

listed in paragraphs (j)(2)(i) through (iii) of this section.

(k) *Party*. The term “party”. The authority citation for part 405 continues to read as follows: with respect to a covered agreement means each NGEP and each insured depository institution or affiliate that entered into the agreement.

(1) *Relevant supervisory agency*. The “relevant supervisory agency” for a covered agreement means the appropriate Federal banking agency for—

(1) Each insured depository institution (or subsidiary thereof) that is a party to the covered agreement;

(2) Each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement; and

(3) Any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement.

(m) *Term of agreement*. An agreement that does not have a fixed termination date is considered to terminate on the last date on which any party to the agreement makes any payment or provides any loan or other resources under the agreement, unless the relevant supervisory agency for the agreement otherwise notifies each party in writing.

[66 FR 2099, Jan. 10, 2001, as amended at 66 FR 14071, Mar. 9, 2001]

## PART 347—INTERNATIONAL BANKING

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### Subpart A—Foreign Branching and Investment by Insured State Nonmember Banks

#### § 347.101 Purpose, authority, and scope.

Under sections 18(d) and 18(l) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d), 1828(l)), the Federal Deposit Insurance Corporation prescribes the regulations in this subpart relating to foreign branches of insured state nonmember banks, the acquisition and

holding of stock of foreign organizations, and loans or extensions of credit to or for the account of such foreign organizations.

### § 347.102 Definitions.

For the purposes of this subpart:

(a) An *affiliate* of an insured state nonmember bank means:

(1) Any entity of which the insured state nonmember bank is a direct or indirect subsidiary or which otherwise controls the insured state nonmember bank;

(2) Any organization which is a direct or indirect subsidiary of such entity or which is otherwise controlled by such entity; or

(3) Any other organization which is a direct or indirect subsidiary of the insured state nonmember bank or is otherwise controlled by the insured state nonmember bank.

(b) *Control* means the ability to control in any manner the election of a majority of an organization's directors or trustees; or the ability to exercise a controlling influence over the management and policies of an organization. An insured state nonmember bank is deemed to control an organization of which it is a general partner or its affiliate is a general partner.

(c) *Eligible* insured state nonmember bank means an eligible depository institution as defined in § 347.401(c).

(d) *Equity interest* means any ownership interest or rights in an organization, whether through an equity security, contribution to capital, general or 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 pre-

ceding year-end Report of Income and Condition (Call Report):<sup>1</sup>

(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 obligations<sup>2</sup> 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.

<sup>1</sup>If 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.

<sup>2</sup>If the obligation is an equity interest, it must be held through a subsidiary of the foreign branch and the insured state nonmember bank must meet its minimum capital requirements.

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(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.

(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

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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.

(10) Engaging in activities that the FRB has determined in Regulation Y (12 CFR 225.28(b)) are closely related to banking under section 4(c)(8) of the Bank Holding Company Act.

(11) Performing services for other direct or indirect operations of a U.S. banking organization, including representative functions, sale of long-term debt, name saving, liquidating assets acquired to prevent loss on a debt previously contracted in good faith, and other activities that are permissible for a bank holding company under sections 4(a)(2)(A) and 4(c)(1)(C) of the Bank Holding Company Act.

(12) Holding the premises of a branch of an Edge corporation or insured state nonmember bank or the premises of a direct or indirect subsidiary, or holding

or leasing the residence of an officer or employee of a branch or a subsidiary.

(13) Engaging in the foregoing activities in an additional amount, or in other activities, with the prior approval of the FDIC under §347.108(d).

(c) *Going concerns.* If an insured state nonmember bank acquires equity interests of a foreign organization under paragraph (b) of this section and the foreign organization is a going concern, up to five percent of either the consolidated assets or revenues of the foreign organization may be attributable to activities that are not permissible under paragraph (b) of this section.

(d) *Joint ventures.* If an insured state nonmember bank directly or indirectly acquires or holds equity interests of a foreign organization resulting in the insured state nonmember bank and its affiliates holding 20 percent or more, but not in excess of 50 percent, of the voting equity interests of a foreign organization in the aggregate, and the insured state nonmember bank or its affiliates do not control the foreign organization, up to 10 percent of either the consolidated assets or revenues of the foreign organization may be attributable to activities that are not permissible under paragraph (b) of this section.

(e) *Portfolio investment.* If an insured state nonmember bank directly or indirectly acquires or holds equity interests of a foreign organization resulting in the insured state nonmember bank and its affiliates holding less than 20 percent of the voting equity interests of a foreign organization in the aggregate, and the insured state nonmember bank or its affiliates do not control the foreign organization:

(1) Up to ten percent of either the consolidated assets or revenues of the foreign organization may be attributable to activities that are not permissible under paragraph (b) of this section; and

(2) Any loans or extensions of credit made by the insured state nonmember bank and its affiliates to the foreign organization must be on substantially the same terms, including interest

rates and collateral, as those prevailing at the same time for comparable transactions between the insured state nonmember bank or its affiliates and nonaffiliated organizations.

(f) *Indirect holding of foreign organizations which are not foreign banks or foreign banking organizations.* Any investment pursuant to the authority of paragraphs (b) through (e) of this section in a foreign organization which is not a foreign bank or foreign banking organization must be held indirectly through a U.S. or foreign subsidiary of the insured state nonmember bank if the foreign organization does not constitute a subsidiary of the insured state nonmember bank, and the insured state nonmember bank must meet its minimum capital requirements.

(g) *Indirect investments in nonfinancial foreign organizations.* An insured state nonmember bank may indirectly acquire and hold equity interests in an amount up to 15 percent of the insured state nonmember bank's Tier 1 capital in foreign organizations engaged generally in activities beyond those listed in paragraph (b) of this section, subject to the following:

(1) The equity interests must be acquired and held indirectly through a subsidiary authorized by paragraphs (b) or (c) of this section, or an Edge corporation if also authorized by the FRB;

(2) The aggregate holding of voting equity interests of one foreign organization by the insured state nonmember bank and its affiliates must be less than 20 percent of the foreign organization's voting equity interests;

(3) The aggregate holding of voting and nonvoting equity interests of one foreign organization by the insured state nonmember bank and its affiliates must be less than 40 percent of the foreign organization's equity interests;

(4) The insured state nonmember bank or its affiliates must not otherwise control the foreign organization; and

(5) Any loans or extensions of credit made by the insured state nonmember bank and its affiliates to the foreign organization must be on substantially the same terms, including interest rates and collateral, as those pre-

vailing at the same time for comparable transactions between the insured state nonmember bank or its affiliates and nonaffiliated organizations.

(h) *Affiliate holdings.* References in this section to equity interests of foreign organizations held by an affiliate of an insured state nonmember bank includes equity interests held in connection with an underwriting or for distribution or dealing by an affiliate permitted to do so by §337.4 of this chapter or section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)).

**§347.105 Underwriting and dealing limits applicable to foreign organizations held by insured State nonmember banks.**

If an insured state nonmember bank, in reliance on the authority of §347.104, holds an equity interest in one or more foreign organizations which underwrite, deal, or distribute equity securities outside the United States as authorized by §347.104(b)(3):

(a) *Underwriting commitment limits.* The aggregate underwriting commitments by the foreign organizations for the equity securities of a single entity, taken together with underwriting commitments by any affiliate of the insured state nonmember bank under the authority of 12 CFR 211.5, must not exceed the lesser of \$60 million or 25 percent of the insured state nonmember bank's Tier 1 capital unless excess amounts are either:

(1) Covered by binding commitments from subunderwriters or purchasers; or

(2) Deducted from the capital of the insured state nonmember bank, with at least 50 percent of the deduction being taken from Tier 1 capital, and the insured state nonmember bank remains well capitalized after this deduction.

(b) *Distribution and dealing limits.* The equity securities of any single entity held for distribution or dealing by the foreign organizations, taken together with equity securities held for distribution or dealing by any affiliate of the insured state nonmember bank under the authority of 12 CFR 211.5:

(1) Must not exceed the lesser of \$30 million or 5 percent of the insured

state nonmember bank's Tier 1 capital, subject to the following:

(i) Any equity securities acquired pursuant to any underwriting commitment extending up to 90 days after the payment date for the underwriting may be excluded from this limit;

(ii) Any equity securities of the entity held under the authority of § 347.104 or 12 CFR 211.5(b) for purposes other than distribution or dealing must be included in this limit; and

(iii) Up to 75 percent of the position in an equity security may be reduced by netting long and short positions in the same security, or offsetting cash positions against derivative instruments referenced to the same security so long as the derivatives are part of a prudent hedging strategy; and

(2) Must be included in calculating the general consent limits under § 347.108(a)(3) if the insured state nonmember bank relies on the general consent provisions as authority to acquire equity interests of the same foreign entity for investment or trading.

(c) *Additional distribution and dealing limits.* With the exception of equity securities acquired pursuant to any underwriting commitment extending up to 90 days after the payment date for the underwriting, equity securities of a single entity held for distribution or dealing by all affiliates of the state nonmember bank (this includes shares held in connection with an underwriting or for distribution or dealing by an affiliate permitted to do so by § 337.4 of this chapter or section 4(c)(8) of the Bank Holding Company Act), combined with any equity interests held for investment or trading purposes by all affiliates of the state nonmember bank, must conform to the limits of § 347.104.

(d) *Combined limits.* The aggregate of the following may not exceed 25 percent of the insured state nonmember bank's Tier 1 capital:

(1) All equity interests of foreign organizations held for investment or trading under § 347.104(g) or by an affiliate of the insured state nonmember bank under the corresponding paragraph of 12 CFR 211.5;

(2) All underwriting commitments under paragraph (a) of this section, taken together with all underwriting

commitments by any affiliate of the insured state nonmember bank under the authority of 12 CFR 211.5, after excluding the amount of any underwriting commitment:

(i) Covered by binding commitments from subunderwriters or purchasers under paragraph (a)(1) of this section or the comparable provision of 12 CFR 211.5; or

(ii) Already deducted from the insured state nonmember bank's capital under paragraph (a)(2) of this section, or the appropriate affiliate's capital under the comparable provisions of 12 CFR 211.5; and

(3) All equity securities held for distribution or dealing under paragraph (b) of this section, taken together with all equity securities held for distribution or dealing by any affiliate of the insured state nonmember bank under the authority of 12 CFR 211.5, after reducing by up to 75 percent the position in any equity security by netting and offset, as permitted by paragraph (b)(1)(iii) of this section or the comparable provision of 12 CFR 211.5.

**§ 347.106 Restrictions on certain activities applicable to foreign organizations held by insured State nonmember banks.**

*Futures commission merchant.* If an insured state nonmember bank, in reliance on the authority of § 347.104, acquires or retains an equity interest in one or more foreign organizations which acts as a futures commission merchant as authorized by § 347.104(b)(10), the foreign organization may not be a member of an exchange or clearing association that requires members to guarantee or otherwise contract to cover losses suffered by other members unless the foreign organization's liability does not exceed two percent of the insured state nonmember bank's Tier 1 capital, or the insured state nonmember bank has obtained the prior approval of the FDIC under § 347.108(d).

**§ 347.107 U.S. activities of foreign organizations held by insured State nonmember banks.**

(a) An insured state nonmember bank may not directly or indirectly hold the equity interests of any foreign organization pursuant to the authority of

this section if the organization engages in the general business of buying or selling goods, wares, merchandise, or commodities in the United States.

(b) An insured state nonmember bank may not directly or indirectly hold more than 5 percent of the equity interests of any foreign organization pursuant to the authority of this subpart unless any activities in which the foreign organization engages directly or indirectly in the United States are incidental to its international or foreign business.

(c) A foreign organization is not engaged in any business or activities in the United States for these purposes unless it maintains an office in the United States other than a representative office.

(d) The following activities are incidental to international or foreign business:

(1) Activities that the FRB has determined in Regulation K (12 CFR 211.4) are permissible in the United States for an Edge corporation.

(2) Other activities approved by the FDIC.

**§ 347.108 Obtaining FDIC approval to invest in foreign organizations.**

(a) *General consent.* General consent of the FDIC is granted for an eligible insured state nonmember bank to make direct or indirect investments in foreign organizations in conformity with the limits and requirements of this subpart if:

(1) The insured state nonmember bank presently operates at least one foreign bank subsidiary or foreign branch, an affiliated bank or Edge or Agreement corporation operates at least one foreign bank subsidiary or foreign branch, or the insured state nonmember bank's holding company operates at least one foreign bank subsidiary;

(2) In any case in which the insured state nonmember bank and its affiliates will hold 20 percent or more of the foreign organization's voting equity interests or control the foreign organization, at least one insured state nonmember bank has a foreign bank sub-

siary in the relevant foreign country;<sup>3</sup>

(3) The investment is within one of the following limits:

(i) The investment is acquired at net asset value from an affiliate;

(ii) The investment is a reinvestment of cash dividends received from the same foreign organization during the preceding 12 months; or

(iii) The total investment directly or indirectly in a single foreign organization in any transaction or series of transactions during a twelve-month period does not exceed two percent of the insured state nonmember bank's Tier 1 capital, and such investments in all foreign organizations in the aggregate do not exceed:

(A) 5 percent of the insured state nonmember bank's Tier 1 capital during a 12-month period; and

(B) Up to an additional five percent of the insured state nonmember bank's Tier 1 capital if the investments are acquired for trading purposes; and

(4) Within 30 days, the insured state nonmember bank provides the FDIC written notice of the investment, unless the investment was acquired for trading purposes, in which case no notice is required.

(b) *Expedited processing.* An investment that does not qualify for general consent but is otherwise in conformity with the limits and requirements of this subpart may be made 45 days after an eligible insured state nonmember bank files a substantially complete application with the FDIC, or upon such earlier time as authorized by the FDIC.

(c) *Inapplicability of general consent or expedited processing.* General consent or expedited processing under this section do not apply:

(1) For foreign investments resulting in the insured state nonmember bank holding 20 percent or more of the voting equity interests of a foreign organization or controlling such organization and the foreign organization 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

<sup>3</sup>A list of these countries can be obtained from the FDIC's Internet Web Site at [www.fdic.gov](http://www.fdic.gov).

(2) 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.

(d) *Specific consent.* Any investment that is not authorized under general consent or expedited processing procedures must not be made without the prior specific consent of the FDIC.

(e) *Computation of amounts.* In computing the amount that may be invested in any foreign organization under this section, any investments held by an affiliate of the insured state nonmember bank must be included.

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

**§ 347.109 Extensions of credit to foreign organizations held by insured State nonmember banks; shares of foreign organizations held in connection with debts previously contracted.**

(a) *Loans or extensions of credit.* An insured state nonmember bank which directly or indirectly holds equity interests in a foreign organization pursuant to the authority of this subpart may make loans or extensions of credit to or for the accounts of the organization without regard to the provisions of section 18(j) of the FDI Act (12 U.S.C. 1828(j)).

(b) *Debts previously contracted.* Equity interests acquired to prevent a loss upon a debt previously contracted in good faith are not subject to the limitations or procedures of this subpart; however they must be disposed of promptly but in no event later than two years after their acquisition, unless the FDIC authorizes retention for a longer period.

**§ 347.110 Supervision and record-keeping of the foreign activities of insured State nonmember banks.**

(a) *Records, controls and reports.* An insured state nonmember bank with any foreign branch, any investment in a foreign organization of 20 percent or more of the organization's voting equity interests, or control of a foreign organization must maintain a system of records, controls and reports that, at minimum, provide for the following:

(1) *Risk assets.* To permit assessment of exposure to loss, information furnished or available to the main office should be sufficient to permit periodic and systematic appraisals of the quality of risk assets, including loans and other extensions of credit. Coverage should extend to a substantial proportion of the risk assets in the branch or foreign organization, and include the status of all large credit lines and of credits to customers also borrowing from other offices or affiliates of the insured state nonmember bank. Appropriate information on risk assets may include:

(i) A recent financial statement of the borrower or obligee and current information on the borrower's or obligee's financial condition;

(ii) Terms, conditions, and collateral;

(iii) Data on any guarantors;

(iv) Payment history; and

(v) Status of corrective measures employed.

(2) *Liquidity.* To enable assessment of local management's ability to meet its obligations from available resources, reports should identify the general sources and character of the deposits, borrowing, and other funding sources, employed in the branch or foreign organization with special reference to their terms and volatility. Information should be available on sources of liquidity—cash, balances with banks, marketable securities, and repayment flows—such as will reveal their accessibility in time and any risk elements involved.

(3) *Contingencies.* Data on the volume and nature of contingent items such as loan commitments and guarantees or their equivalents that permit analysis of potential risk exposure and liquidity requirements.

(4) *Controls.* Reports on the internal and external audits of the branch or foreign organization in sufficient detail to permit determination of conformance to auditing guidelines. Appropriate audit reports may include coverage of:

(i) Verification and identification of entries on financial statements;

(ii) Income and expense accounts, including descriptions of significant chargeoffs and recoveries;

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(iii) Operations and dual-control procedures and other internal controls;

(iv) Conformance to head office guidelines on loans, deposits, foreign exchange activities, proper accounting procedures, and discretionary authority of local management;

(v) Compliance with local laws and regulations; and

(vi) Compliance with applicable U.S. laws and regulations.

(b) *Availability of information to examiners; reports.* (1) Information about foreign branches or foreign organizations must be made available to the FDIC by the insured state nonmember bank for examination and other supervisory purposes.

(2) If any applicable law or practice in a particular foreign country would limit the FDIC's access to information for supervisory purposes, no insured state nonmember bank may utilize the general consent or expedited processing procedures under §§347.103 and 347.108 to:

(i) Establish any foreign branch in the foreign country; or

(ii) Make any investment resulting in the state nonmember bank holding 20 percent or more of the voting equity interests of a foreign organization in the foreign country or controlling such organization.

(3) The FDIC may from time to time require an insured state nonmember bank to make and submit such reports and information as may be necessary to implement and enforce the provisions of this subpart, and the insured state nonmember bank shall submit an annual report of condition for each foreign branch pursuant to instructions provided by the FDIC.

### Subpart B—Foreign Banks

#### § 347.201 Scope.

(a)(1) Sections 347.203 through 347.207 implement the insurance provisions of section 6 of the International Banking Act of 1978 (12 U.S.C. 3104). They set out the FDIC's rules regarding domestic retail deposit activities requiring a foreign bank to establish an insured bank subsidiary; deposit activities permissible for a noninsured branch; authority for a state branch to apply for an exemption from the insurance require-

ment; and, depositor notification requirements. Sections 347.204, 347.205, 347.206 and 347.207 do not apply to a Federal branch. The Comptroller of the Currency's regulations (12 CFR part 28) establish such rules for Federal branches. However, Federal branches deemed by the Comptroller to require insurance must apply to the FDIC for insurance.

(2) Sections 347.203 through 347.207 also set out the FDIC's rules regarding the operation of insured and non-insured branches, whether state or Federal, by a foreign bank.

(b) Sections 347.208 through 347.212 set out the rules that apply only to a foreign bank that operates or proposes to establish an insured State or Federal branch. These rules relate to the following matters: an agreement to provide information and to be examined and provisions concerning record-keeping, pledge of assets, asset maintenance, and deductions from the assessment base.

#### § 347.202 Definitions.

For the purposes of this subpart:

(a) *Affiliate* means any entity that controls, is controlled by, or is under common control with another entity. An entity shall be deemed to "control" another entity if the entity directly or indirectly owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity or controls in any manner the election of a majority of the directors or trustees of the other entity.

(b) *Branch* means any office or place of business of a foreign bank located in any state of the United States at which deposits are received. The term does not include any office or place of business deemed by the state licensing authority or the Comptroller of the Currency to be an agency.

(c) *Deposit* has the same meaning as that term in section 3(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(1)).

(d) *Depository* means any insured state bank, national bank, or insured branch.

(e) *Domestic retail deposit activity* means the acceptance by a state branch of any initial deposit of less than \$100,000.