000,000; (B) its parent foreign bank is controlled by a foreign company which owns or controls foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1,000,000,000; or (C) its parent foreign bank is controlled by a group of foreign companies that own or control foreign banks that in the aggregate have total

worldwide consolidated bank assets in excess of $1,000,000,000.

[12 USC 3105(a).]

[Subsection (b) added a new paragraph to the end of Federal Reserve Act section 13.]

(c)(1) The Board may make examinations of each branch or agency of a foreign bank, and of each commercial lending company or bank controlled by one or more foreign banks or by one or more foreign companies that control a foreign bank, the cost of which shall be assessed against and paid by such foreign bank or company, as the case may be. The Board shall, insofar as possible, use the reports of examinations made by the Comptroller, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this subsection.

(2) Each branch or agency of a foreign bank, other than a Federal branch or agency, shall be subject to paragraph 20 and the provision requiring the reports of condition contained in paragraph 6 of section 9 of the Federal Reserve Act (12 U.S.C. 335 and 324) to the same extent and in the same manner as if the branch or agency were a State member bank. In addition to any requirements imposed under section 4 of this Act, each Federal branch and agency shall be subject to subparagraph (a) of section 11 of the Federal Reserve Act (12 U.S.C. 248(a)) and to paragraph 5 of section 21 of the Federal Reserve Act (12 U.S.C. 483) to the same extent and in the same manner as if it were a member bank.

[12 USC 3105(b).]

(d) On or before two years after enactment of this Act, the Board after consultation with the appropriate State bank supervisory authorities shall report to the Committee on Banking, Finance and Urban Affairs of the United States House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the United States Senate its recommendations with respect to the implementation of this Act, including any recommended requirements such as limitations on loans to affiliates or capital adequacy requirements which should be imposed on foreign banks to carry out the purposes of this Act. Not later than one hundred and eighty days after the enactment of this Act, the Board shall report to such Committees the steps which have been taken to consult and cooperate with State bank supervisory authorities as required by subsection (a)(1)(B).

[12 USC 3105(c).]

SECTION 8—Nonbanking Activities

(a) Except as otherwise provided in this section (1) any foreign bank that maintains a branch or agency in a State, (2) any foreign bank or foreign company controlling a foreign bank that controls a commercial lending company organized under State law, and (3) any company of which any foreign bank or company referred to in (1) and (2) is a subsidiary shall be subject to the provisions of the Bank Holding Company Act of 1956, and to sections 105 and 106 of the Bank Holding Company Act Amendments of 1970 in the same manner and to the same extent that bank holding companies are subject thereto, except that any such foreign bank or company shall not by reason of this subsection be deemed a bank holding company for purposes of section 3 of the Bank Holding Company Act of 1956.

(b) Until December 31, 1985, a foreign bank or other company to which subsection (a) applies on the date of enactment of this Act may retain direct or indirect ownership or control of any voting shares of any nonbanking company in the United States that it owned, controlled, or held with power to vote on the date of enactment of this Act or engage in any nonbanking activities in the United States in which it was engaged on such date.

(c)(1) After December 31, 1985, a foreign bank or other company to which subsection (a) applies on the date of enactment of this Act or on the date of the establishment of a branch in a State an application for which was filed on or before July 26, 1978 may continue to engage in nonbanking activities in the United States in which directly or

through an affiliate it was lawfully engaged on July 26, 1978 (or on a date subsequent to July 26, 1978, in the case of activities carried on as the result of the direct or indirect acquisition, pursuant to a binding written contract entered into on or before July 26, 1978, of another company engaged in such activities at the time of acquisition), and may engage directly or through an affiliate in nonbanking activities in the United States which are covered by an application to engage in such activities which was filed on or before July 26, 1978; except that the Board by order, after opportunity for hearing, may terminate the authority conferred by this subsection (c) on any such foreign bank or company to engage directly or through an affiliate in any activity otherwise permitted by this subsection (c) if it determines having due regard to the purposes of this Act and the Bank Holding Company Act of 1956, that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States. Notwithstanding subsection (a) of this section, a foreign bank or company referred to in this subsection may retain ownership or control of any voting shares (or, where necessary to prevent dilution of its voting interest, acquire additional voting shares) of any domestically-controlled affiliate covered in 1978 which since July 26, 1978, has engaged in the business of underwriting, distributing, or otherwise buying or selling stocks, bonds, and other securi-ties in the United States, notwithstanding that such affiliate acquired after July 26, 1978, an interest in, or any or all of the assets of, a going concern, or commences to engage in any new activity or activities. Except in the case of affiliates described in the preceding sentence, nothing in this subsection (c) shall be construed to authorize any foreign bank or company referred to in this subsection (c), or any affiliate thereof, to engage in activities authorized by this subsection (c) through the acquistion, pursuant to a contract entered into after July 26, 1978, of any interest in or the assets of a going concern engaged in such activities. Any foreign bank or company that is authorized to engage in any activitiy pursuant to this subsection (c) but, as a result of action of the Board, is required to terminate such activity may retain the ownership of control of shares in any company carrying on such activity for a period of two years from the date on which its authority was so terminated by the Board. As used in this subsection, the term "affiliate" shall mean any company more than 5 per centum of whose voting shares is directly or indirectly owned or controlled or held with power to vote by the specified foreign bank or company, and the term "domestically-controlled affiliate covered in 1978" shall mean an affiliate organized under the laws of the United States or any State thereof if (i) no foreign bank or group of foreign banks acting in concert owns or controls, directly or indirectly, 45 per centum or more of its voting shares, and (ii) no more than 20 per centum of the number of directors as established from time to time to constitute the whole board of directors and 20 per centum of the executive officers of such affiliate are persons affiliated with any such foreign bank. For the purpose of the preceding sentence, the term "persons affiliated with any such foreign bank" shall mean (A) any person who is or was an employee, officer, agent, or director of such foreign bank or who otherwise has or had such a relationship with such foreign bank that would lead such person to represent the interests of such foreign bank, and (B) in the case of any director of such domestically controlled affiliate covered in 1978, any person in favor of whose election as a director votes were cast by less than two-thirds of all shares voting in connection with such election other than shares owned or controlled, directly or indirectly, by any such foreign bank.

(2) The authority conferred by this subsection on a foreign bank or other company shall terminate 2 years after the date on which such foreign bank or other company becomes a "bank holding company" as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)); except that the Board may, upon application of such foreign bank or other

company, extend the 2-year period for not more than one year at a time, if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall exceed 3 years in the aggregate.

(d) Nothing in this section shall be construed to define a branch or agency of a foreign bank or a commercial lending company controlled by a foreign bank or foreign company that controls a foreign bank as a "bank" for the purposes of any provisions of the Bank Holding Company Act of 1956, or section 105 of the Bank Holding Company Act Amendments of 1970, except that any such branch, agency or commercial lending company subsidiary" shall be deemed a "bank" or "banking subsidiary", as the case may be, for the purposes of applying the prohibitions of section 106 of the Bank Holding Company Act Amendments of 1970 and the exemptions provided in sections 4(c)(1), 4(c)(2), 4(c)(3), and 4(c)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c) (1), (2), (3), and (4)) to any foreign bank or other company to which subsection (a) applies.

[12 USC 3106. As amended by acts of Oct. 15, 1982 (96 Stat. 1539) and Aug. 10, 1987 (101 Stat. 584).]

[Subsection (e) amended section 2(h) of the Bank Holding Company Act and provided an exemption from the Bank Holding Company Act for foreign banks' nonbanking activities.]

SECTION 9—Operations

* * * * *

(b)(1) Every branch or agency of a foreign bank and every commercial lending company controlled by one or more foreign banks or by one or more foreign companies that control a foreign bank shall conduct its operations in the United States in full compliance with provisions of any law of the United States or any state thereof which—

(A) prohibit discrimination against any individual or other person on the basis of the race, color, religion, sex, marital status, age, or national origin of (i) such individual or other person or (ii) any officer, director, employee, or creditor of, or any owner of any interest in, such individual or other person; and

(B) apply to national banks or State-chartered banks doing business in the State in which such branch or agency or commercial lending company, as the case may be, is doing business.

(2) No application for a branch or agency shall be approved by the Comptroller or by a State bank supervisory authority, as the case may be, unless the entity making the application has agreed to conduct all of its operations in the United States in full compliance with provisions of any law of the United States or any State thereof which—

(A) prohibit discrimination against individuals or other persons on the basis of the race, color, religion, sex, marital status, age, or national origin of (i) such individual or other person or (ii) any officer, director, employee, or creditor of, or any owner of any interest in, such individual or other person; and

(B) apply to national banks or State-chartered banks doing business in the State in which the entity to be established is to do business.

[12 USC 3106a.]

SECTION 10—Representative Offices

(a) Any foreign bank that maintains an office other than a branch or agency in any State shall register with the Secretary of the Treasury in accordance with rules prescribed by him, within one hundred and eighty days after the date of enactment of this Act [enacted Sept. 17, 1978] or the date on which the office is established, whichever is later.

(b) This Act does not authorize the establishment of any such office in any State in contravention of State Law.

[12 USC 3107.]

SECTION 13—Regulation and Enforcement

(a) The Comptroller, the Board, and the

Federal Deposit Insurance Corporation, are authorized and empowered to issue such rules, regulations, and orders as each of them may deem necessary in order to perform their respective duties and functions under this Act and to administer and carry out the provisions and purposes of this Act and prevent evasions thereof.

(b) In addition to any powers, remedies, or sanctions otherwise provided by law, compliance with the requirements imposed under this Act or any amendment made by this Act may be enforced under section 8 of the Federal Deposit Insurance Act by any appropriate Federal banking agency as defined in that Act.

(c) In the case of any provision of the Federal Reserve Act to which a foreign bank or branch thereof is subject under this Act, and which is made applicable to nonmember insured banks by the Federal Deposit Insurance Act, whether by cross-reference to the Federal Reserve Act or by a provision in substantially the same terms in the Federal Deposit Insurance Act, the administration, interpretation, and enforcement of such provision, insofar as it relates to any foreign bank or branch thereof as to which the Board is an appropriate Federal banking agency, are vested in the Board, but where the making of any report to the Board or a Federal Reserve bank is required under any such provision, the Federal Deposit Insurance Corporation may require that a duplicate of any such report be sent directly to it. This subsection shall not be construed to impair any power of the Federal Deposit Insurance Corporation to make regular or special examinations or to require special reports.

[12 USC 3108.]

BANK EXPORT SERVICES ACT

SECTION 202—Purpose

The Congress hereby declares that it is the purpose of this title to provide for meaningful and effective participation by bank holding companies, bankers' banks, and Edge Act corporations, in the financing and development of export trading companies in the United States. In furtherance of such purpose, the Congress intends that, in implementing its authority under section 4(c)(14) of the Bank Holding Company Act of 1956, the Board of Governors of the Federal Reserve System should pursue regulatory policies that—

(1) provide for the establishment of export trading companies with powers sufficiently broad to enable them to compete with similar foreign-owned institutions in the United States and abroad;

(2) afford to United States commerce, industry, and agriculture, especially small- and medium-size firms, a means of exporting at all times;

(3) foster the participation by regional and smaller banks in the development of export trading companies; and

(4) facilitate the formation of joint venture export trading companies between bank holding companies and nonbank firms that provide for the efficient combination of complementary trade and financing services designed to create export trading companies that can handle all of an exporting company's needs.

[12 USC 1843 note.]

SECTION 206—Guarantees for Export Accounts Receivable and Inventory

The Export-Import Bank of the United States is authorized and directed to establish a program to provide guarantees for loans extended by financial institutions or other public or private creditors to export trading companies as defined in section 4(c)(14)(F)(i) of the Bank Holding Company Act of 1956, or to other exporters, when such loans are secured by export accounts receivable, inventories of exportable goods, accounts receivable from leases, performance contracts, grant commitments, participation fees, member dues, revenue from publications, or such other collateral as the Board of Directors may deem appropriate, and when in the judgment of the Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or

exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size, and minority businesses or agricultural concerns. Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

[12 USC 635a–4. As amended by act of Nov. 30, 1983 (97 Stat. 1257). Section 203 of this act added paragraph (14) to section 4(c) of the Bank Holding Company Act. Section 207 amended the seventh paragraph of section 13 of the Federal Reserve Act.]

INTERNATIONAL LENDING SUPERVISION ACT

SECTION 901—Short Title

This title may be cited as the "International Lending Supervision Act of 1983".

[12 USC 3901 note.]

SECTION 902—Declaration of Policy

(a)(1) It is the policy of the Congress to assure that the economic health and stability of the United States and the other nations of the world shall not be adversely affected or threatened in the future by imprudent lending practices or inadequate supervision.

(2) This shall be achieved by strengthening the bank regulatory framework to encourage prudent private decisionmaking and by enhancing international coordination among bank regulatory authorities.

(b) The Federal banking agencies shall consult with the banking supervisory authorities of other countries to reach understandings aimed at achieving the adoption of effective and consistent supervisory policies and practices with respect to international lending.

[12 USC 3901.]

SECTION 903—Definitions

For purposes of this title—

(1) the term "appropriate Federal banking agency" has the same meaning given such term in section 3(q) of the Federal Deposit Insurance Act, except that for purposes of this title such term means the Board of Governors of the Federal Reserve System for—

(A) bank holding companies and any nonbank subsidiary thereof;

(B) Edge Act corporations organized under section 25(a) of the Federal Reserve Act; and

(C) Agreement Corporations operating under section 25 of the Federal Reserve Act; and

(2) the term "banking institution" means—

(A)(i) an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act or any subsidiary of an insured bank;

(ii) an Edge Act corporation organized under section 25(a) of the Federal Reserve Act; and

(iii) an Agreement Corporation operating under section 25 of the Federal Reserve Act; and

(B) to the extent determined by the appropriate Federal banking agency, any agency or branch of a foreign bank, and any commercial lending company owned or controlled by one or more foreign banks or companies that control a foreign bank as those terms are defined in the International Banking Act of 1978. The term "banking institution" shall not include a foreign bank.

[12 USC 3902.]

SECTION 904—Strengthened Supervision of International Lending

(a) Each appropriate Federal banking agency shall evaluate banking institution foreign country exposure and transfer risk for use in banking institution examination and supervision.

(b) Each such agency shall establish exami-

nation and supervisory procedures to assure that factors such as foreign country exposure and transfer risk are taken into account in evaluating the adequacy of the capital of banking institutions.

[12 USC 3903.]

SECTION 905—Reserves

(a)(1) Each appropriate Federal banking agency shall require a banking institution to establish and maintain a special reserve whenever, in the judgment of such appropriate Federal banking agency—

(A) the quality of such banking institution's assets has been impaired by a protracted inability of public or private borrowers in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as—

(i) a failure by such public or private borrowers to make full interest payments on external indebtedness;

(ii) a failure to comply with the terms of any restructured indebtedness; or

(iii) a failure by the foreign country to comply with any International Monetary Fund or other suitable adjustment program; or

(B) no definite prospects exist for the orderly restoration of debt service.

(2) Such reserves shall be charged against current income and shall not be considered as part of capital and surplus or allowances for possible loan losses for regulatory, supervisory, or disclosure purposes.

(b) The appropriate Federal banking agencies shall analyze the results of foreign loan rescheduling negotiations, assess the loan loss risk reflected in rescheduling agreements, and, using the powers set forth in section 908 (regarding capital adequacy), ensure that the capital and reserve positions of United States banks are adequate to accommodate potential losses on their foreign loans.

(c) The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this section within one hundred and twenty days after the date of the enactment of this title.

[12 USC 3904.]

SECTION 906—Accounting for Fees on International Loans

(a)(1) In order to avoid excessive debt service burdens on debtor countries, no banking institution shall charge, in connection with the restructuring of an international loan, any fee exceeding the administrative cost of the restructuring unless it amortizes such fee over the effective life of each such loan.

(2)(A) Each appropriate Federal banking agency shall promulgate such regulations as are necessary to further carry out the provisions of this subsection.

(B) The requirement of paragraph (1) shall take effect on the date of the enactment of this section.

(b)(1) Subject to subsection (a), the appropriate Federal banking agencies shall promulgate regulations for accounting for agency, commitment, management and other fees charged by a banking institution in connection with an international loan.

(2) Such regulations shall establish the accounting treatment of such fees for regulatory, supervisory, and disclosure purposes to assure that the appropriate portion of such fees is accrued in income over the effective life of each such loan.

(3) The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this subsection within one hundred and twenty days after the date of the enactment of this title.

[12 USC 3905.]

SECTION 907—Collection and Disclosure of Certain International Lending Data

(a) Each appropriate Federal banking agency shall require, by regulation, each banking institution with foreign country exposure to submit, no fewer than four times each calen-

dar year, information regarding such exposure in a format prescribed by such regulations.

(b) Each appropriate Federal banking agency shall require, by regulation, banking institutions to disclose to the public information regarding material foreign country exposure in relation to assets and to capital.

(c) The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this section within one hundred and twenty days after the date of the enactment of this title.

[12 USC 3906.]

SECTION 908—Capital Adequacy

(a)(1) Each appropriate Federal banking agency shall cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by using such other methods as the appropriate Federal banking agency deems appropriate.

(2) Each appropriate Federal banking agency shall have the authority to establish such minimum level of capital for a banking institution as the appropriate Federal banking agency, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the banking institution.

(b)(1) Failure of a banking institution to maintain capital at or above its minimum level as established pursuant to subsection (a) may be deemed by the appropriate Federal banking agency, in its discretion, to constitute an unsafe and unsound practice within the meaning of section 8 of the Federal Deposit Insurance Act.

(2)(A) In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the appropriate Federal banking agency may issue a directive to a banking institution that fails to maintain capital at or above its required level as established pursuant to subsection (a).

(B)(i) Such directive may require the banking institution to submit and adhere to a plan acceptable to the appropriate Federal banking agency describing the means and timing by which the banking institution shall achieve its required capital level.

(ii) Any such directive issued pursuant to this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of section 8(i) of the Federal Deposit Insurance Act to the same extent as an effective and outstanding order issued pursuant to section 8(b) of the Federal Deposit Insurance Act which has become final.

3(A) Each appropriate Federal banking agency may consider such banking institution's progress in adhering to any plan required under this subsection whenever such banking institution, or an affiliate thereof, or the holding company which controls such banking institution, seeks the requisite approval of such appropriate Federal banking agency for any proposal which would divert earnings, diminish capital, or otherwise impede such banking institution's progress in achieving its minimum capital level.

(B) Such appropriate Federal banking agency may deny such approval where it determines that such proposal would adversely affect the ability of the banking institution to comply with such plan.

(C) The Chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall encourage governments, central banks, and regulatory authorities of other major banking countries to work toward maintaining and, where appropriate, strengthening the capital bases of banking institutions involved in international lending.

[12 USC 3907.]

SECTION 909—Foreign Loan Evaluations

(a)(1) In any case in which one or more banking institutions extend credit, whether by loan, lease, guarantee, or otherwise,

which individually or in the aggregate exceeds $20,000,000, to finance any project which has as a major objective the construction or operation of any mining operation, any metal or mineral primary processing operation, any fabricating facility or operation, or any metal-making operations (semi and finished) located outside the United States or its territories and possessions, a written economic feasibility evaluation of such foreign project shall be prepared and approved in writing by a senior official of the banking institution, or, if more than one banking institution is involved, the lead banking institution, prior to the extension of such credit.

(2) Such evaluation shall—

(A) take into account the profit potential of the project, the impact of the project on world markets, the inherent competitive advantages and disadvantages of the project over the entire life of the project, and the likely effect of the project upon the overall long-term economic development of the country in which the project is located; and

(B) consider whether the extension of credit can reasonably be expected to be repaid from revenues generated by such foreign project without regard to any subsidy, as defined in international agreements, provided by the government involved or any instrumentality of any country.

(b) Such economic feasibility evaluations shall be reviewed by representatives of the appropriate Federal banking agencies whenever an examination by such appropriate Federal banking agency is conducted.

(c)(1) The authorities of the Federal banking agencies contained in section 8 of the Federal Deposit Insurance Act and in section 910 of this Act, except those contained in section 910(d), shall be applicable to this section.

(2) No private right of action or claim for relief may be predicated upon this section.

[12 USC 3908.]

SECTION 910—General Authorities

(a)(1) The appropriate Federal banking agencies are authorized to interpret and define the terms used in this title, and each appropriate Federal banking agency shall prescribe rules or regulations or issue orders as necessary to effectuate the purposes of this title and to prevent evasions thereof.

(2) The appropriate Federal banking agency is authorized to apply the provisions of this title to any affiliate of an insured bank, but only to affiliates for which it is the appropriate Federal banking agency, in order to promote uniform application of this title or to prevent evasions thereof.

(3) For purposes of this section, the term "affiliate" shall have the same meaning as in section 23A of the Federal Reserve Act, except that the term "member bank" in such section shall be deemed to refer to an "insured bank", as such term is used in section 3(h) of the Federal Deposit Insurance Act.

(b) The appropriate Federal banking agencies shall establish uniform systems to implement the authorities provided under this title.

(c)(1) The powers and authorities granted in this title shall be supplemental to and shall not be deemed in any manner to derogate from or restrict the authority of each appropriate Federal banking agency under section 8 of the Federal Deposit Insurance Act or any other law including the authority to require additional capital or reserves.

(2) Any such authority may be used by any appropriate Federal banking agency to ensure compliance by a banking institution with the provisions of this title and all rules, regulations, or orders issued pursuant thereto.

(d)(1) Any banking institution which violates, or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such banking institution, who violates any provision of this title, or any rule, regulation, or order, issued under this title, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues.

(2) Such violations shall be deemed to be a violation of a final order under section 8(i)(2) of the Federal Deposit Insurance Act and the penalty shall be assessed and collected by the appropriate Federal banking agency under the procedures established by, and subject to the rights afforded to parties in, such section.

[12 USC 3909.]

SECTION 911—GAO Audit Authority

(a)(1) Under regulations of the Comptroller General, the Comptroller General shall audit the appropriate Federal banking agencies (as defined in section 903 of this title), but may carry out an onsite examination of an open insured bank or bank holding company only if the appropriate Federal banking agency has consented in writing.

(2) An audit under this subsection may include a review or evaluation of the international regulation, supervision, and examination activities of the appropriate Federal banking agency, including the coordination of such activities with similar activities of regulatory authorities of a foreign government or international organization.

(3) Audits of the Federal Reserve Board and Federal Reserve banks may not include—

(A) transactions for, or with, a foreign central bank, government of a foreign country, or nonprivate international financing organization;

(B) deliberations, decisions, or actions on monetary policy matters, including discount window operations, reserves of member banks, securities credit, interest on deposits, or open market operations;

(C) transactions made under the direction of the Federal Open Market Committee; or

(D) a part of a discussion or communication among or between members of the Board of Governors of the Federal Reserve System and officers and employees of the Federal Reserve System related to subparagraphs (A) through (C) of this paragraph.

(b)(1)(A) Except as provided in this subsection, an officer or employee of the General Accounting Office may not disclose information identifying an open bank, an open bank holding company, or a customer of an open or closed bank or bank holding company.

(B) The Comptroller General may disclose information related to the affairs of a closed bank or closed bank holding company identifying a customer of the closed bank or closed bank holding company only if the Comptroller General believes the customer had a controlling influence in the management of the closed bank or closed bank holding company or was related to or affiliated with a person or group having a controlling influence.

(2) An officer or employee of the General Accounting Office may discuss a customer, bank, or bank holding company with an official of an appropriate Federal banking agency and may report an apparent criminal violation to an appropriate law enforcement authority of the United States Government or a State.

(3) This subsection does not authorize an officer or employee of an appropriate Federal banking agency to withhold information from a committee of the Congress authorized to have the information.

(c)(1)(A) To carry out this section, all records and property of or used by an appropriate Federal banking agency, including samples of reports of examinations of a bank or bank holding company the Comptroller General considers statistically meaningful and workpapers and correspondence related to the reports shall be made available to the Comptroller General, including such records and property pertaining to the coordination of international regulation, supervisor and examination activities of an appropriate Federal banking agency.

(B) The Comptroller General shall give each appropriate Federal banking agency a current list of officers and employees to whom, with proper identification, records and property may be made available, and

who may make notes or copies necessary to carry out an audit.

(C) Each appropriate Federal banking agency shall give the Comptroller General suitable and lockable offices and furniture, telephones, and access to copying facilities.

(2) Except for the temporary removal of workpapers of the Comptroller General that do not identify a customer of an open or closed bank or bank holding company, an open bank, or an open bank holding company, all workpapers of the Comptroller General and records and property of or used by an appropriate Federal banking agency that the Comptroller General possesses during an audit, shall remain in such agency. The Comptroller General shall prevent unauthorized access to records or property.

[12 USC 3910.]

SECTION 912—Equal Representation for the Federal Deposit Insurance Corporation

As one of the three Federal bank regulatory and supervisory agencies, and as the insurer of the United States banks involved in international lending, the Federal Deposit Insurance Corporation shall be given equal representation with the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency on the Committee on Banking Regulations and Supervisory Practices of the Group of Ten Countries and Switzerland.

[12 USC 3911.]

SECTION 913—Reports

(a) Not later than six months after the date of the enactment of this title, the Secretary of the Treasury or the appropriate Federal banking agencies as specified below, shall transmit a report to the Congress regarding changes to improve the international lending operations of banking institutions. Such report shall—

(1) review the laws, regulations, and examination and supervisory procedures and practices, governing international banking in each of the Group of Ten Nations and Switzerland with particular attention to such matters bearing on capital requirements, lending limits, reserves, disclosure, examiner access, and lender of last resort resources, such report to be prepared by the Chairman of the Board of Governors of the Federal Reserve System;

(2) outline progress made in reaching the goal specified in section 908(c), such report to be prepared by the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve System; and

(3) indicate actions taken to implement this title by the appropriate Federal banking agencies, including a description of the actions taken in carrying out the objectives of the title and any actions taken by any appropriate Federal banking agency that are inconsistent with the uniform implementation by the appropriate Federal banking agencies of their respective authorities under this title, and any recommendations for amendments to this or other legislation, such report to be prepared by the appropriate Federal banking agencies.

(d)* To ensure that Congress is fully informed of the risks to our banking system posed by troubled foreign loans, the Federal banking agencies, before March 31, 1989, and on April 30 of each succeeding year, shall jointly submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and Committee on Banking, Finance and Urban Affairs of the House of Representatives a report that shall include the following:

(1) the level of loan exposure of those banking institutions under the jurisdiction of each agency which is rated "value-impaired", "substandard", "other transfer risk problems", or in any other troubled debt category as may be established by the banking agencies. This tabulation shall clearly identify aggregate loan exposures of the 9 largest United States banks under the agencies' jurisdiction, the aggregate loan exposures of the next 13 largest banks, and

* So designated in original. There are no corresponding subsections (b) and (c).

the aggregate exposure of all other such banks which have significant country risk exposures. This tabulation shall include a separate section identifying, to the extent feasible, new bank loans to countries with debt service problems which were made within the past year preceding the date on which the report required under this subsection is due, and shall include the amount of sovereign loans written off or sold by such banks during the preceding year.

(2) Progress that has been achieved by the appropriate Federal banking agencies and by banking institutions in reducing the risk to the economy of the United States posed by the exposure of banking institutions to troubled international loans through appropriate voluntary or regulatory policies, including increases in capital and reserves of banking institutions.

(3) The relationship between lending activity by the United States banks and foreign banks in countries experiencing debt service difficulties and exports from the United States and other lending countries to these markets, and the extent to which United States banking institutions can be encouraged to continue to make credit available to finance necessary growth in international trade, and particularly to finance United States exports.

(4) The response of regulatory agencies in other countries to the international debt problems, including measures which encourage the building of capital and reserves by foreign banking institutions, tax treatment of reserves, encouragement of new lending to promote international trade, and measures which may place United States banking institutions at a competitive disadvantage when compared with foreign banking institutions.

(5) Steps that have been taken during the previous year by countries experiencing debt service difficulties to enhance conditions for private direct investment (including investment by United States persons) and to eliminate production subsidies, attain price stability, and undertake such other steps as will remove the causes of their debt service difficulties.

Each appropriate Federal banking agency may provide data in the aggregate to the extent necessary to preserve the integrity and confidentiality of the regulatory and examination process.

[12 USC 3912. As amended by act of Aug. 23, 1988 (102 Stat. 1379).]