

**FEDERAL RESERVE BANK  
OF NEW YORK**

[ Circular No. **10758** ]  
January 5, 1995 ]

**INTERNATIONAL BANKING OPERATIONS**

**Proposed Amendments to Regulation K**

*Comments Invited by February 13, 1995*

*To All Depository Institutions, U.S. Branches, Agencies, and  
Representative Offices of Foreign Banks, and Bank Holding Companies  
in the Second Federal Reserve District, and Others Concerned:*

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

The Federal Reserve Board has issued for public comment a proposed amendment to Regulation K (International Banking Operations) to provide criteria for use in evaluating the operations of any foreign bank in the United States that the Board has determined is not subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor.

Comment is requested by February 13, 1995.

Section 202 (e) (7) of the Foreign Bank Supervision Enhancement Act requires the Board to develop these criteria in consultation with the Treasury Department. The Board proposes to take these criteria into account in reaching a view regarding whether a foreign bank that the Board has determined is not subject to comprehensive, consolidated, home country supervision should be permitted to continue its U.S. operations with or without supervisory constraints, or whether such U.S. operations should be terminated.

Printed on the following pages is the text of the Board's proposal, which has been published in the *Federal Register*. Comments thereon should be submitted by February 13, 1995, and may be sent to the Board of Governors, as specified in the notice, or to B. Gerard Dages, Manager, International Surveillance and Review Department.

WILLIAM J. McDONOUGH,  
*President.*

# Proposed Rules

Federal Register

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 211

[Regulation K; Docket No. R-0862]

#### International Banking Operations

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board or Federal Reserve) is seeking public comment on a proposal to amend its regulations to include criteria to be used in evaluating the operations of any foreign bank in the United States that the Board has determined is not subject to comprehensive supervision or regulation on a consolidated basis. The Board is required to develop such criteria, in consultation with the Secretary of the Treasury (Treasury), and to publish them for public comment pursuant to section 202(e)(7) of the Foreign Bank Supervision Enhancement Act (the FBSEA or Act).

**DATES:** Comments must be received by February 13, 1995.

**ADDRESSES:** Comments should refer to Docket No. R-0862 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street, N.W.) at any time. Comments may be inspected in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

**FOR FURTHER INFORMATION CONTACT:**

Kathleen M. O'Day, Associate General Counsel (202/452-3786), Sandra L. Richardson, Managing Senior Counsel (202/452-6406), Margaret E. Minter,

Attorney (202/452-3900), Legal Division; Michael G. Martinson, Assistant Director (202/452-3640), Betsy Roberts, Manager (202/452-3846), 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 Statute**

Section 202(e)(7) of the FBSEA amended section 7 of the International Banking Act of 1978 (IBA) by adding a requirement that the Board, in consultation with the Treasury, develop and publish criteria to be used in evaluating the operation of any foreign bank in the United States that the Board has determined is not subject to comprehensive supervision or regulation on a consolidated basis. In developing such criteria, the Board is required to allow reasonable opportunity for public review and comment. 12 U.S.C. 3105(e)(7). In order to implement this statutory provision, the Board is issuing this notice of proposed rulemaking pursuant to 12 CFR part 211 of its regulations governing international banking operations.

The Congress in enacting the FBSEA recognized the importance of the comprehensive, consolidated supervision of banks operating internationally. The FBSEA strengthened the role of U.S. banking supervisors as the *host* country supervisors of foreign banks operating in this country. The Act also recognized the importance of *home* country supervision in assuring the overall safety and soundness of foreign banks that conduct operations in the United States by requiring the Board:

1. To determine that a foreign bank is subject to comprehensive supervision on a consolidated basis by its home country supervisor in order to establish a new banking presence in this country; and

2. To establish, in consultation with the Secretary of the Treasury, these criteria in order to evaluate the operation of any foreign bank in the United States that the Board has

determined is not subject to such supervision.

As provided in sections 7(e)(1) and (5) of the IBA, as amended, a determination by the Board that a foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis is a sufficient ground, in and of itself, for the Board to require or, in respect of federal branches or agencies, to recommend, termination of the foreign bank's U.S. operations. 12 U.S.C. 3105(e)(1),(5). Termination of a foreign bank's U.S. operations in these circumstances is not mandatory, however. Instead, in enacting section 7(e)(7) of the IBA, Congress recognized that there may be factors in particular cases that militate against termination of a foreign bank's U.S. operations. 12 U.S.C. 3105(e)(7).

All determinations with regard to whether a foreign bank is subject to comprehensive supervision or regulation on a consolidated basis will be made in the context of the supervision and regulation of the foreign bank's existing U.S. operations. Just as is the case with other supervisory or regulatory determinations, a foreign bank generally will have an opportunity to provide its views and any information it considers to be relevant in advance of any decision being made with regard to question of comprehensive, consolidated supervision, unless expeditious action is necessary to protect the public interest.

The proposed criteria set out below reflect the factors the Board considers will be relevant for purposes of evaluating the operations of any foreign bank the Board determines is not subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisors in accordance with 12 CFR 211.24(c)(1).

**Criteria**

Following a determination by the Board that a foreign bank is not subject to comprehensive, consolidated supervision by its home country supervisor in accordance with § 211.24(c)(1) of Regulation K, the Board proposes to take into account a number of criteria in reaching a view regarding whether the foreign bank's U.S. operations should be terminated or permitted to continue, and, if the latter, whether any supervisory constraints should be placed upon the bank in

connection with those operations. These criteria are:

1. The proportion of the foreign bank's total assets and total liabilities that are located or booked in its home country, as well as the distribution and location of its assets and liabilities that are located or booked elsewhere,

2. The extent to which the operations and assets of the foreign bank and any affiliates are subject to supervision by its home country supervisor;

3. Whether the foreign bank has effective and reliable systems of internal controls and management information and reporting, which enable management properly to oversee the bank's worldwide operations;

4. Whether the foreign bank's home country supervisor has any objection to the bank continuing to operate in the United States;

5. 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;

6. The relationship of the U.S. operations to the other operations of the foreign bank, including whether the foreign bank maintains funds in its U.S. offices that are in excess of amounts due from the foreign bank's non-U.S. offices;

7. The soundness of the foreign bank's overall financial condition;

8. The managerial resources of the foreign bank, including the competence, experience, and integrity of the officers and directors and the integrity of its principal shareholders;

9. The scope and frequency of external audits of the foreign bank,

10. The operating record of the foreign bank generally and its role in the banking system in its home country;

11. The foreign bank's record of compliance with relevant laws, as well as the adequacy of its money laundering controls and procedures, in respect of its worldwide operations,

12. The operating record of the U.S. offices of the foreign bank and any affiliates;

13. The views and recommendations of the Office of the Comptroller of the Currency ("OCC") or the relevant state banking regulator regarding the U.S. offices of the foreign bank,

14. Whether the foreign bank, if requested, has provided the Board with adequate assurances that such information will be made available on the operations or activities of the foreign bank and any of its affiliates as the Board deems necessary to determine and enforce compliance with the IBA, the BHC Act, and other applicable federal banking statutes, and

15. Any other information relevant to the safety and soundness of the U.S. operations of the foreign bank.

These criteria address factors relating both to the operations of the foreign bank as a whole and to its U.S. operations in particular. Evaluations of both of these facets of a foreign bank's operations are necessary in order to determine whether the bank's U.S. operations should be permitted to continue and, if so, whether these operations should be subject to supervisory constraints.

As subsection (c) of proposed § 211.30 of Regulation K provides, any foreign bank that the Board determines is not subject to comprehensive, consolidated supervision may be required to enter into an agreement to conduct its U.S. operations subject to such restrictions as the Board, having taken into account the criteria, determines to be appropriate in order to assure the safety and soundness of the bank's U.S. operations. Where appropriate, such an agreement could require a suitable degree of insulation between the foreign bank's U.S. operations and its operations (or those of its affiliates) in other countries. For example, one means of accomplishing this would be to require the bank to conduct its U.S. banking operations in a "net due to" position vis-a-vis the rest of the organization. Other restraints also could be imposed where appropriate (e.g., restricting transactions with other parts of the organization or requiring that international transactions of the U.S. offices be conducted through a correspondent acceptable to the Board). Prior to imposing such restrictions, the Board will consult with the OCC or the appropriate state banking authority.

If any requirements imposed in such an agreement were not adhered to, the U.S. banking operations of the foreign bank would be subject to further enforcement action, including issuance of an order terminating the activities of the U.S. offices or transmittal of a recommendation to the OCC for such termination, as appropriate in the circumstances.

#### Request for Comment

The Board believes that the proposed criteria will be sufficient to evaluate the safety and soundness of the U.S. operations of a foreign bank, to determine whether its U.S. operations should be permitted to continue in the absence of comprehensive, consolidated supervision by the home country authority, and, if so, on what basis. At the same time, the Board does not wish to impact unduly the existing operations of foreign banks, the vast majority of which are operated in a safe and sound

manner by banks that are subject to a significant degree of supervision by their home country authorities. The Board, therefore, considers it to be appropriate, in developing the proposed criteria, to take into account the panoply of tools available to the Board and other banking regulators to regulate the operations of foreign banks that are not yet subject to full consolidated supervision, which fall short of the ultimate sanction of termination of their U.S. operations.

As required by the Act, the Board has consulted with the Treasury in the development of the proposed criteria and the Treasury has agreed that the criteria may be published for comment. Further consultation will take place with the Treasury following the analysis by both agencies of the comments received. The Board requests comment on all aspects of the proposed criteria.

#### Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the proposed rule.

#### Regulatory Flexibility Act Analysis

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

#### List of Subjects in 12 CFR Part 211

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

For the reasons set out in the preamble, the Board proposes to amend 12 CFR part 211 as set forth below.

#### PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for Part 211 is revised to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1841 *et seq.*, 1843 *et seq.*, 3100 *et seq.*, 3901 *et seq.*

2. A new § 211.30 is added to subpart B to read as follows:

#### § 211.30 Criteria for evaluating the U.S. operations of foreign banks not subject to consolidated supervision.

(a) *General* Pursuant to the Foreign Bank Supervision Enhancement Act, \*Public Law 102-242, 105 Stat. 2286 (1991), (the FBSEA) the Board shall develop and publish criteria to be used

in evaluating the operations of any foreign bank in the United States that the Board has determined is not subject to comprehensive supervision or regulation on a consolidated basis.

(b) *Criteria.* Following a determination by the Board that a foreign bank is not subject to comprehensive, consolidated supervision by its home country supervisor in accordance with § 211.24(c)(1) of this subpart, the Board shall consider the following criteria in determining whether the foreign bank's U.S. operations should be permitted to continue and, if so, whether any supervisory constraints should be placed upon the bank in connection with those operations:

(1) The proportion of the foreign bank's total assets and total liabilities that are located or booked in its home country, as well as the distribution and location of its assets and liabilities that are located or booked elsewhere;

(2) The extent to which the operations and assets of the foreign bank and any affiliates are subject to supervision by its home country supervisor;

(3) Whether the foreign bank has effective and reliable systems of internal controls and management information and reporting, which enable management properly to oversee the bank's worldwide operations;

(4) Whether the foreign bank's home country supervisor has any objection to the bank continuing to operate in the United States;

(5) 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;

(6) The relationship of the U.S. operations to the other operations of the foreign bank, including whether the foreign bank maintains funds in its U.S. offices that are in excess of amounts due to its U.S. offices from the foreign bank's non-U.S. offices;

(7) The soundness of the foreign bank's overall financial condition;

(8) The managerial resources of the foreign bank, including the competence, experience, and integrity of the officers and directors and the integrity of its principle shareholders;

(9) The scope and frequency of external audits of the foreign bank;

(10) The operating record of the foreign bank generally and its role in the banking system in its home country;

(11) The foreign bank's record of compliance with relevant laws, as well as the adequacy of its money laundering controls and procedures, in respect of its worldwide operations;

(12) The operating record of the U.S. offices of the foreign bank;

(13) The views and recommendations of the Office of the Comptroller of the Currency or the relevant state banking regulator regarding the U.S. offices of the foreign bank;

(14) Whether the foreign bank, if requested, has provided the Board with adequate assurances that such information will be made available on the operations or activities of the foreign bank and any of its affiliates as the Board deems necessary to determine and enforce compliance with the International Banking Act, the Bank Holding Company Act, and other applicable federal banking statutes; and

(15) Any other information relevant to the safety and soundness of the U.S. operations of the foreign bank.

(c) *Restrictions on U.S. operations—*

(1) *Terms of agreement.* Any foreign bank that the Board determines is not subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor pursuant to § 211.24(c)(1) of this subpart, may be required to enter into an agreement to conduct its U.S. operations subject to such restrictions as the Board, having considered the criteria set forth in paragraph (b) of this section, determines to be appropriate in order to assure the safety and soundness of its U.S. operations.

(2) *Failure to enter into or comply with agreement.* A foreign bank that is required by the Board to enter into an agreement pursuant to paragraph (c)(1) of this section and either fails to do so or fails to comply with the terms of such agreement may be subject to enforcement action in order to assure safe and sound banking operations under 12 U.S.C. 1818, or to termination or a recommendation for termination of its U.S. operations under § 211.25(a) and (e) of this subpart and section (7)(e) of the IBA (12 U.S.C. 3105(e)).

By order of the Board of Governors of the Federal Reserve System, December 7, 1994.

William W. Wiles,

Secretary of the Board

[FR Doc. 94-30549 Filed 12-12-94; 8:45 am]

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