

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. **10835**
February 15, 1996]

INTERNATIONAL BANKING OPERATIONS

**Amendments to Regulation K Regarding the Establishment
of U.S. Representative Offices by Foreign Banks**

*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 a final rule implementing amendments to the Board's Regulation K (International Banking Operations) to permit the establishment of U.S. representative offices by certain foreign banks through prior notice procedures.

These prior notice procedures are designed to permit foreign banks meeting certain requirements to establish representative offices without the need to file a formal application with the Board.

The rule is effective immediately.

In addition, the amendments clarify that only those foreign banking organizations subject to the International Banking Act and the Bank Holding Company Act may establish under general consent procedures a representative office to engage in limited administrative functions in connection with their existing U.S. banking operations.

Lastly, the Board has determined to review and act upon inquiries by "special purpose government banks" seeking exemptions from regulation under the Foreign Bank Supervision Enhancement Act on the basis that they do not fall within the definition of "foreign bank" under Regulation K. Such inquiries would be handled on a case-by-case basis.

Enclosed — for member banks, branches and agencies of foreign banks, bank holding companies, and others maintaining sets of the Board's regulations — is the text of the amendments to Regulation K, as published in the *Federal Register* of January 30, 1996. Copies will be furnished to others on request directed to our Circulars Division (Fax Tel. No. 212-720-6767). For those who have access to the Internet, the U.S. Government Printing Office now makes the *Federal Register* available on the Internet; the reference address is <http://www.access.gpo.gov/>.

Questions regarding Regulation K may be directed to Carla J. Crusius, Staff Director, Foreign Banking Applications Division (Tel. No. 212-720-5863).

WILLIAM J. McDONOUGH,
President.

Board of Governors of the Federal Reserve System**FOREIGN BANKING ORGANIZATIONS
Amendments to Regulation K**

Effective January 24, 1996

FEDERAL RESERVE SYSTEM**12 CFR Part 211****[Regulation K; Docket No. R-0754]****Foreign Banking Organizations****AGENCY.** Board of Governors of the Federal Reserve System.**ACTION:** Final rule.

SUMMARY: The Board is publishing amendments to Subpart B of Regulation K (Foreign Banking Organizations). The amendments permit the establishment of U.S. representative offices by certain foreign banks through prior notice procedures. These prior notice procedures are designed to permit foreign banks meeting certain requirements to establish representative offices without the need to file a formal application with the Board. A foreign bank that is subject to federal regulation under the Bank Holding Company Act (BHC Act), either directly or through the International Banking Act (IBA), and that the Board has previously determined is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor, or which previously has been approved for a representative

office by Board order, would be permitted to establish a full service representative office by prior notice. In addition, the amendments clarify that only those foreign banking organizations subject to the IBA and the BHC Act may establish under general consent procedures a representative office to engage in limited administrative functions in connection with their existing U.S. banking operations. Lastly, the Board has determined to review and act upon inquiries by "special purpose government banks" seeking exemptions from regulation under the Foreign Bank Supervision Enhancement Act (FBSEA) on the basis that they do not fall within the definition of "foreign bank" under Regulation K. Such inquiries would be handled on a case-by-case basis.

EFFECTIVE DATE: January 24, 1996.**FOR FURTHER INFORMATION CONTACT:**

Kathleen M. O'Day, Associate General Counsel (202/452-3786), Ann E. Misback, Managing Senior Counsel (202/452-6406), 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 NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The FBSEA required for the first time that a foreign bank receive federal approval to establish a representative office. Prior to the FBSEA, federal regulation provided a limited definition of a representative office of a foreign bank and only required a foreign bank to register a representative office established in the United States with the Treasury Department. Federal law did not provide for the ongoing oversight or regulation of representative offices of foreign banks.

To fill these and other gaps in federal regulation of foreign banks, Congress adopted a broader definition of representative office in the FBSEA to ensure that all direct operations of a foreign bank are subject to federal regulation and supervision. The FBSEA expanded the definition of a representative office of a foreign bank in the IBA to include any place of business of a foreign bank that is not a branch, agency, or subsidiary.

The FBSEA also provided standards for establishing, examining, and regulating a representative office of a foreign bank. These standards are less rigorous than the standards governing the establishment, examination, and supervision of a branch or agency of a foreign bank. In evaluating an application to establish a representative office, the FBSEA only requires the Board to take into account the standards that are mandatory for the establishment of a branch or an agency. Thus, for example, the Board may permit a foreign bank to establish a representative office even though its home country supervision or financial condition might not support the establishment of a branch or an agency. Similarly, unlike the mandatory, annual examinations required for a branch or agency, the Board may examine a representative office as often as deemed appropriate.

The Board has implemented the FBSEA and the provisions governing a representative office of a foreign bank through two rulemakings. First, in an interim rule, the Board defined a representative office of a foreign bank as a limited purpose office that may only engage in representational and administrative functions on behalf of a foreign bank. The interim rule also stated that a representative office may not make any business decision on behalf of the foreign bank. 57 FR 12992 (April 15, 1992). In taking this approach, the Board adhered to the traditional view that a representative office may only engage in limited functions that facilitate the banking activities of a foreign bank, but may not engage in the activities themselves.

Both foreign banks and some state supervisors objected to this restrictive definition because, in some instances, it would have been more limiting than state laws on representative offices. In response to comments received and initial experience gained in implementing these and other portions of the FBSEA, the Board broadened these interim provisions in a second, final rulemaking. 58 FR 6348 (January 28, 1993). The Board determined that a representative office is permitted to perform any activity that is neither a banking activity nor an activity that is prohibited by state law, Board ruling, or Board order. The Board also introduced two sub-types of representative offices that perform activities that raise few regulatory and supervisory issues and therefore may be established under expedited procedures. Specifically, the Board granted its general consent to the establishment of a representative office that solely performs limited

administrative functions for the foreign bank (a general consent office). The foreign bank must notify the Board of the establishment of a general consent office. The Board also provided a 45 day prior notice procedure for the establishment of a regional administrative office that coordinates operations in a particular geographic region.

In adopting the final rule, the Board recognized that further experience might warrant future revision of the provisions governing a representative office of a foreign bank. Therefore, the Board sought additional comment on these provisions and stated that it would revisit the regulations after gaining additional information on the matter.

The Board received public comments from the Conference of State Bank Supervisors, a trade association, and a foreign bank. These commenters supported the adoption of a broader definition of a representative office and a wider range of permissible activities provided in the final rule. Two commenters sought clarification and expansion of the activities deemed permissible for a representative office. The commenters also recommended measures to reduce and streamline the application procedures for establishing a representative office. Lastly, one commenter requested that representative offices be permitted to send unsolicited financial instruments through inter-office mail to a branch or bank subsidiary that is authorized to accept deposits. The Board is of the view that this activity may constitute deposit-taking, and is therefore inappropriate for a representative office to conduct.

Establishment of Representative Offices by Prior Notice

The Board has concluded that the prior notice procedures may be applied to the establishment of representative offices by foreign banks that are subject to the BHC Act, either directly or through section 8(a) of the IBA, where the Board has made a previous determination that the particular foreign bank is subject to comprehensive supervision on a consolidated basis by its home country supervisor, or previously has been approved for a representative office by Board order. This expanded authority is intended to reduce the burden associated with the filing of a formal representative office application by a foreign banking

organization meeting these requirements.¹

The Board has taken the position that a 45-day prior notice review period to establish such an office is sufficient where the Board has made a formal determination that the foreign bank is subject to CCS in the context of a previous application to establish a branch, agency, commercial lending company, or to acquire a bank, or previously has been approved for a representative office by Board order. The Board has found that the goal of reducing burden for foreign banking organizations, where possible and prudent, outweighs the limited additional supervisory benefits of requiring a formal application for a representative office under these circumstances.

In addition, the final rule clarifies that only foreign banks subject to the BHC Act, either directly or through section 8(a) of the IBA, may establish under the Board's general consent authority a representative office to engage in limited administrative or "back office" functions, and that such "back office" functions may only be performed in connection with the U.S. banking activities of the foreign bank. General consent representative offices were intended to facilitate the establishment of limited offices by foreign banks seeking administrative support for their existing U.S. banking operations, and not as stand-alone operations. In that regard, the activities must be clearly defined, performed in connection with the U.S. banking activities of the foreign bank, and must not involve contact or liaison with customers or potential customers beyond incidental contact relating to administrative matters (such as verification or correction of account information). "Back office" and other administrative functions linked to banking present the fewest supervisory and prudential concerns in the group of representative office activities that are linked to banking. These limited activities reflect a balancing of the Board's desire to reduce regulatory burden with its need to continue to monitor closely the direct operations of foreign banks.

By allowing a foreign bank meeting the criteria outlined above to utilize the Board's prior notice procedures or general consent authority to establish a representative office, the Board does not intend to permit a foreign bank to

¹ Applications by foreign banks that have received comprehensive consolidated supervision (CCS) determinations to establish branches, agencies and commercial lending companies will continue to be delegated to Reserve Banks. 12 CFR 265.11(d)(11).

expand broadly its U.S. banking and nonbanking activities. The proposed rule is designed merely to reduce the burden on those foreign banks seeking to provide additional support for their existing U.S. banking operations.

Special Purpose Government Banks

The FBSEA requires any foreign bank to obtain prior Board approval to establish a branch, agency, commercial lending company, or representative office. In issuing the final rule, the Board exempted the central bank of a foreign country that does not engage in commercial banking activities in the United States from the definition of "foreign bank" and therefore from regulation under the FBSEA. The Board has received several requests from government-owned entities that engage in banking that is not commercial in nature for similar exemptive treatment. A prototypical example of this type of entity is an export-import bank of a foreign country. These so-called "special purpose government banks" maintain offices in the United States that, without this exemption, are representative offices under the FBSEA.

The Board has found that the types of institutions seeking this exemptive relief vary considerably in their legal structure, governmental mandate, and actual operations. Creating a regulatory exemption akin to that provided for central banks in these circumstances would prove unworkable and imprecise. Furthermore, each of the requests for an exemption from regulation under the FBSEA is in fact a request for an interpretation that the entity in question is not a foreign bank within the meaning of the FBSEA and Regulation K. Accordingly, the Board has determined to review and act upon each of these interpretive requests on a case-by-case basis. Among the factors the Board will consider are whether the foreign organization is: (i) established and regulated pursuant to a distinct regulatory scheme that differs from that applied to traditional commercial banks; (ii) owned and capitalized substantially, if not exclusively, by its home government; (iii) subject to direct government control and examination; (iv) engaged exclusively in activities designed to serve specific government policy goals; and (v) prohibited from accepting deposits. This approach, in the Board's view, will provide the best mechanism for determining whether the relief requested is in fact warranted.

Regulatory Review

A full review of Regulation K, as required by the IBA, is underway and will proceed during the course of the

next year. The subject of representative offices will be revisited at that time, and will provide additional opportunity for interested parties to express their concerns regarding these and other relevant issues.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (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 business 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 grants an exemption for certain foreign banking organizations, and, therefore, the Board waives the 30-day general requirement for publication of a substantive rule.

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 final rule.

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 12 CFR 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. Section 211.24 is amended by:
a. Revising paragraphs (a)(2)(i) and (a)(2)(ii); and
b. Redesignating paragraph (d)(3) as paragraph (d)(4), and adding a new paragraph (d)(3).

The revisions and addition read as follows:

§ 211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority.

(a) * * *
(2) * * *

(i) *Prior notice for certain representative offices.* After providing 45 days' prior written notice to the Board, a foreign bank that is subject to the BHC Act, either directly or through section 8(a) of the IBA (12 U.S.C. 3106(a)), may establish:

(A) A regional administrative office; or

(B) A representative office, but only if the Board has previously determined that the foreign bank proposing to establish a representative office is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor, or previously has been approved for a representative office by Board order. The Board may waive the 45-day period if it finds that immediate action is required by the circumstances presented. The notice period shall commence at the time the notice is received by the appropriate Reserve Bank. The Board may suspend the period or require Board approval prior to the establishment of such an office if the notification raises significant policy, prudential or supervisory concerns.

(ii) *General consent for representative offices.* The Board grants its general consent for a foreign bank that is subject to section 8(a) of the IBA (12 U.S.C. 3106(a)), to establish a representative office that solely engages in limited administrative functions (such as separately maintaining back office support systems) that are clearly defined, are performed in connection with the United States banking activities of the foreign bank, and do not involve contact or liaison with customers or potential customers beyond incidental contact with existing customers relating to administrative matters (such as verification or correction of account information), provided that the foreign bank notifies the Board in writing within 30 days of the establishment of the representative office.

* * * * *

(d) * * *

(3) *Special purpose foreign government banks.* A foreign government-owned organization engaged in banking activities in its home country that are not commercial in nature may apply to the Board for a determination that the organization is not a *foreign bank* for purposes of this section. A written request setting forth the basis for such a determination may be submitted to the Reserve Bank of the District in which the foreign organization's representative office is located in the United States or to the Board in the case of a proposed establishment of a representative office.

The Board will review and act upon each such request on a case-by-case basis.

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By order of the Board of Governors of the Federal Reserve System, January 24, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96-1650 Filed 1-29-96; 8:45 a.m.]

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