

limited partnership interest, debt or warrants convertible into ownership interests or rights, loans providing profit participation, binding commitments to acquire any such items, or some other form of business transaction.

(e) *Equity security* means voting or nonvoting shares, stock, investment contracts, or other interests representing ownership or participation in a company or similar enterprise, as well as any instrument convertible to any such interest at the option of the holder without payment of substantial additional consideration.

(f) *FRB* means the Board of Governors of the Federal Reserve System.

(g) *Foreign bank* means an organization that is organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands that:

(1) Is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or the country in which its principal banking operations are located;

(2) Receives deposits to a substantial extent in the regular course of its business; and

(3) Has the power to accept demand deposits.

(h) *Foreign banking organization* means a foreign organization that is formed for the sole purpose of either holding shares of a foreign bank or performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or foreign bank affiliate of the insured state nonmember bank.

(i) *Foreign branch* means an office or place of business located outside the United States, its territories, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, at which banking operations are conducted, but does not include a representative office.

(j) *Foreign country* means any country other than the United States and includes any territory, dependency, or possession of any such country or of the United States.

(k) *Foreign organization* means an organization that is organized under the laws of a foreign country.

(l) *Indirectly* means investments held or activities conducted by a subsidiary of an organization.

(m) *Loan or extension of credit* means all direct and indirect advances of funds to a person, government, or entity made on the basis of any obligation of that person, government, or entity to repay funds.

(n) *Organization* or *entity* means a corporation, partnership, association, bank, or other similar entity.

(o) *Representative office* means an office that engages solely in representative functions such as soliciting new business for its home office or acting as liaison between the home office and local customers, but which has no authority to make business or contracting decisions other than those relating to the personnel and premises of the representative office.

(p) *Subsidiary* means any organization more than 50 percent of the voting equity interests of which are directly or indirectly held by another organization.

(q) *Tier 1 capital* means Tier 1 capital as defined in § 325.2 of this chapter.

(r) *Well capitalized* means well capitalized as defined in § 325.103 of this chapter.

§ 347.103 Foreign branches of insured State nonmember banks.

(a) *Powers of foreign branches.* To the extent authorized by state law, an insured state nonmember bank may establish a foreign branch. In addition to its general banking powers, and if permitted by state law, a foreign branch of an insured state nonmember bank may conduct the following activities to the extent the activities are consistent with banking practices in the foreign country in which the branch is located:

(1) *Guarantees.* Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events including without limitation such things as nonpayment of taxes, rentals, customs duties, or costs of transport and loss or nonconformance of shipping documents, if:

(i) The guarantee or agreement specifies a maximum monetary liability; and

(ii) To the extent the guarantee or agreement is not subject to a separate

amount limit under State or Federal law, the amount of the guarantee or agreement is combined with loans and other obligations for purposes of applying any legal lending limits.

(2) *Local investments.* Acquire and hold the following local investments, so long as aggregate investments (other than those required by the law of the foreign country or permissible under section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)) by all the bank's branches in one foreign country do not exceed 1 percent of the total deposits in all the bank's branches in that country as reported in the preceding year-end Report of Income and Condition (Call Report):¹

(i) Equity securities of the central bank, clearing houses, governmental entities, and development banks of the country in which the branch is located;

(ii) Other debt securities eligible to meet local reserve or similar requirements; and

(iii) Shares of automated electronic payment networks, professional societies, schools, and similar entities necessary to the business of the branch.

(3) *Government obligations.* Make the following types of transactions with respect to the obligations of foreign countries, so long as aggregate investments, securities held in connection with distribution and dealing, and underwriting commitments do not exceed ten percent of the insured state nonmember bank's Tier 1 capital:

(i) Underwrite, distribute and deal, invest in, or trade obligations of:

(A) The national government of the country in which the branch is located or its political subdivisions; and

(B) An agency or instrumentality of such national government if supported by the taxing authority, guarantee, or full faith and credit of the national government.

(ii) Underwrite, distribute and deal, invest in or trade obligations² rated as

investment grade by at least two established international rating agencies of:

(A) The national government of any foreign country or its political subdivisions, to the extent permissible under the law of the issuing foreign country; and

(B) An agency or instrumentality of the national government of any foreign country to the extent permissible under the law of the issuing foreign country, if supported by the taxing authority, guarantee, or full faith and credit of the national government.

(4) *Insurance.* Act as an insurance agent or broker.

(5) *Other activities.* Engage in these activities in an additional amount, or in other activities, approved by the FDIC.

(b) *General consent to establish and relocate foreign branches.* (1) General consent of the FDIC is granted for an eligible insured state nonmember bank to establish foreign branches conducting activities authorized by this section in any foreign country in which the bank already operates one or more foreign branches or foreign bank subsidiaries.

(2) General consent of the FDIC is granted for an insured state nonmember bank to relocate an existing foreign branch within a foreign country.

(3) An insured state nonmember bank acting under this paragraph must provide written notice of such action to the FDIC within 30 days after establishing or relocating the branch.

(c) *Expedited processing of branch applications.* (1) Forty-five days after filing a substantially complete application with the FDIC, or upon such earlier time as authorized by the FDIC, an eligible insured state nonmember bank may establish foreign branches conducting activities authorized by this section in any foreign country in which:

(i) An affiliated bank or Edge or Agreement corporation operates one or more foreign branches or foreign bank subsidiaries; or

(ii) The bank's holding company operates a foreign bank subsidiary.

¹If a branch has recently been acquired by the state nonmember bank and the branch was not previously required to file a Call Report, branch deposits as of the acquisition date must be used.

²If the obligation is an equity interest, it must be held through a subsidiary of the foreign branch and the insured state non-

member bank must meet its minimum capital requirements.

(2) If any of the following are located in two or more foreign countries, an eligible insured state nonmember bank may establish a foreign branch conducting activities authorized by this section in an additional foreign country 45 days after the bank files a substantially complete application with the FDIC, or upon such earlier time as authorized by the FDIC:

(i) Foreign branches or foreign bank subsidiaries of the eligible insured state nonmember bank;

(ii) Foreign branches or foreign bank subsidiaries of banks and Edge or Agreement corporations affiliated with the eligible insured state nonmember bank; and

(iii) Foreign bank subsidiaries of the eligible insured state nonmember bank's holding company.

(d) *Limitations on general consent and expedited processing.* General consent under paragraph (b) or expedited processing under paragraph (c) of this section does not apply:

(1) If the foreign branch would be located on a site on the World Heritage List or on the foreign country's equivalent of the National Register of Historic Places, in accordance with section 403 of the National Historic Preservation Act Amendments of 1980 (16 U.S.C. 470a–2);

(2) If the foreign branch would be located in a foreign country in which applicable law or practice would limit the FDIC's access to information for supervisory purposes; or

(3) If the FDIC at any time notifies the insured state nonmember bank that the FDIC is modifying or suspending its general consent or expedited processing procedure.

(e) *Specific consent required.* An insured state nonmember bank may not engage in a type or amount of foreign branch activity not authorized by this section, or establish a foreign branch other than as authorized by paragraphs (b) and (c) of this section, without obtaining the prior specific consent of the FDIC.

(f) *Branch closing.* An insured state nonmember bank must notify the FDIC in writing at the time it closes a foreign branch.

(g) *Procedures.* Procedures for notices and applications under this section are set out in subpart D of this part.

§ 347.104 Investment by insured State nonmember banks in foreign organizations.

(a) *Investment authorized.* To the extent authorized by state law, an insured state nonmember bank may directly or indirectly acquire and retain equity interests in foreign organizations, subject to the requirements of this subpart.

(b) *Authorized financial activities.* An insured state nonmember bank may not directly or indirectly acquire or hold equity interests of a foreign organization resulting in the insured state nonmember bank and its affiliates holding more than 50 percent of a foreign organization's voting equity interests in the aggregate, or the insured state nonmember bank or its affiliates otherwise controlling the foreign organization, unless the activities of the foreign organization are limited to the following financial activities:

(1) Commercial and other banking activities.

(2) Underwriting, distributing, and dealing debt securities outside the United States.

(3) With the prior approval of the FDIC under § 347.108(d), underwriting, distributing, and dealing equity securities outside the United States.

(4) Organizing, sponsoring, and managing a mutual fund if the fund's shares are not sold or distributed in the United States or to U.S. residents and the fund does not exercise management control over the firms in which it invests.

(5) General insurance agency and brokerage.

(6) Underwriting credit life, credit accident and credit health insurance.

(7) Performing management consulting services provided that such services when rendered with respect to the United States market must be restricted to the initial entry.

(8) Data processing.

(9) Operating a travel agency in connection with financial services offered abroad by the insured state nonmember bank or others.