The Foreign Bank Supervision Enhancement Act of 1991

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On December 19, 1991, the Congress enacted the Foreign Bank Supervision Enhancement Act. Based on a legislative proposal drafted by the Board of Governers of the Federal Reserve System at the request of the congressional banking committees, the act was intended to fill gaps in the supervision and regulation of foreign banks and to ensure that the banking policies established by the Congress were implemented in a fair and consistent manner with respect to all entities (domestic and foreign) conducting a banking business in the United States. It established uniform federal standards for entry and expansion of foreign banks in the United States and substantially increased the role of the Federal Reserve System in the supervision and regulation of their U.S. activities. This article analyzes the objectives of the act and discusses its implementation.

THE NEED FOR LEGISLATION

Foreign banks with U.S. branches and agencies were first subjected to federal regulation with the passage of the International Banking Act of 1978 (IBA). At that time, 122 foreign banks were operating offices in the United States and accounted for $90 billion in assets.[1] The IBA required these banks to maintain reserves and generally limited their activities and geographic expansion in the United States in accordance with the comparable limitations applicable to U.S. banking organizations. Based on a policy of national treatment, the IBA also attempted to adapt the dual banking system—the U.S. system permitting banks to be chartered by either state or federal authorities—to the unique characteristics of foreign bank branches and agencies.

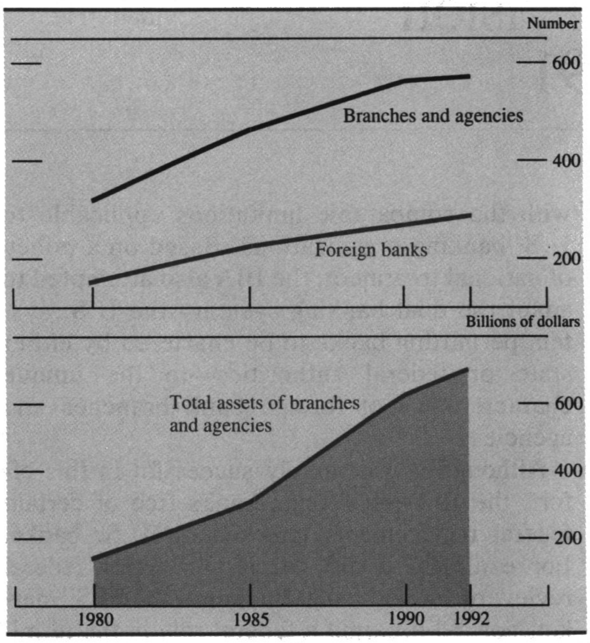
Although it was largely successful in this effort, the IBA left foreign banks free of certain federal requirements imposed on U.S. banks. For example, it did not require prior federal review of foreign bank entry into the U.S. market, nor did it permit a federal role in the termination of a state-licensed branch or agency of a foreign bank.

By 1991, the foreign bank presence in the United States had grown substantially (see chart). Branches and agencies of approximately 280 foreign banks held aggregate assets of $626 billion, or 18 percent of total banking assets in this country, and operated 565 offices, the vast majority of which were state-licensed.[2] Cases of fraud and other criminal activity by some foreign banks in the 1980s convinced the Federal Reserve Board that both state and federal regulators needed to pay greater coordinated attention to the U.S. offices of these institutions. In particular, the Board came to believe that prior federal review of foreign bank entry and expansion in the U.S. market and a federal role in terminating a branch or agency of a foreign bank for unsafe and unsound banking practices were desirable.

1. *International Banking Act of 1978: Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany H.R.10899*, 95 Cong. 2 Sess. (Government Printing Office, 1978), p. 2.

2. "Statement by J. Virgil Mattingly, Jr., General Counsel, Board of Governors of the Federal Reserve System, before the Subcommittee on Consumer and Regulatory Affairs of the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, May 23, 1991," *Federal Reserve Bulletin*, vol. 77 (July 1991), p. 579.

Growth in the number and assets of foreign banks and their branches and agencies in the United States, December 1980–June 1992



Data are plotted from year-end to year-end. The number of foreign countries with branch and agency operations in the United States was thirty-four in 1980, forty-nine in 1985, fifty-four in 1990, and fifty-seven as of June 1992.

The Board's Legislative Proposal

On May 9, 1991, the Board sent to the banking committees a draft bill that was subsequently introduced in the Senate and the House. The purpose of the Board's legislative proposal was to "ensure that foreign bank operations in this country are regulated, supervised, and examined in the same manner as U.S. banks."[3] To this end, the Federal Reserve made several recommendations in the proposed legislation.

- The draft proposal required federal approval for foreign banks seeking to establish state-licensed branches and agencies or commercial lending subsidiaries in the United States. The federal approval requirement was designed to give the Federal Reserve Board, as the agency responsible for overall supervision of foreign banks in the United States, a role in determining whether such institutions might establish or retain a U.S. banking presence. At that time, foreign banks wishing to establish state-licensed banking offices were not required to undergo any federal review or obtain any federal approval before beginning operations.
- The proposal set forth the standards that the Federal Reserve would apply in determining whether to approve the establishment of a U.S. office of a foreign bank. The key recommendation was that the Board should be able to take into account whether a foreign bank was subject to comprehensive, consolidated supervision by its home country regulatory authorities in considering whether to allow the foreign bank to establish new offices in the United States. Experience with the Bank of Credit and Commerce International—whose far-flung operations were not subject to scrutiny on a consolidated basis by a single regulator—demonstrated the importance of this standard. Additional suggested standards included requiring that the foreign bank have adequate financial and managerial resources and that the Federal Reserve have access to sufficient information on the U.S. activities of the foreign bank and its affiliates to be able to determine and enforce compliance with U.S. law. The proposal would have also required the same standards to be applied by the Office of the Comptroller of the Currency (OCC) in licensing new federal branches or agencies.
- The proposal recommended that prior approval by the Federal Reserve be required for foreign banks to establish representative offices in the United States and that such offices be examined to ensure that they did not engage in unlicensed and unsupervised banking.
- The Federal Reserve also requested the authority to terminate the activities of a state-licensed branch, agency, commercial lending company subsidiary, or representative office for violations of law or for unsafe or unsound banking practices as a necessary complement to the requested authority to approve establishment of such offices.
- The Federal Reserve sought increased authority to examine regularly the U.S. operations of foreign banks and clear authority to conduct simultaneous examinations of multiple offices of the same foreign bank when appropriate.

3. Ibid.

• The Federal Reserve proposed that foreign banks operating in the United States, or their affiliates, be required to report loans they make that are secured by 25 percent or more of the stock of any U.S.-insured depository institution or company that controls such a depository institution.

• The proposal required that a foreign bank maintaining branches or agencies in the United States obtain Federal Reserve approval before acquiring more than 5 percent of the voting shares of a bank or bank holding company. This requirement, which already applied to U.S. bank holding companies, sought to ensure that the standards in the Bank Holding Company Act (BHC Act) on control, financial and managerial resources, and community convenience and needs were satisfied in all such acquisitions.

• The Board proposed a clarification of the IBA granting the federal banking agencies authority to share supervisory information with their foreign counterparts, subject to adequate assurances of confidentiality, when the disclosure of information was appropriate in carrying out the federal agency's responsibilities and when the sharing of information would not prejudice the interest of the United States. This proposal recognized that if federal regulators were to have access to the supervisory information of their foreign counterparts, they would be expected to reciprocate when the foreign regulator requested comparable information.

Final Legislation

The Foreign Bank Supervision Enhancement Act (FBSEA) passed the Congress in substantially the same form in which it was proposed and became effective immediately upon enactment on December 19, 1991. A few key additions deserve mention.

The FBSEA requires Federal Reserve approval for the establishment of both state-licensed and federally licensed branches and agencies. This approach is broader than that contained in the original proposal, which would have granted the Federal Reserve the authority to approve the establishment of state-licensed branches and agencies by foreign banks, whereas approval of the establishment of federally licensed branches and agencies by foreign banks would have remained solely the responsibility of the OCC. The statute also provided that the Board could not approve establishment of a branch or agency unless the foreign bank were subject to consolidated home country supervision.

The FBSEA also limits the permissible activities of a state-licensed branch or agency to the activities permitted by the OCC for a federally licensed branch. A state licensed branch or agency may engage in an activity that is permitted by state law but not yet sanctioned by the OCC only if the Board finds the activity to be consistent with sound banking practices and, in the case of an insured branch only, the Federal Deposit Insurance Corporation (FDIC) finds that the activity poses no significant risk to the deposit insurance fund. Unlike most substantive portions of the FBSEA, this restriction became effective on December 19, 1992, one year after enactment.

The FBSEA also imposed new restrictions on deposit taking by foreign banks. It provided that no foreign bank may accept or maintain deposit accounts "having balances of less than $100,000" except through an insured banking subsidiary.[4] This provision created substantial uncertainty in the market because it could have been interpreted to prohibit foreign bank offices from taking certain wholesale deposits.

Finally, the statute mandated two studies not called for in the original Board proposal. The first of these was a comparative analysis by the Federal Reserve and the Treasury Department of the capital standards applicable to foreign banks conducting banking operations in the United States and the risk-based capital and leverage requirements applicable to U.S. banks; the report was completed and delivered to the Congress on June 19, 1992 (see box).[5] A second study—on the advisability of requiring foreign banks in the United States to "roll up" their current branch and agency operations into sepa-

4. P.L. 102–242, 105 Stat. 2236, 2303–04 (Dec. 19, 1991).

5. Board of Governors of the Federal Reserve System and U.S. Department of the Treasury, *Capital Equivalency Report*, June 19, 1992.

The Capital Equivalency Report

Section 214(b) of the FBSEA required the Board and the Secretary of the Treasury jointly to submit to the House and Senate banking committees a report analyzing (1) the capital standards for measurement of capital adequacy established in 1988 by the central bank and supervisory authorities of the G-10 countries and contained in the Basle Accord; (2) foreign regulatory capital standards that apply to foreign banks conducting banking operations in the United States; and (3) the relationship of the Basle and foreign capital standards to the risk-based capital and leverage requirements applicable to U.S. banks. The report, which was issued on June 19, 1992, examined capital standards in twenty-two countries. Banks from these countries collectively held, as of December 31, 1991, approximately 97 percent of total U.S. banking assets held by foreign banks. All but two of the countries examined followed a risk-based capital standard.

In broad terms, the report concluded that the minimum capital standards established by the Basle Accord provide a common basis for evaluating the general equivalency of capital among banks from various countries. In the future, when determining whether a foreign bank's capital meets the minimum standard, as an initial requirement, applicants from countries that adhere to the Basle Accord will be required, at a minimum, to meet the Basle guidelines as administered by their home country supervisors. An applicant from a country not subscribing to the Basle Accord will be required to provide information regarding the capital standard applied by its home country regulator, as well as information sufficient to evaluate the applicant's capital position adjusted as appropriate for accounting and structural differences, and, to the extent possible, information comparable to the Basle framework.

rately incorporated domestic subsidiaries—was completed on December 19, 1992.

IMPLEMENTATION

The immediate effectiveness of major portions of the FBSEA required that implementation proceed quickly.

Initial Guidance

On December 19, 1991, the Board and the OCC issued a joint statement to guide foreign bank branches and agencies with respect to the new statutory limitation in the FBSEA on deposit taking. The language in this limitation was general and could have been interpreted to require uninsured foreign bank offices that accepted deposits of less than $100,000, either as an accommodation to their customers or in connection with their wholesale operations, to cease such activity immediately and to continue to accept such deposits only in an insured banking subsidiary. This could have disrupted the noninsured, nondomestic deposit-taking activities of branches and agencies previously permitted under regulations of the OCC and the FDIC, which specify the circumstances under which domestic retail deposit-taking activities require deposit insurance.

In their joint statement, the agencies indicated that the statute's intent was to prohibit the establishment of *new* insured branches by foreign banks. The agencies further indicated that they would not consider a foreign bank branch or agency to be in violation of the law provided it continued to abide by the OCC and FDIC regulations under section 6 of the IBA.[6] A recent technical amendment to the FBSEA, adopted in October 1992, has clarified that the statutory prohibition on accepting deposits under $100,000 is limited to domestic retail deposits that require deposit insurance protection and does not apply to the broader category of all deposits "having balances of less than $100,000."[7]

On March 5, 1992, interim guidance was issued by Board staff to each of the Reserve Banks, outlining the process for applying for Board approval to establish new foreign bank offices. The guidance set forth procedures for the pro-

6. Supervision and Regulation 91–31 (IB) (Dec. 19, 1991).
7. P.L. 102-550, 106 Stat. 3672 (Oct. 28, 1992).

cessing of applications and contained summaries of the type of information the staff deemed necessary to process an application.[8] If a foreign bank desires to establish an office that was not actually open for business and operating on December 19, 1991, the foreign bank must file an application and receive approval before beginning operations. This requirement has meant that certain foreign banks that had obtained approval to begin business from applicable state authorities or the OCC before December 19, 1991, but had not done so, have had to delay their openings until they could obtain Federal Reserve approval.

The Interim and Final Rules

On April 15, 1992, the Board issued an interim rule amending Regulation K (International Banking Operations) and Regulation Y (Bank Holding Companies and Change in Bank Control) to implement significant portions of the FBSEA.[9] The interim rule established procedures in Regulation K for the exercise of the Board's responsibilities relating to the approval, examination, and termination of foreign bank operations in the United States. It also implemented in Regulation K provisions of the FBSEA that permit disclosure of certain information to foreign supervisors and establish limits on loans to a single borrower by state branches and agencies. The Board amended Regulation Y to state that foreign banking organizations acquiring an interest of more than 5 percent of the voting shares of a U.S. bank or bank holding company must file an application with the Board under the BHC Act. The interim rule became effective immediately but provided for a sixty-day comment period during which interested persons could submit their written comments on the text. The commenters to the interim rule included individual foreign banks, trade associations, law firms, and state bank regulators.

On November 4, 1992, the Board approved adoption of a final rule amending Regulations K and Y. Except for the treatment of representative offices, the final rule is substantially identical to the interim rule with minor changes made to reflect the Board staff's experience with applications filed under the interim rule and clarifications suggested by the public comments.

Much of the rule deals with the standards and procedures for establishing new foreign bank offices in the United States. The FBSEA imposes the following two mandatory standards for the establishment by a foreign bank of a branch, agency, or commercial lending company subsidiary:

- The foreign bank must engage directly in the business of banking outside the United States and be subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country.
- The foreign bank must furnish to the Board the information it needs to assess the application adequately.[10]

Comprehensive Consolidated Supervision

The key standard is comprehensive consolidated supervision. The United States is not the only country that has come to view this requirement as highly desirable. The Basle Committee on Banking Supervision has recently adopted minimum standards for consolidated supervision of banking organizations operating internationally.[11] As defined by the Basle Committee, the minimum acceptable level of supervision requires that the home country supervisor of a bank or banking group

> (a) receive consolidated financial and prudential information on the bank's or banking group's global operations, have the reliability of this information confirmed to its own

8. Supervision and Regulation 92–6 (FIS) (Mar. 5, 1992).
9. 57 Fed. Reg. 12,992 (Apr. 15, 1992).

10. 12 U.S.C. § 3105(d).
11. The Basle Committee on Banking Supervision is composed of representatives of the central banks and supervisory authorities from Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States. The committee meets at the Bank for International Settlements in Basle, Switzerland. It is currently chaired by the president of the Federal Reserve Bank of New York.

> satisfaction through on-site examination or other means, and assess the information as it may bear on the safety and soundness of the bank or banking group; (b) have the capability to prevent corporate affiliations or structures that either undermine efforts to maintain consolidated financial information or otherwise hinder effective supervision of the bank or banking group; and (c) have the capability to prevent the bank or banking group from creating foreign banking establishments in particular jurisdictions.[12]

The comprehensive consolidated supervision standard set forth in the rule is broadly consistent with the Basle Minimum Standards but may also go beyond the standards in certain respects. The rule applies to both the foreign bank applicant and to any parent foreign bank of such an applicant and emphasizes the importance of access to information on the part of the home country supervisor. The rule requires the Board to determine the following:

> whether the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationship of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation.[13]

Illustrative Factors

The rule sets forth five illustrative factors that the Board will consider in evaluating whether the comprehensive supervision standard is met in any particular case. The list of factors is not exhaustive, and no one factor is determinative. The factors were included in the rule in recognition of the fact that different supervisory systems deal with particular supervision issues in different ways. For example, not all systems rely on on-site examinations to the same extent as that of the United States, and financial accounting practices may differ from one jurisdiction to another. The Board will examine the extent to which the home country supervisor does the following:

- Ensures that the foreign bank has adequate procedures for monitoring and controlling its activities worldwide
- Obtains information on the condition of the foreign bank and its subsidiaries and offices outside the home country through regular reports of examination, audit reports, or otherwise
- Obtains information on the dealings and relationship between the foreign bank and its affiliates, both foreign and domestic
- Receives from the foreign bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the foreign bank's financial condition on a worldwide, consolidated basis
- Evaluates prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis.[14]

The commenters on the interim rule generally supported the standard and the five illustrative factors and these remain the same in the final rule. Some commenters suggested that the Board be permitted to take into account whether a home country supervisor, while not currently exercising consolidated supervision, was nonetheless making significant progress toward meeting the standard. This approach is advocated in the Basle Minimum Supervision Standards.[15] In the Board's view, the mandatory language of the

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12. Basle Committee on Banking Supervision, "Minimum Standards for the Supervision of International Banking Groups and Their Cross Border Establishments" (Basle Minimum Supervision Standards), June 1992.

13. 12 C.F.R. § 211.24(c).

14. Ibid.

15. As discussed above, the Basle Minimum Supervision Standards paper sets forth certain minimum standards for consolidated supervision of a banking group as a whole and indicates that host countries should determine whether banks seeking to enter their markets meet such standards. The paper, however, goes on to say the following:

> Some authorities may initially need to make either statutory or administrative changes in order to comply with these new standards; therefore, in cases where an authority fails to meet one or more of these standards, recognition should be given to the extent to which the authority is actively working to establish the necessary capabilities to permit it to meet all aspects of these minimum standards.

See Basle Minimum Supervision Standards, p. 3.

FBSEA does not permit this flexibility with respect to applications to establish branches, agencies, or commercial lending companies. The Board, however, does retain such flexibility in the case of applications to establish representative offices because the FBSEA provides that the standards—such as comprehensive consolidated supervision—which are mandatory for branches, agencies, and commercial lending companies, are discretionary for representative offices.

Other Standards

The FBSEA also contains other standards that the Board may consider in determining whether to approve any U.S. office of a foreign bank. These are the following:

- Whether the home country supervisor of the foreign bank has consented to the proposed establishment of a branch, agency, or commercial lending company subsidiary

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

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

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

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

- Whether the foreign bank and its U.S. affiliates are in compliance with applicable U.S. law, and whether the applicant has established adequate controls and procedures in each of its offices to ensure continuing compliance with U.S. law, including controls directed to detection of money laundering and other unsafe or unsound banking practices.[16]

The standard that has attracted the most attention from foreign banks and commenters has been the requirement to provide adequate assurances of access to information. This standard is intended primarily to address bank operations in so-called secrecy jurisdictions—those jurisdictions whose laws deliberately restrict access to information in an effort to attract offshore banking business. The standard is not intended to require that the Board have access to routine customer information. In general, this information would be sought only in those instances in which the Board had reason to believe that U.S. laws—such as the prohibition against money laundering—had been or were being violated. In some of the first applications considered by the Board's staff, it became clear that requiring information about the secrecy laws of every jurisdiction in which an applicant or its affiliates conducted business could be impractical and burdensome on applicants, particularly in the case of foreign banks with extensive operations outside their home countries. The Board has refined its information requirements to include a materiality test. This test will require an applicant to submit information on the secrecy laws only of those jurisdictions in which it or its affiliates conduct material operations, defined as direct or indirect activities that, in the aggregate, account for 5 percent or more of the consolidated worldwide assets of the bank or its ultimate parent.

16. 12 C.F.R. § 211.24(c).

EXPANDED AUTHORITY OVER REPRESENTATIVE OFFICES

Another major area addressed by the rule is the Board's expanded powers with respect to representative offices. Under the FBSEA, the Board has for the first time the authority to approve establishment of and examine such offices. The interim rule contained a definition of representative office that limited the types of activities such offices could conduct to traditional representational and administrative functions. In certain cases, these limitations went beyond those in applicable state law, which merely specifies the types of activities that a representative office may not conduct.

Relationship to State Law

This definition provoked several comments including the assertion that the Board had no authority to supersede state law. In the Board's view, the FBSEA requires that all direct U.S. activities of a foreign bank, including those conducted through a representative office, be subject to federal supervision. The IBA defines branches and agencies in terms of what they are permitted to do, but the statute is silent as to the permissible activities of a representative office. Nonetheless, the Board believes that determining the permissible activities of a representative office is not solely a function of state law.

For example, state law clearly could not permit a representative office to engage in the business of banking. The legislative history of the FBSEA states that a representative office may not conduct "any banking activities, including deposit-taking, securities trading, foreign exchange dealing, and other similar activities."[17] No further prohibitions are noted. The legislative history gives examples of permissible activities of representative offices but these examples are not characterized as all inclusive. For example, the Senate report states that

> A representative office generally operates as a loan production office for a foreign bank; the office may conduct representational and administrative work on behalf of the bank but no credit or other business decisions may be made at the office or by its personnel.[18]

These references to "credit or other business decisions" are best understood as references to those credit or other business decisions related to banking.

The FBSEA reflects this critical distinction between banking offices and representative offices by imposing a lower standard for the approval of the establishment of representative offices than for the approval of branches and agencies that are permitted to conduct a banking business. Accordingly, the FBSEA implicitly requires the Board to establish guidelines as to what activities do and do not constitute the business of banking.

Determining Permissible Activities

The problem of defining the activities of a representative office is further complicated by certain provisions of the BHC Act that impose limitations on the ability of a foreign bank subject to that act to conduct nonbanking business through a representative office. These limitations raise the issue of whether the permitted activities of a representative office should vary depending on whether the foreign bank is or is not subject to the BHC Act. (A foreign bank that operates a U.S. branch or agency or owns a U.S. bank is subject to the BHC Act, whereas a foreign bank that operates only a representative office is not.)

The Board has attempted to resolve these issues in a manner that is consistent with the letter and purpose of the FBSEA. The rule provides that any new direct office of a foreign bank that is not a branch or agency is subject to Board approval as a representative office. Existing direct offices that previously did not fall within the definition of representative office are required to register with the Federal Reserve but

17. *Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991: Report of the Senate Committee on Banking, Housing, and Urban Affairs,* Senate Report 167, 102 Cong. 1 Sess. (GPO, 1991), p. 118.

18. Ibid.

will not otherwise be required to seek Federal Reserve approval to continue to operate.

All newly approved and existing representative offices will be permitted to engage in core representational and administrative activities. These activities include those traditionally associated with representative offices, such as loan production. New representative offices will be permitted to engage, on a case-by-case basis, in other nonbanking activities not prohibited by state or federal law; existing representative offices may continue to perform nonbanking activities not prohibited by state or federal law. During the next year, the Federal Reserve will examine representative offices to obtain more accurate information on such activities. After such examinations, if the Federal Reserve decides that representative offices should not conduct certain nonbanking activities, it will conduct further rulemaking on the issue.

The Board has also established a procedure for more expedited approval of a representative office that functions as a regional headquarters office for a foreign bank with existing banking operations in the United States. A foreign bank wishing to establish this type of representative office will be required to provide the Board with prior notice of its intent. If the Board does not object to the proposal within a prescribed period, the foreign bank may establish the representative office. The rule also permits the establishment by general consent of representative offices that conduct only limited back office operations. These provisions also make clear that the Federal Reserve has the authority to examine such offices under its general and specific examination authority.

The Applications Process

The processing of applications has proved to be more cumbersome than had been anticipated. Delays have been caused by several factors, including the length of time required to conduct background checks of applicants and related parties with other federal agencies. The Board is committed to reducing the delays that are attributable to factors under its control and is taking specific steps in this regard.

The Board has decided not to make determinations of consolidated supervision on a country-by-country basis, but rather for individual banks; nonetheless, applicants chartered in the same country may rely on information previously submitted and considered by the Board on consolidated supervision in that country. Subsequent applicants need only describe the extent to which the supervision system already evaluated applies to them and how, if at all, that system has changed since the Board last considered it. The same approach will be taken with respect to descriptions of secrecy laws in particular jurisdictions.

The Board, the OCC, and state supervisors will continue working toward a common application form. Until the form is available, the Board will accept a copy of the state or OCC application as an application under the FBSEA. Of course, matters addressed in the FBSEA or in the Board's rule and not in the state or OCC application will need to be handled separately. State and OCC applications and applications to the Board under the FBSEA will be processed simultaneously.

The Board has received some criticism for pursuing background checks with other federal agencies, primarily because of the lengthy delays caused by conducting such checks. The Board believes that checks can provide useful information and that, on occasion, such information can be critical. Accordingly, the Board has determined to continue conducting checks on applicants and related parties. Checks will be initiated at the beginning of the process to help minimize delays.

In the rule, the Board has indicated that it will delegate approval of certain applications to the Reserve Banks. Delegation is permitted for subsequent FBSEA applications from a foreign bank that has received an FBSEA approval from the Board when such applications present no significant supervisory issues. The Board anticipates that delegated applications could be processed more expeditiously than applications requiring Board approval.

Examinations

The rule provides for annual on-site examinations of branches, agencies, and commercial lending companies by a U.S. banking supervisor, as well as coordination of such examinations. Accordingly, each U.S. branch and agency of a foreign bank will have been examined in 1992 by either a state or a federal regulator and will be examined annually thereafter. All representative offices will be examined by the responsible Reserve Bank in 1993 and regularly thereafter.

In implementing its coordinated examination program for foreign banks, the Board has applied a flexible approach designed to use resources efficiently and to minimize the burdens on the office examined. The Board may conduct its own examination of foreign bank branches and agencies, alternate its examination with the primary supervisor every other year, rely on the examination of the primary supervisor, or participate in a joint examination. The Reserve Banks will try to avoid duplicating the work of other federal or state examiners if a branch or agency is subject to more than one on-site examination in a twelve-month period. When possible, a joint report will be issued on a joint examination. □