# FEDERAL RESERVE BANK OF NEW YORK

[ Circular No. **10826**
January 12, 1996 ]

## INTERNATIONAL BANKING OPERATIONS

## — Proposed Amendments to Regulation K Regarding Interstate Operations

*Comments Requested by February 5*

## — Amendments to Regulation K Regarding Foreign Investments

*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 statements have been issued by the Board of Governors of the Federal Reserve System:

**Regulation K Proposal**

The Federal Reserve Board has issued for public comment proposed changes to the provisions of the Board's Regulation K regarding interstate banking operations of foreign banking organizations.

Comment is requested by February 5, 1996.

The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act) removed geographic restrictions on interstate banking by foreign banks effective September 29, 1995, and requires certain foreign banks without U.S. deposit-taking offices to select a home state for the first time.

The proposed amendments to Regulation K would require these foreign banks to select a home state by March 31, 1996, and would immediately remove outdated restrictions on certain mergers by U.S. bank subsidiaries of foreign banks outside the home state of the foreign bank.

The Board is also requesting comment on other aspects of the Interstate Act as it applies to foreign banks.

**Amendments to Regulation K**

The Federal Reserve Board has issued a final rule amending its Regulation K to ease the burden on U.S. banking organizations seeking to make investments in foreign companies.

The final rule is effective immediately.

The final rule, which is part of an overall review of the entire regulation, expands the authority of strongly capitalized and well-managed banking organizations to make certain foreign investments. No prior notice or application to the Board will be required before an organization makes an investment that falls within this revised general consent authority.

The final rule also streamlines the review procedures for notices and applications.

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 5, and may be sent to the Board of Governors, as specified in the notice, or to our Foreign Bank Report Division.

Also, enclosed is a copy of the text of the amendments to Regulation K as published in the *Federal Register*. Questions concerning these amendments may be directed to Carla J. Crusius, Staff Director, Foreign Banking Applications Division. (Tel. No. 212-720-5863).

WILLIAM J. MCDONOUGH,
*President.*

**12 CFR Part 211**

**[Regulation K; Docket No. R–0911]**

## International Banking Operations

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

**ACTION:** Proposed rule.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is proposing to amend its Regulation K regarding interstate banking operations of foreign banking organizations. The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act) removed geographic restrictions on interstate banking by foreign banks effective September 29, 1995, and requires certain foreign banks without U.S. deposit-taking offices to select a home state for the first time. The proposed amendments to Regulation K would require these foreign banks to select a home state by March 31, 1996, and would immediately remove outdated restrictions on certain mergers by U.S. bank subsidiaries of foreign banks outside the home state of the foreign bank. Obsolete and superseded provisions of Regulation K concerning home state selection would be deleted. The Board is also requesting comment on other aspects of the Interstate Act as it applies to foreign banks.

**DATES:** Comments must be received by February 5, 1996.

**ADDRESSES:** Comments should refer to Docket No. R–0911 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington D.C. 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 § 261.8 of the Board's rules regarding availability of information, 12 CFR 261.8.

**FOR FURTHER INFORMATION CONTACT:** Kathleen M. O'Day, Associate General Counsel (202/452–3786), Ann E. Misback, Managing Senior Counsel (202/452–3788), Douglas M. Ely, Senior Attorney (202/452–5289), Legal Division; Michael G. Martinson, Assistant Director (202/452–3640), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For users of Telecommunication Device for the Deaf [TDD] *only,* please contact Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

**SUPPLEMENTARY INFORMATION:** The Interstate Act amended section 5 of the International Banking Act of 1978 (IBA), which governs interstate banking and branching operations of foreign banks. The Interstate Act also amended the Bank Holding Company Act of 1956 (BHC Act), the Federal Deposit Insurance Act and several other statutes regarding interstate banking operations of bank holding companies, national banks and state banks. In light of these amendments, the Board proposes to amend the provisions of its Regulation K regarding interstate banking operations of foreign banking organizations (12 CFR 211.22) as discussed below.

### Determination of Home State

Section 104(d) of the Interstate Act modifies the existing definition of a foreign bank's home state under section 5(c) of the IBA. Section 104(d) retains the provision of the IBA stating that the home state of a foreign bank that has any combination of branches, agencies, subsidiary commercial lending companies and subsidiary banks (U.S. banking operations) in more than one state is whichever of these states is selected by the foreign bank, or by the Board if the foreign bank fails to choose. Section 104(d) also provides, for the first time, that if a foreign bank has U.S. banking operations, including agencies or subsidiary commercial lending companies, in one state only, that state is the foreign bank's home state for purposes of interstate branching. The Board proposes the following amendments to 12 CFR 211.22(a) in order to reflect and implement these changes to the definition of a foreign bank's home state.

### Abolition of Distinction Between Deposit-Taking Offices and Nondeposit-Taking Offices

Prior to the Interstate Act, the Board interpreted the IBA to require a foreign bank to have a home state only if the foreign bank had deposit-taking offices, *i.e.,* branches or subsidiary banks. 44 FR 62903 (November 1, 1979). This interpretation is set forth in § 211.22(a)(2) of Regulation K. Section 104(d) of the Interstate Act superseded this interpretation by providing for the first time that foreign banks with only agencies or subsidiary commercial lending companies have a home state. Accordingly, the Board proposes that § 211.22(a)(2) be deleted.

The Board also proposes that § 211.22(a)(5) be deleted. This provision follows the Board's interpretation of the IBA in § 211.22(a)(2) by requiring foreign banks to select as their home state the state where their first U.S. deposit-taking office is located. Since the Interstate Act has superseded that interpretation, § 211.22(a)(5) is proposed to be removed.

*Initial Home State Selection Under the Interstate Act*

As noted, the Interstate Act for the first time requires foreign banks with only subsidiary commercial lending companies or agencies in the United States to have a home state. In order to implement this requirement, the Board proposes that any foreign bank required for the first time to have a home state because it has subsidiary commercial lending companies or agencies in more than one state, and no other U.S. banking operations, be permitted to select its home state. (Foreign banks with domestic agencies and subsidiary commercial lending companies in one state only are assigned that state as their home state by section 5(c)(2) of the IBA, as amended by section 104(d) of the Interstate Act.) Each foreign bank covered by the rule would be required to select its home state from those states in which the foreign bank established U.S. agencies and subsidiary commercial lending companies before September 29, 1994 (the date of enactment of the Interstate Act), and has continuously operated such offices. A foreign bank covered by the rule shall select its home state by filing with the Board a declaration of home state by March 31, 1996.

In the event a foreign bank required to select a home state fails to do so, the Board would exercise its authority, as contemplated by section 104(d) of the Interstate Act, to determine a foreign bank's home state. In such cases, the Board proposes to designate as a foreign bank's home state the state in which the total assets of all its offices, net of claims on affiliates or other offices of the foreign bank, is the largest, as reflected in the foreign bank's most recent report of condition.

The Board also proposes to state in its new rule that, as is provided in section 5(c)(2) of the IBA as amended by section 104(d) of the Interstate Act, a foreign bank with branches, agencies, subsidiary commercial lending companies or subsidiary banks in one state only shall have that state as its home state. A foreign bank that has already chosen a home state would not be affected by the proposed rule.

The Board intends to review other issues raised by the Interstate Act relating to the interstate operations of foreign banks in a future rule-making proceeding. The Board accordingly invites comment concerning all aspects of the application of the Interstate Act to foreign banks.

*Deletions of Other Obsolete Sections*

The Board proposes that current §§ 211.22(a)(1),(3) and (4) be deleted. These sections governed initial selection of home states for foreign banks under the IBA as enacted in 1978 and the Board's implementing regulations, which were adopted in 1980. The foreign banks affected by these provisions selected a home state, or had one selected for them by the Board or through operation of Regulation K, several years ago. Accordingly, the Board proposes that these provisions be deleted.

**Bank Mergers Outside Home State**

Section 211.22(c) of Regulation K provides that a foreign bank with one or more domestic banking subsidiaries outside its home state shall notify the Board if it proposes to acquire through a subsidiary bank all or substantially all of the assets of a U.S. bank which is larger than the subsidiary bank and is located outside of the foreign bank's home state under the IBA. The Board may direct the foreign bank to redesignate as its home state the state in which its subsidiary bank is located if the Board finds the proposed acquisition would be inconsistent with the foreign bank's home state selection under the IBA.

The Board adopted this rule in 1980 due to a concern that allowing a foreign bank to expand its deposit-taking capabilities both by branching in its IBA home state and through major acquisitions by merger outside its home state might permit evasion of the interstate restrictions then in place under the IBA and the BHC Act. At that time, a foreign bank with a subsidiary bank in one state (State X) and a branch in another state (State Y) which declared State Y as its home state under the IBA generally could not acquire more than 5 per cent of the shares of an additional bank in State Y, because such acquisitions were subject to the geographic restrictions of section 3(d) of the BHC Act. These restricted purchases of banks outside a foreign bank's home state for purposes of the BHC Act, in this case State X. In addition, such a foreign bank generally could not acquire more than 5 per cent of the shares of an additional bank in State X as a result of section 5(a)(5) of the IBA, which also applied the limits of section 3(d) of the BHC Act to interstate bank acquisitions by foreign banks outside their home state as determined under the IBA (in this case, State Y). The Board concluded that a foreign bank might circumvent these restrictions on interstate banking by engaging, through a subsidiary bank, in a large merger outside its IBA home state (in this case, State X), and framed its interstate bank merger rule to allow the Board to redesignate the foreign bank's home state to prevent this circumvention.

The concerns underlying the rule no longer apply due to the changes made by the Interstate Act. The geographic limits on interstate bank purchases by foreign banks outside their IBA home state under section 5(a)(5) of the IBA have been abolished. In addition, section 3(d) of the BHC Act was amended as of September 29, 1995 to phase out the principal geographic restrictions on interstate banking acquisitions applicable to domestic and foreign acquirors under the BHC Act. As of that date, there is no need to prevent foreign banks from circumventing geographic limits that no longer apply. Accordingly, the Board proposes that the bank merger rule of § 211.22(c) be deleted effective immediately.

**Retained Provisions**

The Board proposes that §§ 211.22(b) and (d) of Regulation K be retained with no change at this time. Section 211.22(b), which allows foreign banks to change their home states once, will be reviewed in the Board's future rule-making process discussed above. Until such time, foreign banks which have not previously changed their home states may change their home state in accordance with § 211.22(b). Section 211.22(d), which concerns attribution of home states to foreign banking organizations controlled by other foreign banking organizations, also is proposed to be retained pending future review.

**Request for Comment**

The Board requests comment on all aspects of the proposed changes to Regulation K, and on all other aspects of the application of the Interstate Act to foreign banks which may be dealt with appropriately through rulemaking.

**Paperwork Reduction Act**

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act 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 revisions to

Regulation K 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 continues to read as follows:

**Authority:** 12 U.S.C. 221 *et seq.*, 1818, 1841 *et seq.*, 3101 *et seq.*, 3901 *et seq.*

2. In § 211.22, paragraph (a) is revised; paragraph (c) is removed; and paragraph (d) is redesignated as paragraph (c) to read as follows:

### § 211.22 Interstate banking operations of foreign banking organizations.

(a) *Determination of home state.* (1) A foreign bank (except a foreign bank to which paragraph (a)(2) of this section applies) that has any combination of domestic agencies or subsidiary commercial lending companies that were established before September 29, 1994, in more than one state and have been continuously operated shall select its home state from those states in which such offices or subsidiaries are located. A foreign bank shall do so by filing with the Board a declaration of home state by March 31, 1996. In the absence of such selection, the Board shall designate the home state for such foreign banks.

(2) A foreign bank that, as of September 29, 1994, had declared a home state or had a home state determined pursuant to the law and regulations in effect prior to that date shall have that state as its home state.

(3) A foreign bank that has any branches, agencies, subsidiary commercial lending companies, or subsidiary banks in one state, and has no such offices or subsidiaries in any other states, shall have as its home state the state in which such offices or subsidiaries are located.

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By order of the Board of Governors of the Federal Reserve System, December 21, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

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**Board of Governors of the Federal Reserve System**

# INTERNATIONAL BANKING OPERATIONS

# AMENDMENTS TO REGULATION K

Effective February 5, 1996

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 211**

**[Regulation K; Docket No. R–0896]**

**International Operations of United States Banking Organizations**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Subpart A of Regulation K (International Operations of U.S. Banking Organizations) to provide expanded general consent authority for investments in foreign companies by

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U.S. banking organizations that are strongly capitalized and well managed. This expanded authority is designed to permit U.S. banking organizations meeting these requirements to make larger investments without the need for prior approval or review. Certain investments or activities, however, are not eligible for the expanded authority. The final rule requires an investor making use of the expanded authority to provide the Board with certain information after an investment has been made. In addition, for those investments requiring prior notice to the Board, the rule would streamline the processing of such notices.

**EFFECTIVE DATE:** December 21, 1995.

**FOR FURTHER INFORMATION CONTACT:** Kathleen M. O'Day, Associate General Counsel (202/452–3786), Sandra L. Richardson, Managing Senior Counsel (202/452–6406), Jonathan D. Stoloff, Senior Attorney (202/452–3269), or Andres L. Navarrete, Attorney (202/452–2300), Legal Division; William A. Ryback, Associate Director (202/452–2722), Michael G. Martinson, Assistant Director (202/452–2798), or Betsy Cross, Manager (202/452–2574), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the users of Telecommunication Device for the Deaf (TDD) *only,* please contact Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

**SUPPLEMENTARY INFORMATION:** Subpart A of the Board's Regulation K sets out the rules governing the foreign activities of U.S. banking organizations, including procedures for making investments in foreign banking and non-banking organizations. Under section 211.5(c), all such investments, whether made directly or indirectly, are required to be made in accordance with the general consent, prior notice, or specific consent procedures contained in that paragraph. 12 CFR 211.5(c). No prior notice or application is required for any investment that falls within the general consent authority. Such authority at present is limited to investments where the total amount invested in any one organization, in one transaction or a series of transactions, does not exceed the lesser of $25 million or 5 percent of the investor's Tier 1 capital where the investor is a member bank, bank holding company, or Edge corporation engaged in banking.[1]

On September 25, 1995, the Board requested public comment on a proposed rule that would expand the general consent authority for strongly capitalized and well-managed banking organizations. 60 FR 49350. The expanded general consent authority (expanded authority) was intended to reduce the burden associated with obtaining approval for such investments for U.S. banking organizations meeting these requirements. The comment period ended on October 30, 1995. The Board received nine public comments on the proposal. Comments were submitted by six banking organizations and three trade associations. The Board has considered the comments and, as a result of its further review, has made several changes to address these comments in the final rule.

The final rule removes the current $25 million cap on general consent investments, which is currently the binding constraint on such investment in almost all cases, and instead ties the expanded general consent limits to the capital of the investor. An aggregate limit on investments made in any 12-month period under the expanded authority is established. The final rule also specifies the nature of investments eligible for the expanded authority, as well as the types of activities that may be conducted by the organization in which the investment is to be made. Comments received regarding each of these areas are discussed below.

**Investor Eligibility for Expanded General Consent**

The final rule limits the expanded general consent authority to those investors that are strongly capitalized and well managed. The expanded authority is available for investments by member banks, bank holding companies, Edge corporations that are not engaged in banking, and agreement corporations. The expanded authority is available only where the investor, its parent member bank, if any, and the bank holding company are strongly capitalized and well managed, as those terms are defined by the Board. *Strongly capitalized,* in relation to member banks, is defined with reference to the definition of "well capitalized" set out in the prompt corrective action standards, which requires, at a minimum, a 6 percent tier 1 and 10 percent total risk-based capital ratio and a leverage ratio of 5 percent.[2] 12 CFR 208.33(b)(1). Edge or agreement corporations and bank holding companies are required to have a total risk-based capital ratio of 10 percent or more in order to be considered strongly capitalized for purposes of the expanded authority.

One commenter asked for clarification with respect to the applicability of the capital tests, maintaining that the capital requirement should apply only to the investor and entities that control the investor. Section 211.5(c)(2)(i)(F) of the proposed rule indicates that this is in fact the requirement.

Another commenter pointed out that risk-based capital ratios have not been applicable previously to Edge corporations not engaged in banking. The Board notes this comment but considers that calculating such a ratio would not impose an undue burden on those investors seeking to utilize the expanded authority.

The definition of *well managed* included in the proposed rule provided that, in order to be considered well managed, the Edge or agreement corporation, its parent member bank, if any, and the bank holding company must each have received a composite rating of at least 1 or 2, with no component below 3, at its most recent examination or review. Comments submitted advocated relying solely upon the composite rating for purposes of the "well managed" definition. The final rule incorporates this change. However, an additional element also has been incorporated in the definition to clarify that any investor that is under a formal supervisory action would be ineligible to take advantage of the expanded authority. The Board believes the existence of any such supervisory action would be indicative of managerial deficiencies such that the expanded authority should not be available.

**Individual Investment Limit**

Limits were proposed on the expanded authority that were tied to the level of capital of the investor. For Edge or agreement corporations, the relevant limits were proposed to be no more than the lesser of 20 percent of the Edge or agreement corporation's tier 1 capital or 2 percent of the tier 1 capital of its parent member bank. For member banks and bank holding companies, the proposed limit was no more than 2 percent of tier 1 capital.

One commenter proposed that the limit be raised to at least 2.5 percent of total capital. Several commenters noted that the existing general consent authority in Regulation K sets the limit at 5 percent of tier 1 capital, and advocated retention of the higher limit.

[1] In the case of an Edge corporation not engaged in banking, the relevant general consent limit is the lesser of $25 million or 25 percent of its Tier 1 capital.

[2] The member bank also may not be subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board to meet and maintain a specific capital level for any capital measure. 12 CFR 208.33(b)(1).

The Board notes, however, that the current limit is expressed as *the lesser of* $25 million or 5 percent of tier 1 capital; the $25 million limit on general consent investments has proved to be the constraining factor, particularly for U.S. banking organizations that would meet the strongly capitalized standard. The Board believes that a general consent limit of 5 percent of tier 1 capital, in the absence of an absolute dollar cap, would be too high even for organizations that are strongly capitalized and well managed because an initial capital investment in, for example, a subsidiary, may be leveraged many times resulting in a potential total exposure far in excess of the initial 5% of capital. The Board has therefore decided to retain the proposed 2 percent limit in the final rule.

In response to a comment seeking clarification that the existing authorization for general consent investments will continue to be available, the Board notes that the expanded authority is parallel authority for making investments by banking organizations that meet the strongly capitalized and well managed standards. As is clear from section 211.5(c)(2)(i)(B) and (C) of Regulation K, however, the limits on investment in any one organization apply on a cumulative basis over time and include investments made under the existing as well as the expanded authority.

Several commenters argued that expanded authority should be available for additional investments in existing subsidiaries. The Board notes that, as indicated in section 211.5(c)(2)(iv)(D) of the final rule, using the expanded authority for making additional investments in existing subsidiaries and joint ventures is permissible under the terms of the final rule, subject to the investment limits and the other investment restrictions.

**Aggregate Investment Limit**

The proposed rule provided for an overall aggregate investment limit on all investments made during the previous 12-month period under the existing and the expanded authority. Under this limit, all such investments, when aggregated with the proposed investment, may not exceed the lesser of 50 percent of the Edge or agreement corporation's total capital or 5 percent of the parent member bank's total capital, in the case of an Edge or agreement corporation, or 5 percent of its total capital, in the case of a member bank or a bank holding company. A number of commenters supported the Board's position that the aggregate limits apply only to general consent investments and not to investments made pursuant to prior notice or specific consent.

However, one commenter argued that investments made under existing general consent authority should not count toward the aggregate limit because once the aggregate limit is reached, prior notice would be required for small investments representing little risk to the investor. The Board agrees that the additional regulatory burden associated with including investments made under the existing general consent authority in calculating the aggregate limits outweighs any supervisory benefits. Accordingly, the aggregate limit shall apply only to investments made under the expanded general consent authority.

The proposal also provided that, in determining compliance with the aggregate limits and in order to avoid double counting of investments, an investment in a subsidiary shall be counted only once notwithstanding that such subsidiary may, within the next 12 months, downstream all or part of such investment to another subsidiary. Several commenters argued for a longer time period in which to make downstream investments or that no time limit should be imposed. The Board believes the 12 month time limit should be retained as it strikes an appropriate balance between easing regulatory burden and maintaining adequate oversight, given that the condition of a banking organization may change over time. Supervisory views regarding downstreaming investments also may change over time in light of changed circumstances.

One commenter argued that downstream investments should not be subject to the individual investment limits as well as the aggregate investment limits. However, the Board believes that supervisory concerns regarding the need to monitor diversification of investments in view of any changed circumstances relating to the investor means that the limits on investments in one organization should include downstream investments.

Finally, a commenter argued that restructurings (through the contribution of an investment from one affiliate to another) should also be encompassed within the same exclusion as that provided for downstream investments. The Board notes in response to this comment that Regulation K already provides general consent authority for transfers among affiliates at net asset value.

**Eligible Investments**

The proposal limited the types of investments eligible for the expanded authority, as well as the types of activities that may be conducted by the organization in which the investment is to be made. Ineligible investments included an investor's initial entry into a foreign country, the establishment or acquisition of an initial subsidiary bank in a foreign country, investments in general partnerships or unlimited liability companies, and an acquisition of shares or assets of a corporation that is not an affiliate of the investor. Exclusion of the latter type of acquisition was intended to limit the expanded authority to investments in de novo subsidiaries (including subsequent investments in such subsidiaries) by excluding the acquisition of going concerns.

Commenters requested clarification as to whether additional investments made in existing subsidiaries and joint ventures would be eligible investments under the expanded authority. The final rule authorizes investments in existing subsidiaries and joint ventures, provided they meet the remaining criteria for eligible investments and the criteria for eligible activities.

Several commenters opposed the proposal's exclusion of initial acquisitions of going concerns from the expanded investment authority. However, the Board continues to believe such exclusion is appropriate in light of the potential additional risk associated with such investments. These risks are greater than simply the amount of capital invested, extending also, for example, to the value and quality of the acquired organization's assets. The Board therefore considers that prior notice of such an investment is appropriate.

Several commenters argued that the acquisition or establishment of an initial bank subsidiary in a foreign country should be permissible without prior notice to the Board where the investor already has a branch in that country. The Board believes that such a change may be inconsistent with its responsibility as home country supervisor under the Minimum Standards for Supervision of Internationally Active Banks established by the Basle Supervisors Committee, in those cases where the Board has not previously approved or reviewed the establishment of a significant subsidiary bank in that country. The Minimum Standards contemplate that the home country supervisor should specifically authorize any outward expansion by a bank, both to inform the home country

supervisor of the intention of the bank to operate in another country and to provide the host supervisor with the comfort that the home supervisor does not object to the expansion and takes responsibility for the supervision of the branch or subsidiary bank. Consequently, the Board believes it is appropriate to retain the prior notice requirement for establishment of an initial subsidiary bank in another country under the expanded authority.

**Post-investment Notice**

The proposal required an investor making use of the expanded authority to provide the Board with a post-investment notice within 10 business days of making the investment. However, the Board requested comment on whether the requirements relating to the post-investment notice could be incorporated into existing reporting requirements.

Several commenters argued the post-investment notice would be unnecessary and inconsistent with the goal of reducing regulatory burden, particularly since investors are required to report acquisitions of shares in foreign organizations on an existing Federal Reserve form (F.R. 2064) by the end of the month following the month in which the investment was made. Commenters maintained that the Board already has sufficient information to monitor investments in foreign subsidiaries through existing reporting and examination authority. Based upon the comments, the Board has decided to eliminate the 10 business day notice requirement. However, the Board has determined that certain limited additional information that is not at present provided in the FR 2064 is required to be submitted; such information may be submitted on the same schedule as the FR 2064, namely, by the end of the month following the month in which the investment was made.

The Board agrees with those commenters who argued that additional information should be limited to cover specific areas of potential risks regarding investments made under the expanded general consent authority and accordingly has narrowed the information that would be required to be submitted following exercise of the expanded authority. More specifically, the information that would be required under the final rule is limited to: the respective responsibilities of the parties if the investment is a joint venture; one year projections for the organization in which the investment is made; and, where the investment is to redress a loss, a description of the reasons for the loss and the steps taken to address the problem. This would provide to the Board the minimum information necessary to monitor any additional risks posed by such investments.

One commenter requested clarification as to whether or not the post-investment notice is intended to cover investments made pursuant to the existing general consent authority, which would make the proposal more restrictive than the present requirements for general consent investments. The Board notes that the post-investment notice would be required only in relation to investments made under the expanded authority.

In response to another comment, the Board wishes to clarify that investments in newly established companies are not precluded by the restriction on the acquisition of shares or assets of an organization that is not an affiliate or joint venture of the investor.

**Processing Procedures**

The final rule incorporates the change in processing procedures indicating that the 45 day period commences upon receipt of the notice or application to invest in a foreign company. Commenters generally supported this change in processing procedures.

Finally, one commenter noted generally that Regulation K is a technically difficult regulation and expressed concern that the proposed revisions, by incorporating additional technical language, would have the side effect of further diminishing the readability of the regulation. The Board notes that the five year review of Regulation K mandated by the International Banking Act of 1978 is now underway. Ways in which Regulation K may be simplified will be considered during the course of that review.

**Regulatory Flexibility Analysis**

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

Pursuant to 5 U.S.C. 553(d), this amendment to Regulation K will become effective immediately. This final rule grants an exemption for certain U.S. banking organizations, and therefore the Board waives the 30 day general requirement for publication of a substantive rule.

**Paperwork Reduction Act Analysis**

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget.

The collection of information requirements in this regulation are found in 12 CFR 211.5(c). The submission of this information is mandatory under sections 25 and 25A of the Federal Reserve Act (12 U.S.C. 601–604(a) and 611–631) and sections 4(c)(13), 4(c)(14), and 5(c) of the Bank Holding Company Act (12 U.S.C. 1843(c)(13), 1843(c)(14) and 1844(c)) to evidence compliance with the requirements of Regulation K. The Federal Reserve uses the information to monitor the international operations of U.S. banking organizations, and to fulfill its supervisory responsibilities under Regulation K. The respondents are banks, bank holding companies, and Edge and agreement corporations.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0107.

No comments specifically addressing the estimate burden were received.

The Federal Reserve estimates that, based on 1995 data, 10 responses per year will be filed by U.S. banking organizations under the expanded general consent authority. Currently, the investments that will be permitted under expanded general consent require prior notification on the form for International Applications and Prior Notifications under Subparts A and C of Regulation K (FR K–1; OMB No. 7100–0107). The estimated burden for each prior notification can range from 1 to 10 hours, depending on its complexity. Under the revised rule, an investor will no longer submit information prior to the investment; instead, it will submit limited information regarding specific areas of potential risks of the investment after the investment is made. The volume of this information will vary depending on the type of investment; the annual burden per respondent is estimated to be .5 hours, on average. Based on an hourly cost of $20, the annual cost to the public is estimated to be $100. There are no start up costs or capital costs.

The information collected is not deemed confidential. The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0107), Washington, DC 20503.

**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 of Governors amends 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.*, 3101 *et seq.*, 3901 *et seq.*

2. Section 211.2 is amended by redesignating paragraphs (u) and (v) as paragraphs (v) and (w), respectively, and by adding new paragraphs (u) and (x) to read as follows:

**§ 211.2 Definitions.**

* * * * *

(u) *Strongly capitalized* means:

(1) In relation to a parent member bank, that the standards set out in 12 CFR 208.33(b)(1) are satisfied; and

(2) In relation to an Edge or Agreement corporation or a bank holding company, that it has a total risk-based capital ratio of 10.0 percent or greater.

* * * * *

(x) *Well managed* means that the Edge or Agreement corporation, its parent member bank, if any, and the bank holding company have each received a composite rating of 1 or 2 at its most recent examination or review and are not subject to any supervisory enforcement action.

3. Section 211.5 is amended by:

a. Redesignating paragraphs (c)(2) and (c)(3) as paragraphs (c)(3) and (c)(4) respectively and by adding a new paragraph (c)(2); and

b. In newly designated paragraph (c)(3), by removing the word "accepted" in the third sentence and adding in its place the word "received".

The addition reads as follows:

**§ 211.5 Investments and activities abroad.**

* * * * *

(c) * * *

* * * * *

(2)(i) *Expanded general consent for de novo investments.* Notwithstanding the amount limitations of paragraph (c)(1) of this section, but subject to the other limitations of this section, the Board grants expanded general consent authority for investments in an organization by an investor that is strongly capitalized and well managed if:

(A) The activities of the organization are limited to activities in which a national bank may engage directly or in which a subsidiary may engage under paragraph (d) of this section;

(B) In the case of an investor that is an Edge corporation that is not engaged in banking or an Agreement corporation, the total amount invested in such organization (in one transaction or a series of transactions) does not exceed the lesser of 20 percent of the investor's Tier 1 capital or 2 percent of the Tier 1 capital of the parent member bank;

(C) In the case of a bank holding company or member bank investor, the total amount invested in such organization (in one transaction or a series of transactions) directly or indirectly does not exceed 2 percent of the investor's Tier 1 capital;

(D) All investments made, directly or indirectly, by an Edge corporation not engaged in banking or an Agreement corporation during the previous 12-month period under paragraph (c)(2) of this section, when aggregated with the proposed investment, would not exceed the lesser of 50 percent of the total capital of the Edge or Agreement corporation, or 5 percent of the total capital of the parent member bank;

(E) All investments made, directly or indirectly, by a member bank or a bank holding company during the previous 12-month period under paragraph (c)(2) of this section, when aggregated with the proposed investment, would not exceed 5 percent of its total capital; and

(F) Both before and immediately after the proposed investment the investor, its parent member bank, if any, and any parent bank holding company are strongly capitalized and well managed.

(ii) *Determining aggregate investment limits.* For purposes of determining compliance with the aggregate investment limits set out in paragraphs (c)(2)(i)(D) and (E) of this section, an investment by an investor in a subsidiary shall be counted only once notwithstanding that such subsidiary may, within 12 months of the date of making the investment, downstream all or any part of such investment to another subsidiary.

(iii) *Additional investments.* An investor that makes investments under paragraph (c)(2)(i) of this section may also make additional investments in an organization under the standards set forth in paragraphs (c)(1)(ii), (c)(1)(iii) and (c)(1)(iv) of this section.

(iv) *Ineligible investments.* The following investments are not eligible for the general consent under paragraph (c)(2)(i) of this section:

(A) An investment in a foreign country where the investor does not have an affiliate or a branch;

(B) The establishment or acquisition of an initial subsidiary bank in a foreign country;

(C) Investments in general partnerships or unlimited liability companies; and

(D) An acquisition of shares or assets of an organization that is not an affiliate or joint venture of the investor.

(v) *Post-investment notice.* By the end of the month following the month in which the investment is made, the investor shall provide the Board with the following information relating to the investment:

(A) If the investment is in a joint venture, the respective responsibilities of the parties to the joint venture;

(B) Projections for the organization in which the investment is made for the first year following the investment; and

(C) Where the investment is made in an organization that incurred a loss in the last year, a description of the reasons for the loss and the steps taken to address the problem.

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By order of the Board of Governors of the Federal Reserve System, December 21, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

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