

**FEDERAL RESERVE BANK  
OF NEW YORK**

[ Circular No. **10630** ]  
March 19, 1993 ]

**FOREIGN BANK SUPERVISION ENHANCEMENT ACT OF 1991**

**New Procedures Relating to Applications Filed by Foreign Banks**

*To All State Member Banks, Bank Holding Companies,  
Branches, Agencies, and Representative Offices of Foreign Banks, and  
Edge and Agreement Corporations in the Second Federal Reserve District:*

The following statement has been issued by the Board of Governors of the Federal Reserve System:

The Federal Reserve Board has announced new procedures to be used in processing applications filed by foreign banks under the Foreign Bank Supervision Enhancement Act of 1991 (FBSEA).

Under the FBSEA, a foreign bank may not establish a branch, agency, representative office or commercial lending company without the prior approval of the Board.

The Board has taken a number of steps that are intended to expedite processing and reduce the burden on applicants. These steps include procedures that:

- require simultaneous review of applications by the Board and Reserve Bank staffs;
- urge all foreign bank applicants to meet with Board and Reserve Bank staffs prior to filing applications;
- require adherence to time frames in requesting information during the acceptance process;
- establish new internal guidelines for processing applications after acceptance; and
- inform the public that information files on home country supervision and bank secrecy laws are maintained and available in the Board's Freedom of Information Office.

The FBSEA established uniform standards for all foreign banks entering the United States and requires foreign banks to meet financial, managerial, and operational standards equivalent to those required of U.S. banking organizations.

Printed on the following pages is the text of a statement issued by the Board of Governors describing new procedures to be followed in processing applications filed by foreign banking institutions. Questions regarding these procedures may be directed to John S. Cassidy, Assistant Vice President (Tel. No. 212-720-5859).

E. GERALD CORRIGAN,  
*President.*

**STATEMENT BY  
THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
CONCERNING NEW PROCEDURES RELATING TO APPLICATIONS FILED  
UNDER THE FOREIGN BANK SUPERVISION ENHANCEMENT ACT OF 1991**

The Foreign Bank Supervision Enhancement Act of 1991 (the FBSEA), enacted on December 19, 1991, established uniform standards for all foreign banks entering the United States, requiring them generally to meet financial, managerial, and operational standards equivalent to those required of U.S. banking organizations. Since the enactment of the FBSEA, the Board has taken a number of actions to implement its provisions, including issuing administrative guidance to Reserve Banks, adopting interim and final regulations setting forth the standards the Board uses in evaluating applications, and publishing, together with the Treasury Department, two studies mandated by the FBSEA, one on capital equivalency and the other on whether to require foreign banks to operate in the United States only through subsidiary banks.

Under the FBSEA, a foreign bank may not establish a branch, agency, representative office or commercial lending company subsidiary without obtaining the prior approval of the Board. The Board may not approve an application under the FBSEA for a branch, agency or commercial lending company unless it finds that the foreign bank applicant is subject to comprehensive supervision and regulation on a consolidated basis by home country authorities. Under the FBSEA, the Board also considers other factors, such as whether the home country authorities have consented to the establishment of the proposed office, the foreign bank's financial and managerial resources and its capacity to engage in international banking, and whether the foreign bank has provided adequate assurances that it will provide access to information sufficient to allow the Board to determine the bank's compliance with law. The Board may take account of all of these standards in evaluating an application to establish a representative office. Many of these standards are not specifically addressed by the statutes and application forms of the various state licensing authorities or the Office of the Comptroller of the Currency. For this reason, the Board must ask for additional information from applicant foreign banks and from the applicant's home country supervisor.

Questions have been raised by the industry and others concerning the processing time for FBSEA applications. The chief source of delay in virtually all the FBSEA applications has been the time necessary to complete the name checks requested by the Board from other government agencies on the applicant foreign bank, certain shareholders, and key personnel. The name checks potentially provide the Board with information relevant to a number of the statutory standards and it is anticipated that completion of these name checks will continue to delay processing of the applications. The Board, however, has taken a number of steps designed to expedite the completion of name checks and believes that the time frames for their completion may improve in the future. Other agencies have been cooperative in these efforts. In addition, the Board believes that applications by foreign banks to engage in limited nonbanking activities may, in appropriate cases, require fewer inquiries than do applications under the FBSEA, which will reduce the volume of name checks that must be handled by other agencies.

In addition, in an effort to encourage more efficient and timely processing of FBSEA applications, to reduce the burden on foreign bank applicants and to improve communications between applicants and Board and Reserve Bank staff, the Board has adopted new procedures with respect to those aspects of the application process under its direct control. These new procedures are consistent with the Board's flexible approach to the implementation of the FBSEA.

## NEW PROCEDURES FOR PROCESSING APPLICATIONS FILED UNDER THE FBSEA

### 1. Applications will be Reviewed Simultaneously by Board and Reserve Banks Staffs

Applications under the FBSEA have been subject to the usual process for System review: an application is first submitted to the local Reserve Bank, which reviews the application for informational sufficiency. If the application lacks necessary information, the Reserve Bank asks the applicant to provide the information within a specified time period. Only after the requested information is furnished is the application accepted and forwarded to the Board for review.

Although this process has generally worked well in applications under statutes where policies and procedures are relatively well-defined, policies are not as well-defined under the more recently enacted FBSEA. Thus, in many cases, additional information requests have been made by Board staff after the application has been accepted. The Board believes that the process would be more efficient if FBSEA applications are reviewed simultaneously by Reserve Bank and Board staff. The two staffs would coordinate requests for further information to be sent to the applicant bank, which should reduce the frequency of such requests and the burden such requests impose on the applicant. The Board will reexamine the need for this special procedure once the backlog of FBSEA applications is cleared and policies and procedures are better defined.<sup>1</sup>

Under the new procedure, the Reserve Bank will forward to the Board copies of applications filed under the FBSEA within one business day of receipt. Board staff will be responsible for reviewing the application within set time limits and coordinating with Reserve Bank staff in preparing requests to the applicant for additional information. Copies of the applicant's responses would also be forwarded immediately to Board staff for review. Joint decisions then would be made on whether the application is ready for acceptance.

This procedure is intended to improve processing times and to facilitate communication by the applicants with staff.

### 2. All Foreign Bank Applicants Are Urged to Meet with Both Board and Reserve Bank Staff Prior to Filing Applications

The Board urges foreign banks to meet with Federal Reserve staff at any time and particularly if the foreign bank is proposing to expand in the United States. The Board believes that early discussions between applicants and both Board and Reserve Bank staff are useful in identifying relevant issues. Such meetings would assure that the foreign bank is apprised before the application is filed of all relevant issues and would enable staff to obtain necessary information at an earlier stage of the process.

The Board also encourages applicants to consult with Board and Reserve Bank staff at any time during the application process concerning issues raised by the application, its status, or processing problems. Attached to this document are the names and telephone numbers of appropriate Board and Reserve Bank staff responsible for these matters. Applicants should feel free to contact these individuals.

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<sup>1</sup> This review process will not entirely eliminate the need to request additional information in the latter stages of an application. Analysis of information already received may give rise to additional questions. The new procedure, however, should reduce the number of times an applicant is contacted for more information and reveal issues earlier.

### **3. Time Frames will be Followed during the Acceptance Process**

In its implementing regulations and procedures, the Board has attempted to be flexible in its approach, for example, by imposing less rigid time limits on foreign bank applicants to respond to information requests. As a result of the forbearance in imposing time limits for receipt of information, some applicant banks have not responded promptly to requests for further information, including information required to initiate name checks, creating the erroneous impression that applications were not receiving attention from the Federal Reserve.

Experience has indicated that the process could be made more efficient if reasonable time limits are imposed both on the Federal Reserve staff to ask for information and on the foreign bank applicants to respond to such requests. Consequently, the Board has adopted the following time limits to be used in connection with FBSEA applications.

The Reserve Bank and Board staff must review an application and request additional information from an applicant within 15 business days of receipt of the application by the Reserve Bank. The applicant must respond within 20 business days. If the applicant does not respond within that time, the application normally would be returned as informationally deficient. If the applicant does respond within the time limit, the Reserve Bank and Board staffs would have an additional 10 business days either to accept the application as complete or to request additional information. The applicant similarly would be given 10 business days for response.

This proposal would ensure that an application does not remain for an indeterminate period of time at a Reserve Bank when the applicant has not furnished the information necessary to act on the proposal.

### **4. New Guidelines will be Followed in Processing Applications after Acceptance**

Applications filed under the FBSEA are subject to the same 60-day time schedule as applications filed under the BHC Act. However, as the Board acknowledged when it adopted final rules under the FBSEA, it would normally be difficult to meet the 60-day schedule with respect to these applications. Name checks are often not complete by the end of that time period and in some cases the response to staff's inquiries to home country authorities has not been received. An applicant is always informed in writing as to the general reasons for the delay beyond the 60-day time period but there is no required communication with the applicant after that date (although in practice, there are frequent telephone calls between staff and applicant).

The Board believes that foreign banks may appreciate a more formalized communication schedule. The Board has instructed the staff as a general matter to inform an applicant that, in light of all the information that must be received before the record on the application may be considered complete, the application would not be likely to be acted on within the 60-day period but that it would be presented to the Board as soon as possible after the record is completed. Where the response from the home country supervisor has not been received by the 120th day, the staff would normally return the application as informationally deficient.

In addition to sending the required 60-day letter setting forth the reasons for the delay, the staff would also send a letter at 120 days (assuming the application has not yet been acted on) giving another report on the status of the application, for example, if the Board is still awaiting name checks.

In any event, the staff would not wait for completion of name checks on any application that presents a significant issue that otherwise would be dispositive of the case, such as unsatisfactory financial considerations or where the applicant has not provided requested information within a reasonable time. These cases would be brought to the Board for resolution as soon as the issue is defined and analyzed.

**5. Files on Home Country Supervision and Bank Secrecy Laws are Maintained and Available in the Board's Freedom of Information Office**

In connection with applications under the FBSEA, information must be provided by a foreign bank applicant on home country supervision and bank secrecy laws of the jurisdictions in which it operates because such information is necessary for the Board to make determinations required by the statute. However, in order to reduce the burden on future applicants, the Board has compiled files of information on these two subject areas. These files contain the information submitted to the Board in connection with other applications and are available to the public. Information in these files may be obtained by contacting the Board's Freedom of Information Office at 202-452-3684.

**Questions Regarding FBSEA Applications Should be Addressed to:**

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