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**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. **10534**
April 30, 1992]

AMENDMENTS TO REGULATIONS K AND Y

**— Interim Rule Implementing the Foreign Bank Supervision
Enhancement Act of 1991**

**— Interim Rule Implementing Provisions of the Federal Deposit Insurance Corporation
Improvement Act of 1991**

Comments Invited by June 15

*To all Bank Holding Companies, Branches, Agencies and Representative Offices
of Foreign Banks, and Article XII Investment Companies in the Second Federal
Reserve District, and Others Concerned:*

The Board of Governors of the Federal Reserve System has announced the adoption of various interim amendments to Regulations K (International Banking Operations) and Y (Bank Holding Companies and Change in Bank Control), effective April 15, 1992, in order to carry out the provisions of the Foreign Bank Supervision Enhancement Act of 1991 and the Federal Deposit Insurance Corporation Improvement Act of 1991. The Board has also invited comments, by June 15, on these interim rules.

In announcing the amendments, the Board issued the following statements:

Foreign Bank Supervision Enhancement Act

The Federal Reserve Board has issued an interim regulation to carry out provisions of the Foreign Bank Supervision Enhancement Act of 1991.

Although the interim regulation is effective immediately, the Board requested public comment over a 60-day period on its provisions. The comment period ends June 15, after which the Board will review the interim regulation based upon all comments received and issue a final regulation.

The Act stems from a recommendation sent to Congress last year during the Board's investigation of the Bank of Credit and Commerce International. The Board concluded that additional legislation was needed to strengthen Federal regulation and supervision of foreign bank operations in this country.

As of last December, there were 304 foreign banks with operations in the United States with aggregate banking assets of \$866 billion.

A key mandatory standard in the law requires that a foreign bank applying to operate in the United States must be subject to comprehensive supervision or regulation by its home country authorities on a consolidated basis. It also must supply any information to the Board that is needed to assess the application adequately. The Act also contains discretionary standards to be considered by the Board in deciding on applications, and these are set forth in the regulation.

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In making a determination on consolidated home country supervision, the interim regulation stipulates that the Board will assess, among other factors, the extent to which the home country supervisor:

- ensures that the foreign bank has adequate procedures for monitoring and controlling its worldwide operations;
- receives information on the condition of the foreign bank outside its home country, whether through examination, audit reports or otherwise;
- obtains information on the dealings and the relationship between the foreign bank and its affiliates;
- obtains financial reports that permit analysis of the condition of the foreign bank on a consolidated basis;
- evaluates prudential standards, such as capital adequacy, on a worldwide basis.

The interim regulations also detail the procedures to be used in the filing of applications by foreign banks to operate in this country through a branch, agency, representative office or commercial lending company.

In filing an application, a foreign bank is required to describe applicable secrecy laws, if any, in its home country that would restrict the provision of information to the Board. If the restrictions are significant enough to impede the monitoring of the foreign bank's operations, the Board could deny the application.

The interim regulation also addresses the termination of offices and affiliates of foreign banks, the limitation on loans to one borrower, and activities of state branches and agencies.

FDIC Improvement Act

The Federal Reserve Board has issued an interim rule to carry out provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991 that affect bank holding companies and foreign banking organizations with operations in the United States.

The interim rule amends Regulation Y and is effective immediately. The interim rule will be reviewed by the Board at a later date after the receipt of public comment. Public comment is requested by June 15, 1992.

The interim rule specifies additional factors that the Federal Reserve must consider in acting on applications submitted under the Bank Holding Company Act to acquire a bank.

Enclosed are copies of the text of the interim amendments to Regulations K and Y, which have been reprinted from the *Federal Register* of April 15. Comments are invited by June 15, 1992, and may be sent to the Board, as indicated in the notices, or to our Banking Applications Department. Questions regarding Regulations K or Y may also be directed to that Department (Tel. No. 212-720-1465).

E. GERALD CORRIGAN,
President.

REGULATION Y

Interim Rule Implementing Provisions of Federal Deposit Insurance Corporation Improvement Act of 1991

Effective April 15, 1992;

Comments Invited through June 15, 1992

12 CFR Part 225**[Docket No. R-0755]****Regulation Y—Review Criteria for Bank Holding Company Applications****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Interim rule with request for comments.

SUMMARY: The Board is publishing for comment an amendment to its Regulation Y, which governs bank holding companies and foreign banking organizations with operations in the United States, to implement certain regulatory improvements contained in the Federal Deposit Insurance Corporation Improvement Act of 1991. The proposed amendment specifies additional factors that the Federal Reserve System must consider in acting on applications submitted under the Bank Holding Company Act to acquire a bank. The intended effect of the amendment is to conform the Board's Regulations to the statutory changes.

DATES: *Effective Date.* This interim rule is effective April 15, 1992. *Comment Date.* Comments should be received on or before June 15, 1992.

ADDRESSES: Comments, which should refer to Docket No. R-0755, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary. Comments addressed to the attention of Mr. Wiles may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and

the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT:

Scott G. Alvarez, Associate General Counsel (202-452-3583), or Brian E.J. Lam, Attorney (202-452-2067), Legal Division; or Sidney M. Sussan, Assistant Director (202-452-2638), Division of Banking Supervision and Regulation. For the hearing impaired *only*, Telecommunications Device for the Deaf, Dorothea Thompson (202-452-3544).

SUPPLEMENTARY INFORMATION: The Board is implementing an interim rule and requesting public comment on revisions to its Regulation Y concerning the factors the Board must consider in reviewing and acting on applications by bank holding companies to acquire banks under section 3 of the Bank Holding Company Act. The changes are required by amendments made to the Bank Holding Company Act ("BHC Act") by the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICI Act"), and conform the criteria set forth in the Board's regulations for evaluating such bank applications to the statutory requirements set forth in these amendments. Sections 202(d) and 210 of the FDICI Act, Pub. L. 102-242, 105 Stat. 2237, 2290, 2298.

The amendments enacted by the FDICI Act require the Board to disapprove any application under

section 3 of the BHC Act if:

(A) The company fails to provide the Board with adequate assurances that the company will make available to the Board such information on the operations or activities of the company, and any affiliate of the company, as the Board determines to be appropriate to determine and enforce compliance with this Act; or

(B) In the case of an application involving a foreign bank, the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country. Section 202(d) of the FDICI Act, Pub. L. 102-242, 105 Stat. 2237, 2290.

These amendments also provide that the Board's consideration of the managerial resources of a company or bank "shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or bank." Section 210 of the FDICI Act, Pub. L. 102-242, 105 Stat. 2237, 2298.

To implement these statutory provisions, the Board proposes to amend the list of factors contained in Regulation Y that the Board considers in reviewing bank acquisition proposals.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, and pursuant to the Board's

authority under section 5(b) of the Bank Holding Company Act of 1956, 12 U.S.C. 1844(b), the Board is amending 12 CFR part 225 to read as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818i, 1831(i), 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909, 3310, and 3331-3351.

2. Section 225.13 is amended by revising the introductory text to paragraph (a) and paragraph (b)(2), and by adding paragraphs (b)(4) and (b)(5), to read as follows:

§ 225.13 Factors considered in acting on bank applications.

(a) *Prohibited anticompetitive transactions.* As specified in section 3(c)

of the BHC Act, the Board may not approve any application under this subpart if:

* * * * *

(b) ***

(2) *Managerial Resources.* The competence, experience, and integrity of the officers, directors, and principal shareholders of the applicant, and of the banks and bank holding companies concerned; their record of compliance with laws and regulations; and the record of the applicant and its affiliates of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.

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(4) *Availability of appropriate information.* Whether the applicant has provided the Board with adequate assurances that it will make available such information on its operations or activities, and the operations or activities of any affiliate of the

applicant, that the Board deems appropriate to determine and enforce compliance with the BHC Act and other applicable federal banking statutes, and any regulations thereunder.

(5) *Comprehensive supervision of foreign banks.* Whether, in the case of an application involving a foreign bank, the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, as provided in § 211.25(c)(1) of the Board's Regulation K (12 CFR 211.25(c)(1)).

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By order of the Board of Governors of the Federal Reserve System, April 9, 1992.

William W. Wiles,
Secretary of the Board.
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federal register

Regulations K and Y;
Docket No. R-0754

Interim Rule Implementing the
Foreign Bank Supervision
Enhancement Act of 1991

*Effective April 15, 1992; Comments
Invited through June 15, 1992*

FEDERAL RESERVE SYSTEM

12 CFR Parts 211, 225, 263, 265

[Docket No. R-0754]

Regulation K—International Banking Operations and Regulation Y—Bank Holding Companies and Change in Bank Control**AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Interim rule with request for comments.

SUMMARY: This interim rule implements the Foreign Bank Supervision Enhancement Act of 1991 (FBSEA or Act), Subtitle A of Title II of the Federal Deposit Insurance Corporation Improvement Act of 1991, which made changes to the authority of the Board of Governors of the Federal Reserve System (Board) under the International Banking Act of 1978 (IBA). Regulation K is amended to reflect the Board's new authority in the supervision and regulation of foreign banks seeking to do business in the United States. Regulation Y is amended to require that foreign banking organizations acquiring more than 5 percent of the shares of a U.S. bank or bank holding company file an application with the Board under the Bank Holding Company Act (BHC Act). These amendments are intended to implement the provisions of the FBSEA that enhance the Board's authority over the establishment of U.S. offices by foreign banks and other aspects of the supervision of the U.S. operations of foreign banks.

DATES: *Effective Date.* This interim rule is effective April 15, 1992. *Comment Date.* Comments are requested and must be submitted by June 15, 1992.

ADDRESSES: Comments, which should refer to Docket No. R-0754, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary. Comments addressed to the attention of Mr. Wiles may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding the Availability of

Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Kathleen M. O'Day, Assistant General Counsel (202/452-3786), Ann E. Misback, Senior Attorney (202/452-3788), Gregory A. Baer, Attorney (202/452-3236), or Margaret E. Minitier, Attorney (202/452-3900), Legal Division; Michael G. Martinson, Assistant Director (202/452-3640), Betsy Cross, Manager (202/452-2574), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The FBSEA grants to the Board new powers in the supervision and regulation of foreign banks operating or seeking to operate in the United States. The Board is amending its Regulation K to conform it to the new authority provided under the FBSEA. The amendments are effective immediately. The Board is seeking comment on these amendments and will consider further revisions as appropriate on the basis of the comments received.

The Board finds that it is necessary to issue its rule on an interim basis subject to public comment in order to conform its regulations to the applicable statutes and to ensure that applications by foreign banks to establish offices in the United States will not be delayed pending the end of a notice and comment period. There was no opportunity for the Board to publish proposed regulations for comment prior to the effective date of the FBSEA, as the Act was effective upon enactment. Accordingly, the Board, for good cause, finds that the notice and public comment procedure normally required is impractical and contrary to the public interest under 5 U.S.C. 553(b)(B). The Board further finds that, for the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to make the interim rule effective immediately, without regard for the 30-day period provided for in 5 U.S.C. 553(d).

The enactment of the IBA in 1978 subjected the operations of foreign banks in this country to federal regulation for some purposes. Since that time, the presence of foreign banks in the United States has expanded significantly. As of December 31, 1991, there were 304 foreign banks with operations in the United States with aggregate banking assets of \$866 billion.

Branches and agencies of foreign banks alone had aggregate assets of approximately \$716 billion, or 20 percent of total banking assets in this country, as of year end 1991. Approximately 94 percent of the total assets of foreign bank branches and agencies were in 532 state-licensed branches and agencies, while 6 percent were in 84 federally licensed branches and agencies.

Foreign banks have made significant contributions to the banking environment in the United States and have been an important source of credit for American business. Over the last three years, however, the Board has conducted investigations and taken enforcement actions with respect to unlawful activities at the U.S. offices of several foreign banks. In 1990, as a result of one investigation, the Board forwarded recommendations to the Congress to subject a foreign bank's branches and agencies in this country to various provisions of the criminal code governing bank fraud and other bank crimes. Those recommendations were acted upon by the Congress in the Crime Control Act of 1990.

In 1991 the Board conducted a further review of the statutes, regulations and supervisory policies governing the operations of foreign banks in the United States, and concluded that legislation was needed to strengthen the system of federal regulation and supervision of foreign bank operations in this country. In response to a request for legislative recommendations from the Congress, the Board sent a legislative proposal to the Chairmen of the Senate and House Banking Committees of the United States Congress on May 9, 1991. The Congress enacted substantial portions of this proposal on December 19, 1991 as the FBSEA.

In enacting the FBSEA, Congress sought to provide federal regulators with clear standards to govern the establishment of U.S. offices by foreign banks and with enhanced tools for supervising their ongoing operations in the United States. The Board's interim rule amends Regulation K to reflect these and other changes made by the FBSEA. The Board has revised Regulation K to establish procedures for the exercise of the Board's responsibilities relating to the approval, examination and termination of foreign bank operations in the United States. It has also revised Regulation K to implement provisions of the FBSEA that allow for disclosure of certain information to foreign supervisors and

establish limits on loans to a single borrower by state branches and agencies. In addition, the Board is amending Regulation Y to reflect that foreign banking organizations acquiring an interest of greater than 5 percent of the voting shares of a U.S. bank or bank holding company must file an application with the Board under the BHC Act.

Establishment of Foreign Bank Offices

Board Approval

Regulation K is amended to implement the statutory requirement that a foreign bank obtain the prior approval of the Board before it establishes a branch, agency, representative office, or commercial lending company subsidiary (collectively, "office") in the United States. The regulation provides that changing the status of an office in a way that makes a material difference in the activities of that office—for example, from an agency to a branch—or the relocation of an office from one state to another constitutes the establishment of an office for which prior Board approval is required. In certain circumstances, the regulation also requires Board approval, although not necessarily prior Board approval, when a foreign bank or parent company of a foreign bank acquires ownership or control of a commercial lending company through acquisition or merger, or when a foreign bank assumes the operations of a branch, agency, or representative office through certain mergers or acquisitions.

The Board's authority to approve new foreign bank offices parallels the continuing authority of the Office of the Comptroller of the Currency (Comptroller) to license new federal branches and agencies of foreign banks and the authority of state banking departments or authorities to license new state branches and agencies. The Board's approval authority does not supplant the authority of the Comptroller and the state regulatory authorities to license new foreign bank offices in accordance with whatever terms or conditions those authorities might establish.

Definitions

The regulation adopts a new set of definitions applicable to the provisions implementing the FBSEA. It also makes complementary amendments to definitions previously contained in Subparts A and B of Regulation K. With respect to the definition of representative office, the regulation describes the kinds of functions—representational and administrative—

permitted for representative offices. It has been amended to specify that certain activities would not be permitted for such offices.

Under the FBSEA, Board approval is required before a foreign bank may establish any office in the United States or acquire control of a commercial lending company. "Establish" is defined as opening and engaging in business at a new office. It is also defined to include the assumption by a foreign bank through merger, or the acquisition of the operations, of an office that is open and conducting business in the United States, where the institution that will operate the U.S. office ceases operation as a separate entity or otherwise changes in corporate form following the merger or acquisition. Finally, the definition of "establish" further includes upgrading the status of an office or relocating an office from one state to another. The definition does not refer to a change involving a commercial lending company because approval by the licensing or chartering authority, as well as by the Board, would be required where a change in the corporate form of a subsidiary is involved.

Branch and Agency Functions

It has come to the Board's attention that certain offices or subsidiaries of foreign banks in the United States that are not regulated as a branch or agency by any banking authority in this country are nevertheless performing functions that are appropriate only to banks, branches, or agencies licensed by U.S. bank regulatory authorities. These functions go beyond soliciting business on behalf of the foreign bank to include entering into contracts with customers for the account of the foreign bank parent, with the resulting transaction often being booked at one of the offshore, shell branches of the parent bank. To the extent that employees of these offices or subsidiaries in the United States—or employees of the foreign bank operating from U.S. offices or subsidiaries or other locations—are contracting on behalf of the foreign bank to lend money or to take deposits in this country, these activities in the United States appear to fall within the definition of "agency" or "branch" in the IBA. Such activities are only permissible if the foreign bank first obtains a license from the appropriate state or federal authority to operate a branch or agency. This approach would not preclude a foreign bank with an authorized U.S. branch or agency from also using employees located in the United States to perform activities on behalf of an offshore shell branch or agency.

Procedures for Applications

A foreign bank seeking to establish an office must file an application with the Board and give notice of its application to the public. The Board's publication requirement parallels that currently employed by the Comptroller for applications by a foreign bank to establish a federal branch or federal agency. For applications to establish a federal branch or federal agency, compliance with the publication procedures of the Comptroller will satisfy the Board's requirement.

The regulation provides for public comment within 30 days of the publication of the notice and for Board action generally within 60 days of acceptance of the application. The Board may request any information in addition to that supplied in the application when the Board believes that additional information is necessary for its decision, and may extend the 60-day period for decision if it determines that an extension would serve the public interest and so notifies the applicant. These rules are similar to those for bank holding company applications.

Special procedures for obtaining after-the-fact approval by the Board of applications to establish offices are provided to address the establishment of U.S. offices through certain mergers or acquisitions of foreign banks. Such establishment occurs when there is a change in the corporate form of the foreign bank operating the branch, agency, representative office, or commercial lending company in this country, such as through a merger of that foreign bank into another foreign bank or, in certain circumstances, the acquisition of the assets or operations of the foreign bank by another foreign bank. In order to allow the transaction to be accomplished without delay, the Board may permit consummation to occur before an application has been filed with or acted upon by the Board. The regulation sets forth the criteria on which the Board may base such a decision. The Board's after-the-fact approval procedures apply only if the new bank resulting from a merger or the bank being acquired does not control or own more than 5 percent of the voting shares of a U.S. bank. In all cases, the Board reserves the right to deny the application, and an applicant must agree to abide by the Board's decision, including by, if necessary, terminating the activities of any U.S. office as required by the Board.

In contrast, no application is required where a foreign bank with a U.S. office is acquired by a foreign bank or foreign

company if the acquired foreign bank continues to operate in the same corporate form as prior to the acquisition, and the acquired foreign bank does not control or own more than 5 percent of the shares of a U.S. bank. In such circumstance, there would be no change in the corporate form of the foreign bank that operates the U.S. office, and for that reason no application would be required. The regulation does require a written notice within 10 days of the change in ownership or control of the foreign bank with the U.S. office in order for the Board to be able to monitor whether other regulatory requirements—such as the qualifying foreign banking organization standard—are being met by the new consolidated organization.

The Board wishes to make clear that under no circumstances is an application to the Board required for a merger or acquisition of two or more foreign banks that occurs wholly outside the United States where the foreign banks have no U.S. offices and do not control a U.S. bank.

The Board's regulation takes account of the fact that the Board will be acting on applications for foreign bank offices for which approval must also be obtained from the Comptroller or the relevant state banking authority. For that reason, the Board envisions close cooperation between itself and these agencies. The Board will notify the Comptroller or the relevant state banking authority when an application is received and will consult with that agency throughout the application process. In acting on an application, the Board will rely to the extent possible on information already supplied by the applicant or otherwise available to the Comptroller or the relevant state banking authority.

The Board will also consult with the Comptroller, the Federal Deposit Insurance Corporation (FDIC) and the state supervisors in an effort to develop a uniform standard form for applications by foreign banks to establish branches, agencies, representative offices, and commercial lending companies. Until a form is issued, an applicant should submit to the appropriate Reserve Bank a copy of its application to either the state banking authority or the Comptroller, and should contact the responsible Reserve Bank to determine what additional information should be provided.

Standards for Approval of Applications to Establish a Branch, Agency, or Commercial Lending Company Subsidiary

Regulation K is revised to implement the statutory requirements for approval of foreign bank applications and additional requirements imposed by the Board pursuant to its statutory authority. The Board may condition approval of an application as it deems necessary.

Comprehensive supervision or regulation of a foreign bank on a consolidated basis by home country authorities is one of the mandatory requirements for the establishment of an office in the United States. The Board's regulation provides a standard for assessing consolidated supervision or regulation: whether a foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank, including the relationship of the bank to affiliated companies, to be able to assess its overall financial condition and compliance with law. In making that determination, the Board will assess, among other factors, the extent to which the home country supervisor:

1. Ensures that the foreign bank has adequate procedures for monitoring and controlling its worldwide operations;
2. Obtains information on the condition of the foreign bank and its subsidiaries or offices, whether through examination, audit reports, or otherwise;
3. Obtains information on the dealings and relationship between the foreign bank and its affiliates;
4. Receives financial reports that permit analysis of the consolidated, worldwide condition of the foreign bank;
5. Evaluates prudential standards on a worldwide basis.

The Board recognizes that the legal systems for supervision and regulation vary from country to country, and that comprehensive supervision or regulation on a consolidated basis can be achieved in different ways. The regulation includes both the general standard the Board will apply in making its determination and the primary elements it will consider in applying this standard. At the same time, the regulation gives the Board flexibility in making case-by-case determinations without imposing the U.S. regulatory system on foreign banks outside the United States.

The proposed factors focus on the ability of the home country supervisor to obtain information on, and supervise, the foreign bank's operations and overall condition, but they do not mandate that the information be obtained in a particular form or through particular methods. The Board will

obtain information on these factors by requiring the foreign bank to submit in its application a description of the supervision to which it is subject, or any changes in such supervision since the last relevant Board determination on consolidated supervision in the foreign bank's home country. The Board will also seek to gather information from outside sources, including the home country authorities.

It is possible that different types of institutions from the same country may be supervised in a different manner. Thus, a decision in a particular case relating to a home country's supervision may not always be determinative for other applicants from that country. There will also be applications from banks in one country that are owned by banks in another country. In such a case, both the applicant bank and any parent foreign bank must be subject to consolidated home country supervision, necessitating determinations for more than one country.

The discretionary standards for approval are adopted from the statute and further clarified by the regulation. The financial and managerial standards imposed by the regulation reflect those required of domestic banks under the Board's Regulation Y. In addition, the standard for managerial resources includes consideration of management's experience and capacity to engage in international banking and any record of a foreign bank or its management with respect to compliance with laws and regulations. Where the foreign bank is already present in the United States, the standard requires consideration of a foreign bank's fulfillment of any commitments to, and any conditions imposed by, the Board in connection with prior applications. The Board will also examine whether the foreign bank home country supervisor and the supervisor of any foreign bank parent share information about the bank with the Board and other supervisors.

One of the discretionary standards established by the FBSEA for applications to establish a branch, agency, or commercial lending company is whether the foreign bank has provided the Board with adequate assurances that it will make available the Board information on the operation of the bank and its affiliates necessary to determine compliance with U.S. law. Although this standard is discretionary for such applications, the FBSEA also amended the BHC Act to make these assurances a mandatory requirement for the acquisition of a U.S. bank by a

company, including a foreign bank or other foreign company.

In making such assurances on disclosure of information to the Board, the applicant is required to describe applicable secrecy laws, and how those laws would restrict the provision of information to the Board. If the restrictions are significant enough to impede materially the monitoring of the foreign bank's operations, the standard on disclosure of information would allow the Board to deny the application. There could, however, be instances in which such restrictions would not impede the review of a foreign bank's operations. In such circumstances, if the Board has no reason to believe that the affiliates are engaged in violations of law, the application could still be approved subject to the imposition of a condition that activities of the foreign bank's U.S. office or subsidiary must be terminated if the information restrictions subsequently interfere with the Board's ability to determine the safety and soundness of the U.S. operations of the foreign bank or the foreign bank's compliance with U.S. laws and regulations.

Abbreviated Procedures

The Comptroller currently may apply abbreviated procedures for applications to establish an additional federal branch or federal agency within a state in which a foreign bank already maintains a federal branch or federal agency. The Board is considering, and is seeking comment on, whether to establish similar procedures after it has gained experience in reviewing applications from foreign banks under the new regulations.

The Board may also consider more streamlined procedures or delegation of authority to the Reserve Banks for the approval of certain applications for new offices after the Board has developed experience in approving such applications sufficient to provide a basis for identifying the appropriate circumstances for more limited procedures.

Representative Offices

In acting on applications by foreign banks to establish representative offices, the Board will take into account to the extent it deems appropriate the standards for approval of applications to establish branches, agencies, and commercial lending company subsidiaries. In so doing, the Board will consider the nature and extent of the proposed activities of the representative office in the United States.

Applications under the Bank Holding Company Act

Section 207 of the FBSEA eliminated a provision in section 8 of the IBA that exempted foreign banks and companies controlling foreign banks from certain of the requirements of section 3 of the BHC Act if the foreign bank operated in the United States only through branches, agencies, or commercial lending companies. As a result, a foreign bank or a company that controls a foreign bank that maintains a branch or agency in the United States or controls a commercial lending company in the United States is now subject to all of the provisions of the BHC Act as if the foreign bank or company were a bank holding company under the BHC Act. The Board has adopted a conforming amendment to Regulation Y that specifies that in general a foreign banking organization with a branch, agency, or commercial lending company subsidiary in the United States is subject to the application requirements of section 3 of the BHC Act for the acquisition of a direct or indirect interest in a U.S. bank or U.S. bank holding company. The conforming amendment also provides that an application is not required under section 3 for the acquisition of more than 5 percent of the shares of a foreign banking organization that does not control a bank in the United States.

Termination of an Office of a Foreign Bank in the United States

Grounds for Termination of Offices

Regulation K is revised to include the statutory standards for termination by the Board of the operations in the United States of a representative office or state branch, state agency, or commercial lending company of a foreign bank. Before terminating any state branch or state agency, the Board will request and consider the views of the relevant state supervisor. The regulation also reflects the statutory requirement that the Board recommend to the Comptroller that a federal branch or federal agency be terminated if the termination would be warranted under the same standards applicable to a state branch or agency.

Hearing

Under the FBSEA, a termination order generally will be issued only after notice and an opportunity for a hearing. The Board may act without providing for a hearing if it determines that doing so is necessary in order to protect the public interest. When such action is necessary, the Board may take other actions

designed to give the foreign bank notice and an opportunity to present its views.

Voluntary Termination

The Board's regulation requires notice of the voluntary termination of an office by a foreign bank 30 days in advance of that termination. Such a procedure is necessary for the Board to monitor a foreign bank's presence in the United States. This notice requirement is in addition to, and does not satisfy, any other requirement by federal or state authorities relating to a voluntary liquidation or branch closing.

Examinations of Offices and Affiliates of Foreign Banks

Under sections 7(c) and 10(c) of the IBA, the Board is granted authority to examine any branch, agency, or representative office of a foreign bank, any commercial lending company or bank controlled by one or more foreign banks, and any other office or affiliate of a foreign bank that conducts business in the United States. Moreover, the Board is authorized to coordinate examinations of the U.S. offices and U.S. affiliates of a foreign bank with the other federal and state banking regulators and to conduct its own examinations of such offices. The Board has delegated the authority to coordinate such examinations to its Director of the Division of Banking Supervision and Regulation.

Regulation K is revised to implement the statutory requirement that each branch and agency of a foreign bank be examined on site at least once in every twelve-month period, beginning on the date on which the most recent examination ended, by one of the federal or state banking agencies. This interim rule also revises Regulation K to implement the statutory standard that representative offices shall be examined in the manner and with the frequency determined by the Board. The Board is also exercising its discretion to add commercial lending companies to the list of offices to be examined in every twelve-month period.

Disclosure of Information to Foreign Supervisors

Under section 15(a) of the IBA, the Board is authorized to disclose supervisory information to a foreign supervisor if such disclosure is appropriate and would not prejudice the interests of the United States. Before disclosing any information, the Board is required to obtain, to the extent necessary, the agreement of the foreign supervisor to maintain the

confidentiality of the information to the extent possible under applicable law. The Board delegates to the General Counsel the authority to determine whether disclosure is appropriate in a particular case and to negotiate any confidentiality agreement. The General Counsel will consult with the other federal banking agencies as appropriate in deciding whether to disclose supervisory information.

Limitation on Loans to One Borrower

The FBSEA amends section 7 of the IBA to provide that a state branch or state agency must comply with the same limitations with respect to loans made to a single borrower as are applicable to a federal branch or federal agency under the IBA. Under the IBA, a federal branch or agency is subject to the limit on loans to single borrowers found in the National Bank Act. Under that Act, the federal branches and agencies of the same foreign bank must aggregate all their loans to the same borrower to determine compliance with this limit. The capital against which the loans are measured is the consolidated capital of the foreign bank.

The regulation implements the new requirement in the FBSEA by requiring a foreign bank with a state branch or agency to aggregate all loans made to the same borrower by all of its branches and agencies in the United States—regardless of whether they have federal or state licenses—for purposes of determining compliance with the statutory limit. The intent of the provision is to put the operations of the foreign bank in the United States on a comparable footing with domestic banks for lending purposes.

Activities of State Branches and Agencies

Section 7(h)(1) of the IBA, as enacted by the FBSEA, provides that a state branch or state agency may not engage in any type of activity not permissible for a federal branch unless the Board has determined that such activity is consistent with sound banking practices. In the case of insured branches, the FDIC must also determine that the activity poses no significant risk to the deposit insurance fund. The Board proposes to address this provision at a later time, after consulting the FDIC.

Deposit Insurance Requirement for Retail Deposit-Taking

There is an unresolved issue concerning the scope of section 6(c) of the IBA, specifically whether a foreign

bank must establish an insured bank subsidiary if it maintains any deposits with balances under \$100,000, or whether a foreign bank need only establish an insured bank subsidiary if it accepts or maintains deposits with balances under \$100,000 that are domestic retail deposits requiring deposit insurance pursuant to sections 6(a) and (b) of the IBA and the regulations adopted by the FDIC and the Comptroller. On December 19, 1991, the Board and the Comptroller provided guidance to foreign banks that, until the agencies issued clarifying rules or interpretations, the foreign banks would not be considered to be in violation of section 6(c) if they limited their deposit-taking activities in branches and agencies to those permitted by regulations of the FDIC and the Comptroller in effect on December 19, 1991. The Board is continuing to review section 6(c) and the intent of the Congress with respect to this provision, and has therefore reserved this part of the regulation for future promulgation.

Rules of Practice for Hearings

Under amendments to the IBA made by the FBSEA, the Board must, unless expeditious action is required, hold hearings before terminating the activities of a state branch, state agency, subsidiary, or representative office of a foreign bank. Accordingly, the Board has revised its hearing rules to make them applicable in such cases.

Penalties for Violation of the IBA

Section 208 of the FBSEA added a new section 16 to the IBA that provides for civil money penalties for violation of the IBA. That provision, like the rest of the FBSEA, is currently effective. The Board is working with the other federal banking agencies to determine whether it is necessary to adopt conforming regulations, and that effort will be the subject of a separate notice and opportunity for comment.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis—a description of the reasons why the action by the agency is being considered and a statement of the objectives of, and the legal basis for, the proposed rule—are contained in the supplementary information above. The Board's interim rule requires no

additional reporting or recordkeeping requirements other than as are necessary to implement the statute; nor are there relevant federal rules that duplicate, overlap, or conflict with the proposed rule, other than as required by law.

Another requirement of the initial regulatory flexibility analysis is a description of and, where feasible, an estimate of the number of small entities to which the proposed rule shall apply. The interim rule will apply to all foreign offices, regardless of size. The rule should not have a significant economic impact on small branches, agencies, representative offices, and commercial lending companies, but rather will improve the supervision and regulation of all such offices.

Paperwork Reduction

The Board, acting pursuant to authority delegated to it by the Director of the Office of Management and Budget under 44 U.S.C. 3507(e), has approved the collection of information called for by sections 211.25 and 211.27 of the Board's Rules and sections 7 and 10 of the IBA.

List of Subjects

12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 263

Administrative practice and procedure, Federal Reserve System.

12 CFR Part 265

Authority delegations (Government agencies), Federal Reserve System.

For the reasons outlined above, the Board of Governors is amending 12 CFR parts 211, 225, 263 and 265 to read as set forth below:

PART 211—INTERNATIONAL BANKING OPERATIONS

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

Authority: Federal Reserve Act (12 U.S.C. 221 *et seq.*); Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); t

International Banking Act of 1978 (Pub. L. 95-369; 92 Stat. 607; 12 U.S.C. 3101 *et seq.*); the Bank Export Services Act (Title II, Pub. L. 97-290, 96 Stat. 1235); the International Lending Supervision Act (Title IX, Pub. L. 98-181, 97 Stat. 1153, 12 U.S.C. 3901 *et seq.*); and the Export Trading Company Act Amendments of 1988 (Title III, Pub. L. 100-418, 102 Stat. 1384 (1988)).

2. Section 211.2 is amended by revising paragraph (t) to read as follows:

§211.2 Definitions.

(t) *Representative office* means an office that:

(1) Engages solely in representational and administrative functions, such as soliciting new business or acting as liaison between the organization's head office and customers in the United States; and

(2) Does not have authority to make any business decision for the account of the organization it represents, including contracting for any deposit or deposit-like liability on behalf of the organization.

3. Section 211.21 is amended by removing the word "and" where it appears in paragraph (b)(1), by removing the period at the end of paragraph (b)(2) and adding a semi-colon in its place, and by adding new paragraphs (b)(3) through (b)(8) to read as follows:

§211.21 Authority, purpose, and scope.

(3) Board approval of the acquisition or establishment of an office of a foreign bank in the United States under §§ 7(d) and 10(a) of the IBA (12 U.S.C. 3105(c), 3107(a));

(4) The termination by the Board of a foreign bank's representative office, state branch, state agency, or commercial lending company subsidiary in the United States under sections 7(e) and 10(b) of the IBA (12 U.S.C. 3105(d), 3107(b));

(5) The examination of any office or affiliate of a foreign bank in the United States under sections 7(c) and 10(c) of the IBA (12 U.S.C. 3105(b), 3107(c));

(6) The disclosure of supervisory information to a foreign supervisor under section 15 of the IBA (12 U.S.C. 3109);

(7) The limitations on loans to one borrower by state branches and state agencies of a foreign bank under section 7(h) of the IBA (12 U.S.C. 3105(g)); and

(8) The deposit insurance requirement for retail deposit taking by a foreign bank under section 6 of the IBA (12 U.S.C. 3104).

4. Sections 211.22 and 211.23 are redesignated as §§ 211.23 and 211.24, respectively.

5. Newly designated § 211.23 is amended by removing paragraph (a) and redesignating paragraphs (b) through (e) as paragraphs (a) through (d), respectively.

6. Newly redesignated § 211.24 is amended by removing paragraph (a) and redesignating paragraphs (b) through (i) as paragraphs (a) through (h), respectively.

7. A new § 211.22 is added to read as follows:

§211.22 Definitions.

The definitions of § 211.2 in subpart A of this part apply to this subpart except as a term is otherwise defined in this section:

(a) *Affiliate*, of a foreign bank or of a parent of a foreign bank, means any company that controls, is controlled by, or is under common control with, the foreign bank or the parent of the foreign bank.

(b) *Agency* means any office or any place of business of a foreign bank located in any state 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:

(1) Are incidental to, or arise out of the exercise of, other lawful banking powers;

(2) Are to serve a specific purpose;

(3) Are not solicited from the general public;

(4) Are not used to pay routine operating expenses in the United States such as salaries, rent, or taxes;

(5) Are withdrawn within a reasonable period of time after the specific purpose for which they were placed has been accomplished; and

(6) Are drawn upon in a manner reasonable in relation to the size and nature of the account.

(c) *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 U.S.C. 1841).

(d) *Branch* means any place of business of a foreign bank located in any state at which deposits are received.

(e) *Change the status* of an office means convert a representative office into a branch or an agency, or convert an agency into a branch.

(f) *Commercial lending company*

means any organization, other than a bank or an organization operating under section 25 of the FRA (12 U.S.C. 601-604a), organized under the laws of any state, that maintains credit balances and permissible for an agency and engages in the business of making commercial loans. *Commercial lending company* includes any company chartered under Article XII of the banking law of the State of New York.

(g) *Comptroller* means the Office of the Comptroller of the Currency.

(h) *Control* has the same meaning assigned to it in section 2 of the BHC Act (12 U.S.C. 1841), and the terms *controlled* and *controlling* shall be construed consistently with the term *control*.

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

(j) A foreign bank *engages directly in the business of banking outside of the United States* if the foreign bank engages directly in banking activities usual in connection with the business of banking in the countries where such foreign bank is organized or operating.

(k) To *establish* means to:

(1) Open and conduct business through an office;

(2) Assume, through merger, the operations of an office that is open and conducting business;

(3) Acquire an office through the acquisition of a subsidiary where such subsidiary would cease to operate in the same corporate form following the acquisition;

(4) Change the status of an office; or

(5) Relocate an office from one state to another.

(l) *Federal agency*, *federal branch*, *state agency* and *state branch* have the same meanings as in section 1 of the IBA (12 U.S.C. 3101).

(m) *Foreign bank* means an organization that is organized under the laws of a foreign country and that engages directly in the business of banking. The term *foreign bank* does not include central banks of foreign countries that are not engaged in a commercial banking business in the United States.

(n) *Foreign banking organization* means a foreign bank (as defined in section 1(b)(7) of the IBA (12 U.S.C. 3101(b)(7))) that operates a branch, agency or commercial lending company subsidiary in the United States or that controls a bank in the United States,

and any company of which such foreign bank is a subsidiary.

(o) *Home country*, with respect to a foreign bank, means the country in which the foreign bank is chartered or incorporated.

(p) *Home country supervisor*, with respect to a foreign bank, means the governmental entity or entities in the foreign bank's home country with responsibility for the supervision and regulation of the foreign bank.

(q) *Licensing authority* means:

(1) With respect to an application to establish a state branch or state agency of a foreign bank, the relevant state supervisor;

(2) With respect to an application to establish a federal branch or federal agency, the Comptroller.

(r) *Office or office of a foreign bank* means any branch, agency, representative office, or commercial lending company subsidiary of a foreign bank in the United States.

(s) The *parent* of a foreign bank means any company of which the foreign bank is a subsidiary; the *immediate parent* of a foreign bank is the company of which the foreign bank is a direct subsidiary; and the *ultimate parent* of a foreign bank is the parent of the foreign bank that is not the subsidiary of any other company.

(t) *Relevant state supervisor* means the state entity that is authorized to supervise and regulate a state branch, state agency or commercial lending company.

(u) *Representative office* means an office that:

(1) Engages in representational and administrative functions, such as soliciting new business or acting as liaison between the foreign bank's head office and customers in the United States; and

(2) Does not have authority to make any business decision for the account of the foreign bank it represents, including contracting for any deposit or deposit-like liability on behalf of the foreign bank.

(v) *State* means any state of the United States or the District of Columbia.

(w) *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 any organization that is otherwise controlled or capable of being controlled by a foreign banking organization.

8. Sections 211.25 through 211.30 are

added to read as follows:

§211.25 Approval of offices of foreign banks.

(a) *Board approval of offices of foreign banks*—(1) *Prior Board approval.*

(i) Except as otherwise provided in paragraph (a)(2) of this section, a foreign bank shall obtain the approval of the Board before it establishes a branch, agency, representative office or commercial lending company subsidiary in the United States.

(ii) Except as otherwise provided in paragraph (a)(2) of this section, a foreign bank shall obtain the Board's prior approval before it acquires ownership or control of:

(A) A commercial lending company, or

(B) A foreign bank that owns or controls a commercial lending company in the United States where the acquired foreign bank would cease to operate in the same corporate form following the acquisition.

(2) *After-the-fact Board approval.* Where a foreign bank proposes to establish an office in the United States through an acquisition of, or merger with, a foreign bank with an office in the United States, the Board may, in its discretion, allow the acquisition or merger to proceed before an application to establish an office has been filed or acted upon under this section where:

(i) The foreign bank or banks will not own or control more than five percent of any class of the voting securities of, or control, a U.S. bank;

(ii) Prior to consummation of the acquisition or merger, each of the relevant foreign banks commits in writing to comply with the procedures for an application under this section within a reasonable period of time or has already filed an application; and

(iii) The Board is given reasonable advance notice of the proposed acquisition or merger, and each of the relevant foreign banks commits in writing to abide by the Board's decision on the application, including, if necessary, to terminate the activities of any U.S. office as required by the Board.

(3) *Notification of change in ownership or control.* A foreign bank with a U.S. office shall notify the Board in writing within 10 days of a change in its ownership or control where it is acquired or controlled by another foreign bank or company and the foreign bank with a U.S. office continues to operate in the same corporate form as prior to the change in ownership or control.

(4) *Transactions subject to approval under Regulation Y.* Subpart B of the Board's Regulation Y (12 CFR 225.11 through 225.14) governs the acquisition by a foreign bank or foreign banking organization of direct or indirect ownership or control of any voting securities of a bank or bank holding company in the United States if the acquisition results in the foreign bank or foreign banking organization's ownership or control of more than 5 percent of any class of voting securities of a U.S. bank or bank holding company, including through acquisition of a foreign banking organization that owns or controls more than 5 percent of any class of the voting securities of a U.S. bank or bank holding company.

(b) *Procedures for application*—(1) *Filing application.* An application for the Board's prior approval pursuant to this section shall be filed in the manner prescribed by the Board.

(2) *Publication requirement*—(i) *In general.* Except with respect to a proposed transaction where more extensive notice is required by statute or as otherwise provided in paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, the applicant shall publish a notice in a newspaper of general circulation in the community in which the applicant proposes to engage in business. The notice shall state that an application is being filed as of the date of the notice and provide the name of the applicant, the subject matter of the application, and the date by which comments are due pursuant to paragraph (b)(3) of this section. The applicant shall furnish with its application to the Board a copy of the notice, the date of its publication, and the name and address of the newspaper in which it was published.

(ii) *Exception.* The Board may modify the publication requirement of paragraph (b)(2)(i) of this section in appropriate circumstances.

(iii) *Federal branch or federal agency.* In the case of an application to establish a federal branch or federal agency, compliance with the publication procedures of the Comptroller shall satisfy the publication requirement of this section. Comments regarding the application should be sent to the Board and the Comptroller.

(3) *Written comments.* Within 30 days after publication as required in this section, any person may submit to the Board written comments and data on a application. The Board may extend the 30-day comment period if the Board determines that additional relevant information is likely to be provided by

interested persons or if other extenuating circumstances exist.

(4) *Action on application*—(i) *Time limits.* The Board shall act on an application from a foreign bank within 60 calendar days after the foreign bank has been notified that its application has been accepted, unless the Board determines that the public interest will be served by providing additional time to review the application and notifies the applicant that the 60-day period is being extended.

(ii) *Additional information.* The Board may request any information in addition to that supplied in the application when the Board believes that additional information is necessary for its decision.

(5) *Coordination with other regulators.* Upon receipt of an application by a foreign bank under this section, the Board shall promptly notify, consult with, and consider the views of the licensing authority.

(c) *Standards for approval*—(1) *Mandatory standards*—(i) *Applicable standards.* As specified in section 7(d) of the IBA (12 U.S.C. 3105(c)), the Board may not approve an application to establish a branch or an agency, or to acquire ownership or control of a commercial lending company, unless it determines that:

(A) The foreign bank and any parent foreign bank engage directly in the business of banking outside the United States and are subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in their home countries; and

(B) The foreign bank has furnished to the Board the information that the Board requires in order to assess the application adequately.

(ii) *Basis for determining comprehensive supervision or regulation on a consolidated basis.* In determining whether a foreign bank and any parent foreign bank is subject to comprehensive supervision or regulation on a consolidated basis, the Board will determine whether the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationship of the bank to any affiliate) to assess its overall financial condition and compliance with law and regulation. In making such a determination, the Board shall assess, among other factors, the extent to which the home country supervisor:

(A) Ensures that the foreign bank has adequate procedures for monitoring and

controlling its activities worldwide;

(B) Obtains information on the condition of the foreign bank and its subsidiaries and offices outside the home country through regular reports of examination, audit reports, or otherwise;

(C) Obtains information on the dealings and relationship between the foreign bank and its affiliates, both foreign and domestic;

(D) Receives from the foreign bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the foreign bank's financial condition on a worldwide, consolidated basis;

(E) Evaluates prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis.

(2) *Discretionary standards.* In acting on any application under this subpart, the Board may take into account:

(i) Whether the appropriate authorities in the home country of the foreign bank have consented to the proposed establishment of a branch, agency or commercial lending company subsidiary;

(ii) The financial resources of the foreign bank (including the foreign bank's capital position, projected capital position, profitability, level of indebtedness, and future prospects) and the condition of any U.S. office of the foreign bank;

(iii) The managerial resources of the foreign bank, including the competence, experience, and integrity of the officers, directors, and principal shareholders; management's experience and capacity to engage in international banking; and the record of the foreign bank and its management of complying with laws and regulations, and of fulfilling any commitments to, and any conditions imposed by, the Board in connection with any prior application;

(iv) Whether the foreign bank's home country supervisor and the home country supervisor of any parent of the foreign bank share material information regarding the operations of the foreign bank with other supervisory authorities;

(v) Whether the foreign bank has provided the Board with adequate assurances that information will be made available to the Board on the operations or activities of the foreign bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the BHC Act, and other applicable federal banking statutes; these assurances shall include a statement from the foreign bank describing any laws that would restrict the bank or any

of its parents from providing information to the Board; and

(vi) Whether the foreign bank and its U.S. affiliates are in compliance with applicable U.S. law, and whether the applicant has established adequate controls and procedures in each of its offices to ensure continuing compliance with U.S. law, including controls directed to detection of money laundering and other unsafe or unsound banking practices.

(3) *Additional factor.* In acting on an application, the Board may consider the needs of the community and the history of operation of the foreign bank and its relative size in its home country, provided, however, that the size of the foreign bank shall not be the sole factor in determining whether an office of a foreign bank should be approved.

(4) *Establishment of conditions.* Consistent with the mandatory standards for approval, the Board may impose such conditions on its approval as it deems necessary, including a condition requiring future termination of any activities based on an inability of the foreign bank to provide information on the activities of itself or its affiliates necessary for the Board to determine and enforce compliance with U.S. banking laws.

(d) *Representative offices.*—(1) *Standard for approval.* As specified in section 10(a) of the IBA (12 U.S.C. 3107(a)), in acting on the application of a foreign bank to establish a representative office, the Board shall take into account to the extent it deems appropriate the standards for approval set out in paragraph (c) of this section.

(2) *Additional requirements.* The Board may impose any additional requirements that it determines to be necessary to carry out the purposes of the IBA.

(e) *Preservation of existing authority.* Nothing in this subpart shall be construed to relieve any foreign bank or foreign banking organization from any otherwise applicable requirement of federal or state law, including any applicable licensing requirement.

§211.26 Termination of an office of a foreign bank.

(a) *Grounds for termination.* As specified in section 7(e) and 10(b) of the IBA (12 U.S.C. 3105(d), 3107(b)), the Board may order a foreign bank to terminate the activities of its representative office, state branch, state agency, or commercial lending company subsidiary if the Board finds that:

(1) The foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country in accordance with § 211.25(c)(1)(ii); or

(2)(i) There is reasonable cause to believe that the foreign bank or any of its affiliates has committed a violation of law or engaged in an unsafe or unsound banking practice in the United States; and

(ii) As a result of such violation or practice, the continued operation of the foreign bank's representative office, state branch, state agency, or commercial lending company subsidiary would not be consistent with the public interest or with the purposes of the IBA, the BHC Act, or the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1811 *et seq.*).

(b) *Factor.* In making its findings under this section, the Board may take into account the needs of the community as well as the history of operation of the foreign bank and its relative size in its home country, provided, however, that the size of the foreign bank shall not be the sole determining factor in a decision to terminate an office.

(c) *Consultation with relevant state supervisor.* Before issuing an order terminating the activities of a state branch, state agency, or commercial lending company subsidiary under this section, the Board shall request and consider the views of the relevant state supervisor.

(d) *Termination procedures.*—(1) *Notice and hearing.* Except as otherwise provided in paragraph (d)(3) of this section, an order issued under this section shall be issued only after notice to the relevant state supervisor and the foreign bank and an opportunity for a hearing.

(2) *Procedures for hearing.* Hearings under this section shall be conducted pursuant to the Board's Rules of Practice for Hearings (12 CFR part 263).

(3) *Expedited procedure.* The Board may act without providing an opportunity for a hearing if it determines that expeditious action is necessary in order to protect the public interest. When the Board finds that it is necessary to act without providing an opportunity for a hearing, the Board may, solely in its discretion, provide the foreign bank that is the subject of the termination order with notice of the intended termination order, grant the foreign bank an opportunity to present a written submission opposing issuance of the order, or take any other action designed to provide the foreign bank

with notice and an opportunity to present its views concerning the order.

(e) *Termination of federal branch or federal agency.* The Board may transmit to the Comptroller a recommendation that the license of a federal branch or federal agency be terminated if the Board has reasonable cause to believe that the foreign bank or any affiliate of the foreign bank has engaged in conduct for which the activities of a state branch or state agency may be terminated pursuant to this section.

(f) *Voluntary termination.* A foreign bank shall notify the Board at least 30 days prior to terminating the activities of any office. Notice pursuant to this paragraph is in addition to, and does not satisfy, any other federal or state requirements relating to the termination of an office or the requirement for prior notice of the closing of a branch pursuant to section 39 of the FDIA (12 U.S.C. 1831p).

§211.27 Examination of offices and affiliates of foreign banks.

(a) *Conduct of examinations.* The Board may examine any branch, agency, or representative office of a foreign bank, any commercial lending company or bank controlled by one or more foreign banks or one or more foreign companies that control a foreign bank, and any other office or affiliate of a foreign bank conducting business in any state.

(b) *Coordination of examinations.* To the extent possible, the Board shall coordinate its examinations of the U.S. offices and U.S. affiliates of a foreign bank with the appropriate supervisory authorities, including simultaneous examinations of such U.S. offices and U.S. affiliates of a foreign bank.

(c) *Annual on-site examinations.* Each branch, agency, or commercial lending company subsidiary of a foreign bank shall be examined at least once during each 12-month period (beginning on the date the most recent examination of the office ended) by the Board or an appropriate supervisory authority.

(d) *Examination of representative offices.* Representative offices shall be examined in the manner and with the frequency determined by the Board.

(e) *Definition.* For purposes of this section, *appropriate supervisory authorities* means the Federal Deposit Insurance Corporation, if an office or affiliate of a foreign bank accepts or maintains insured deposits; the Comptroller, if an office or affiliate of a foreign bank is licensed by the Comptroller; and the relevant state supervisor, if the office or affiliate of a foreign bank is state-licensed.

§211.28 Disclosure of supervisory information to foreign supervisors.

(a) *Disclosure by Board.* The Board may disclose information obtained in the course of exercising its supervisory or examination authority to a foreign bank regulatory or supervisory authority if the Board determines that disclosure is appropriate for bank supervisory or regulatory purposes and will not prejudice the interests of the United States.

(b) *Confidentiality requirement.* Before making any disclosure of information pursuant to paragraph (a) of this section, the Board shall obtain, to the extent necessary, the agreement of the foreign bank regulatory or supervisory authority to maintain the confidentiality of such information to the extent possible under applicable law.

§211.29 Limitation on loans to one borrower.

The total loans and extensions of credit by all the state branches and state agencies of a foreign bank outstanding to a single borrower at one time shall be aggregated with the total loans and extensions of credit by all federal branches and federal agencies of the same foreign bank outstanding to such borrower at the same time and shall be subject to the limitations and other provisions of section 5200 of the Revised Statutes (12 U.S.C. 84), and the regulations promulgated thereunder, in the same manner that extensions of credit by a federal branch or federal agency are subject to section 4(b) of the IBA (12 U.S.C. 3102(b)).

§211.30 Deposit insurance requirement for retail deposit taking by foreign banks.— [Reserved]

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for 12 CFR part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3907, 3909, 3310, and 3331-3351.

2. Section 225.11 is amended by adding a new paragraph (f) to read as follows:

§225.11 Transactions requiring Board approval.

* * * * *

(f) *Transactions by a foreign banking organization.* Any transaction described in paragraphs (a) through (e) of this section by a foreign banking

organization that involves the acquisition of an interest in a U.S. bank or bank holding company for which application would be required if the foreign banking organization were a bank holding company.

3. Section 225.12 is amended by adding a new paragraph (f) to read as follows:

§225.12 Transactions not requiring Board approval.

* * * * *

(f) *Acquisition of a foreign banking organization.* The acquisition of a foreign banking organization where the foreign banking organization does not directly or indirectly own or control a bank in the United States, unless the acquisition is also by a foreign banking organization and otherwise subject to § 225.11(f) of this subpart.

PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for 12 CFR part 263 is revised to read as follows:

Authority: 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o-4, 78o-5, and 78u-2.

2. Section 263.50 is amended by removing the word "and" at the end of paragraph (b)(7), removing the period at the end of paragraph (b)(8) and adding in its place a semi-colon, and by adding paragraphs (b)(9) and (b)(10) to read as follows:

§263.50 Purpose and scope.

* * * * *

(b) * * *

(9) Termination of the activities of a

state branch, state agency, or commercial lending company subsidiary of a foreign bank in the United States, pursuant to section 7(e) of the IBA (12 U.S.C. 3105(d)); and

(10) Termination of the activities of a representative office of a foreign bank in the United States, pursuant to section 10(b) of the IBA (12 U.S.C. 3107(b)).

3. Section 263.51 is amended by removing the period at the end of paragraph (b) and adding in its place a semi-colon and by adding the following new paragraph (c) to read as follows:

§263.51 Definitions.

* * * * *

(c) *Institution* has the same meaning as that assigned to it in § 263.4, and shall also include any foreign bank with a representative office in the United States.

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for 12 CFR part 265 is revised to read as follows:

Authority: Section 11 (i) and (k) of the Federal Reserve Act, (12 U.S.C. 248(i) and (k)); and sections 7(c) and 15 of the International Banking Act of 1978 (12 U.S.C. 3015(c), 3109).

2. Section 265.6 is amended by adding paragraph (b)(2) to read as follows:

§265.6 Functions delegated to General Counsel.

* * * * *

(b) * * *

(2) *Disclosure to foreign authorities.*

To make the determinations required for disclosure of information to a foreign bank regulatory or supervisory authority, and to obtain, to the extent necessary, the agreement of such authority to maintain the confidentiality of such information to the extent possible under applicable law (12 CFR 211.28).

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3. Section 265.7 is amended by adding paragraph (d)(8) to read as follows:

§265.7 Functions delegated to Director of Division of Banking Supervision and Regulation.

* * * * *

(d) * * *

(8) *Conduct and coordination of examinations.* To authorize the conduct of examinations of the U.S. offices and affiliates of foreign banks under section 7(c) and 10(c) of the IBA (12 U.S.C. 3105(b), 3107(c)), and where appropriate to coordinate those examinations with examinations of the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the relevant state supervisors.

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Board of Governors of the Federal Reserve System, April 9, 1992.

William W. Wiles,
Secretary of the Board.

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